

## THE GUIDELINES ON THE APPROVAL AND REGISTRATION OF CREDIT RATING AGENCIES

[Gazette Notice 8512 of 2001]

### 1. Introduction

The Capital Markets Authority is seeking to promote the establishment of credit rating agencies as part of measures aimed at building an active corporate securities debt market and impetus to deepening of the domestic capital markets.

These are guidelines on the requirements for approval and registration of credit rating agencies in Kenya.

#### 1.1 Credit Rating:

Credit rating is an objective and independent opinion on the general creditworthiness of an issuer of a debt instrument, and its ability to meet its obligations in a timely manner over the life of the financial instrument based on relevant risk factors including the ability of the issuer to generate cash in the future. Ratings rank the debt issue within a consistent framework to compare risk among the different debt instruments in the market and assign a risk grade.

As it pertains to assessment of future likely positions on the basis of both quantitative and qualitative judgment and past performance, credit rating is necessarily subjective. The goal of the rating process is to arrive at a reasoned judgment on credit risk not through a set formula but rather through a careful review and analysis of the critical issues surrounding a specific debt and the issuer. This in particular includes the ability of the management to sustain in future, cash generation in the face of adverse changes in the business and economic environment. A rating is therefore an informed opinion of future outcome based on known qualitative and quantitative factors.

A rating does not constitute a recommendation to purchase, sell or hold a particular security. In addition, a rating does not comment on the suitability of an investment for a particular investor.

The objective of a credit rating is to provide independent, high quality, impartial, value-added quantitative and qualitative review as well as analytical information on the risk profile assessment of issuers of financial instruments.

It therefore serves to promote confidence in the capital markets and enhance transparency by facilitating investors' awareness on underlying risks of an issuer or issued financial instrument through assignment of ratings.

### 2. Core Professional Capacity

- 2.1 The applicant must make evident its capacity to perform the role of a rating agency.
- 2.2 The applicant must have a background and experience as well as professional expertise to provide the service of a rating agency.
- 2.3 The applicant must either be in the process of appointing or have appointed professionals including economic, financial and research analysts, and other relevant quantitative and qualitative analysts who have the relevant background in the rating business.

### 3. Objectivity and Independence

- 3.1 The applicant must demonstrate its independence and objectivity.
- 3.2 The applicant must not be associated directly or indirectly with group(s) who have conflicting interests in the area of the rating business.
- 3.3 The applicant must also demonstrate that it has a proven rating methodology.
- 3.4 The rating process must have sufficient internal checks and balances to safeguard objectivity in particular where qualitative judgment also plays an important role in the rating process.

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- 3.5 The rating process must be based on quantitative and qualitative review of facts and must not rely in hearsay or rumours to downgrade or upgrade a particular issuer or issued financial instrument.

**4. Ownership**

- 4.1 In order to ensure independence and objectivity, the applicant must be a body corporate with a preponderance of an institutional shareholding of repute.
- 4.2 The shareholders, board of directors, management and professional analytical staff should be persons of impeccable character.
- 4.3 The applicant should partly be owned by an internationally recognized rating agency or have a contractual arrangement with an internationally recognized rating agency that provides technical and strategic support drawn from international experience.
- 4.4 For purposes of this guidelines, an internationally recognized agency shall be a rating agency which has been in the business of providing credit ratings for debt securities or any securities of interest to investors, which obligates the issuer to pay back the principal amount raised in more than two markets for at least five years.
- 4.5 The ownership structure or association and capital level shall not be the only basis or criteria of determining the independence and integrity of a rating agency.

**5. Capital Requirements**

The applicant shall have a stable financial base with a minimum paid up capital of KSh. 12 million (or the equivalent in US dollars).

**6. Disclosure of Information by Rating Agency**

The rating agency must disclose to the Authority, issuers and the general public the following—

- (a) General fee structure or any change thereof;
- (b) downgrades of ratings;
- (c) disclosure of ratings of commercial paper or corporate bonds as applicable.

**7. Confidentiality**

The rating agency must have a system of maintaining on a confidential basis the information supplied strictly for the purpose of rating by issuers in order to safeguard and promote confidence in the rating process.

**8. Documents to Accompany the Application for Approval and Registration of a Credit Agency in Kenya**

An application for approval and registration should be made to the Capital Markets Authority accompanied by the following—

- (a) certificate of Incorporation, Memorandum and Articles of Association;
  - (b) business plan (to include resumes of the top management staff, management structure, brief on the rating methodology, rating grades, fee structure);
  - (c) a sample of a standard agreement between the rating agency and its clients;
  - (d) draft sample "letter of requests" for rating accompanied by a draft of the "information requirements for rating securities".
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**THE CAPITAL MARKETS (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS**

[Legal Notice 181 of 2001, Legal Notice 165 of 2002, Legal Notice 100 of 2009]

**PART I – PRELIMINARY****1. Citation**

These Regulations may be cited as the Capital Markets (Collective Investment Schemes) Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

"Act" means the Capital Markets Act;

"certificate of entitlement" means a document of title, statement of account or any other document evidencing ownership of the holder thereof to one or more shares acquired by the holder in a collective investment scheme;

"custodian" means a company approved by the Authority to hold in custody funds, securities, financial instruments or documents of title to assets of a collective investment scheme;

"dealing" means an act of buying, selling or agreeing to buy or sell or trade shares by a fund manager;

"collective investment scheme portfolio" means all cash and other collective investment scheme portfolio for the time being held or deemed to be held upon trust pursuant to a trust deed establishing a collective investment scheme or other incorporation or offering document of a collective investment scheme, other than the amount for the time being standing to the credit of the distribution account;

"dilution" means that a collective investment scheme may suffer reduction in the value of its collective investment scheme portfolio as a result of costs incurred in dealing in its underlying investments and of any spread between the buying and the selling prices of such investments;

"holder" means any person (other than a fund manager) who is the lawful holder of a certificate evidencing that he has an interest in the collective investment scheme and includes a purchaser of or a subscriber for such an interest who is entitled to have a certificate issued to him;

"initial charge" means that portion of the selling price of a share which represents the fund manager's charge in respect of expenditure incurred and work performed by it in connection with the creation and issue of such share but does not include any compulsory charge;

"portfolio" means a group of securities in which members of the public are invited to acquire shares pursuant to the collective investment scheme and include any amount in cash forming part of the assets pertaining to such portfolio;

"shillings" means shillings in the currency of the Republic of Kenya;

"trust" means a trust within the meaning of the Trustee Act (Cap. 167);

"trust deed" in relation to a collective investment scheme, means the trust deed that sets out the trusts governing the unit trust or mutual fund and includes every instrument that varies those trusts, or effects the powers, duties, or functions of the trustee or manager of the unit trust or mutual fund;

"trustee" in relation to a unit trust, means a trustee in which are invested the money, investments or other collective investment scheme portfolio that are for the time being subject to the trusts governing the unit trust;

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"unit" means an undivided share in the collective investment scheme portfolio of a unit trust scheme;

"working day" excludes Saturday, Sunday and public holidays.

PART II – CONSENT, REGISTRATION AND APPROVAL  
OF COLLECTIVE INVESTMENT SCHEMES

**3. Application for consent.**

An application for consent to register a collective investment scheme shall be submitted to the Authority by the promoter of a proposed collective investment scheme, and shall be accompanied by—

- (a) the prescribed application fee;
- (b) the documents specified in Regulation 4 and
- (c) such other documents that may be required by the Authority.

**4. Documents to accompany application.**

(1) The application in Regulation 3 shall be accompanied by the following documents—

- (a) draft incorporation documents of the collective investment scheme;
- (b) memorandum and articles of association of the promoter;
- (c) memorandum and articles of association of the proposed fund manager;
- (d) business plan;
- (e) one bank reference; and
- (f) two professional or business references.

(2) Consent granted for the registration of a collective investment scheme shall lapse after three months.

**5. Application for registration of a collective investment scheme**

An application for registration of a collective investment scheme shall be made to the Authority by a promoter of the collective investment scheme, in triplicate in Form I set out in the First Schedule, within three months after the grant of consent, accompanied by the following—

- (a) the incorporation documents;
- (b) the information memorandum;
- (c) audited reports for the preceding 3 years of the proposed fund manager, where applicable;
- (d) audited reports for the preceding 3 years of the proposed trustee;
- (e) audited reports for the preceding 3 years of the proposed custodian;
- (f) a letter of consent to act as a fund manager;
- (g) a letter of consent to act as a trustee;
- (h) a letter of consent to act as a custodian; and
- (i) the prescribed registration fee.

**6. Notification of registration.**

The Authority shall advise the promoter within thirty days of receipt of the application for registration of a collective investment scheme whether registration has been granted.

**7. Form of certificate**

The certificate of registration of a collective investment scheme shall be in Form 2 set out in the First Schedule.



PART III – INCORPORATION DOCUMENTS  
OF A COLLECTIVE INVESTMENT SCHEME

**8. Requirements of incorporation documents**

(1) The incorporation documents of a collective investment scheme shall contain the documents specified in the Second Schedule.

(2) Nothing in the incorporation documents may provide that a trustee, custodian, fund manager or board of directors of a collective investment scheme shall be exempt from liability to a holder for breach of trust, fraud or negligence, or be indemnified against such liability by holders or at the holder's expense.

**9. Alteration of incorporation documents**

(1) All proposed alterations or additions to the incorporation documents shall be submitted to the Authority for prior approval.

(2) The Authority shall determine whether holders shall be notified of any alterations or additions to the incorporation documents and the period of notice if any to be applied before the changes are to take effect.

(3) The notice period referred to in subregulation (2) shall not exceed three months unless the Authority, having regard to the merits of the case, otherwise determines.

**10. Alterations subject to approval of the Authority.**

(1) Subject to Regulation 9, the incorporation documents may be altered by the fund manager without consulting the holders, provided that the trustee or the board of directors, as the case may be, certify in writing that in their opinion the proposed alteration—

- (a) is necessary to enable compliance with fiscal, statutory or other official requirements; or—
- (b) does not materially prejudice holders' interests, does not to any material extent release the trustee, custodian, fund manager or the board of directors, their agents or associates from any liability to holders and does not materially increase the costs payable from the collective investment scheme portfolio concerned; or
- (c) is necessary to correct a manifest error.

(2) All alterations under this Regulation shall be filed with the Authority within seven days of the relevant decision.

**11. Inspection**

The fund manager shall make the incorporation documents available for inspection free of charge to any of the collective investment scheme's holders at all times during ordinary office hours at the registered office of the fund manager.

PART IV – COLLECTIVE INVESTMENT SCHEME INFORMATION MEMORANDUM

**12. Collective Investment scheme to issue information memorandum**

A collective investment scheme shall not offer its shares for sale to the public or a section of the public issued an information memorandum approved by the Authority which complies with the Fourth Schedule.

**13. Requirements of information memorandum**

(1) Every information memorandum of a collective investment scheme shall contain the information listed in the Fourth Schedule.

(2) Application forms supplied to persons who are not holders shall be accompanied by the information memorandum but advertisements or investment plans containing an application form and all the information listed in the Fourth Schedule may also be used.

(3) Where performance data or estimated yields are included in an information memorandum, advertisement or any other invitation to the public to invest in the collective

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investment scheme, the Authority may require justification of the calculations resulting in such performance data or estimated yields.

(4) Forecast of a collective investment scheme's performance shall not be made in the information memorandum and the publication of a prospective yield shall not constitute a forecast of performance and a statement to the effect that the publication is that of a prospective yield and not a forecast of performance shall be made in the information memorandum, advertisement or any other invitation to the public.

#### **14. Revision of information memorandum**

(1) An information memorandum shall be—

- (a) reviewed and revised at least once in every six months to take account of any change or new matter, other than a matter which reasonably appears to the fund manager to be insignificant;
- (b) revised immediately upon the occurrence of any material change in the matters stated therein or upon the occurrence of any new material information which ought to be disclosed therein.

(2) A revision of the information memorandum may take the form of a complete substitution of the previous information memorandum or a supplement to the information memorandum and the date of the revision shall be prominently displayed.

(3) Any amendments to the information memorandum shall require the prior approval of the Authority.

### **PART V – MANAGEMENT OF A COLLECTIVE INVESTMENT SCHEME**

#### **FUND MANAGER**

#### **15. Obligation to appoint a fund manager**

Every collective investment scheme shall appoint in writing a fund manager approved by the Authority to manage the day to day operation of the collective investment scheme.

#### **16. Management of a collective investment scheme**

(1) No person shall be appointed as a fund manager of a collective investment scheme unless such a person holds a licence to operate as a fund manager issued by the Authority.

(2) A fund manager of a collective investment scheme may in relation to the custodian or trustee of such collective investment scheme, be a holding company or a subsidiary company within the meaning of the terms as defined in section 154 of the Companies Act, (Cap. 486) or be deemed by the Authority to be otherwise under control of substantially the same persons or the consist substantially of the same shareholders, provided that the investment in a related company shall be limited to ten percent of the total funds managed by the fund manager.

(3) A fund manager shall at all times maintain a paid-up share capital and unimpaired reserves of not less than ten million shillings for the operation of the collective investment scheme.

[L.N. 165/2002, r. 2.]

#### **17. Duties of a fund manager**

(1) A fund manager of a collective investment scheme shall carry out the administration of the fund including the management of the portfolio of investments in accordance with the direction and the authority of the trustee or the board of directors, as the case may be, as well as the provisions of the incorporation documents, the information memorandum, the rules of the collective investment scheme and these Regulations.

(2) The principal duties of a fund manager shall include but shall not be restricted to—

- (a) advising the trustee or board of directors, as the case may be, on the asset classes which are available for investment;
- (b) formulating a prudent investment policy;

- (c) investing the scheme's assets in accordance with the scheme's investment policy;
- (d) reinvesting any income of the scheme fund which is not required for immediate payments;
- (e) instructing the custodian to transfer, exchange, deliver in the required form and manner the scheme assets held by such custodian;
- (f) ensuring that the shares or units in the collective investment scheme are priced in accordance with the information memorandum, the rules of the collective investment scheme and these Regulations;
- (g) not selling any shares otherwise than on the terms and at a price calculated in accordance with the provisions of the information memorandum, rules of the collective investment scheme or these Regulations;
- (h) rectifying any breach of matters arising under paragraph (f) or (g) provided that where the breach relates to incorrect pricing of shares or to the late payment in respect of the issue or redemption of shares, rectification shall, unless the trustee or board of directors, as the case may be, otherwise directs, extend to the reimbursement or payment or arranging the reimbursement or payment of money by the fund manager to the holders or former holders, by the fund manager to the scheme, or by the scheme to the fund manager;
- (i) purchasing at the request of a holder, any shares held by such holder on the terms and at a price calculated in accordance with the provisions hereof;
- (j) publishing daily the price of shares in at least two daily newspapers of national circulation, published in the English language:

Provided that where a collective investment scheme is not dealing on a daily basis, there shall be at least one publication a month of the prices of shares in at least two daily newspapers of national circulation, at least three days before the dealing day, specifying therein the date of the dealing day.

- (k) preparing and timeously dispatching all cheques, warrants, notices, accounts, summaries, declarations, offers and statements required under the provisions of the information memorandum, rules of the collective investment scheme or these Regulations, to be issued, served or sent and signing and executing all certificates and all transfers of securities;
- (l) making available for inspection to the trustee or board of directors or any approved auditor appointed by the trustee or directors, the records and the books of account of the fund manager giving to the trustee or board of directors or to any such auditor such oral or written information as it or he requires with respect to all matters relating to the fund manager, its properties and its affairs;
- (m) making available or ensuring that there is made available to the trustee or board of directors such details as the trustee or board of directors may require with respect to all matters relating to the collective investment scheme; and
- (n) being fair and equitable in the event of any conflict of interest that may arise in the course of its duties.

(3) A fund manager shall not engage or contract any advisory or management services on behalf of a collective investment scheme without prior written approval of the trustee or the board of directors:

Provided that—

- (a) the fund manager shall remain liable for any act or omission of the sub-contracted fund manager;
- (b) the fees and expenses of any such persons shall be payable by the fund manager and shall not be payable out of the collective investment scheme portfolio;

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- (c) any expenses incurred by any such persons which, if incurred by the fund manager would have been payable out of the collective investment scheme portfolio, may be paid out of the collective investment scheme portfolio to the fund manager by way of reimbursement; and
- (d) any such appointment or termination of appointment shall be notified in writing to all holders.

(4) All monetary benefits or commissions arising out of managing scheme funds shall be credited to the scheme fund by the fund manager.

(5) The fund manager shall account to the trustee within thirty days after receipt by the fund manager any monies payable to the trustee.

(6) Every fund manager shall issue a receipt evidencing the purchase of shares of the collective investment scheme for each purchase.

(7) The fund manager shall issue a certificate of entitlement to the holders every thirty days, specifying any shares held by any holder and showing the transactions in the holder's account during the preceding month and which shall be *prima facie* evidence of the title of the holder to the units or shares.

## 18. Records to be maintained by a fund manager

(1) A fund manager of a collective investment scheme shall—

- (a) keep and maintain a record of all minutes, statements of accounts and resolutions in respect of the scheme's investment portfolio;
- (b) keep or cause to be kept proper books of accounts and records in which shall be entered all transactions effected by the fund manager for the account of the collective investment scheme and permit the trustee or board of directors from time to time on demand to examine and take copies of or extracts from any such books and records;
- (c) maintain a daily record of shares held by the fund manager, including the type of such shares acquired or disposed of, and of the balance of any acquisitions and disposals; and
- (d) keep and maintain a daily record of the shares of the scheme which are held, issued, redeemed, exchanged, and the valuation of the collective investment scheme portfolio including particulars given in Regulation 69, required upon completion of a valuation.

(2) The fund manager shall make the collective investment scheme's records available for inspection by the trustee, board of directors or the Authority free of charge at times during office hours and shall supply the trustee, board of directors or Authority with a copy of the records or any part of such records on request at no charge.

## 19. Fund manager's reports

(1) The fund manager shall provide the trustee, board of directors, holders and the Authority quarterly from the date of the fund manager's appointment with—

- (a) a valuation of the scheme fund and of all the investments representing the same, including the details of the cost of such investments and their estimated yields;
- (b) a report reviewing the investment activity and performance of the investment portfolios comprising the scheme fund since the last report date and containing the fund manager's proposals for the investment of the scheme fund during the period; and
- (c) a record of all investment transactions during the previous period.

(2) The Fund manager of a collective investment scheme shall once every year provide every holder and the Authority with audited accounts and such other statements as may be necessary in relation to the operations of that scheme during the period which ended

not more than three months before the date on which such accounts or statements are submitted, and in regard to its position as at the end of that period, including—

- (a) the fund manager's capital resources actually employed or immediately available for employment for the purposes of the scheme;
- (b) in respect of the collective investment scheme portfolio, the total market value of each of the several securities included in the collective investment scheme portfolio, and the value of each of those securities expressed—
  - (i) as a percentage of the total market value of the collective investment scheme portfolio;
  - (ii) as a percentage of the total amount of securities of that class issued by the concern in which the investment is held; and
  - (iii) indicating the percentage of such securities in relation to the investment guidelines specified in Regulation 78(2).
- (c) the amount of dividends and interest and any other income for distribution which have accrued to the underlying securities comprised in the collective investment scheme portfolio, indicating the classes of income and the amount derived from each class, and how the income has been or is intended to be allocated;
- (d) the amount of proceeds of capital gains, rights and bonus issues and any other accruals and receipts of a capital nature which have been or are to be invested in the scheme for the benefit of the holders, indicating the classes thereof and the amount derived from each class, but excluding amounts derived from the sale of shares;
- (e) the total amount derived from the sale of shares, indicating the total amount paid in respect of compulsory charges, and the total amount paid in respect of the repurchase of shares;
- (f) the fund, manager's income derived from all sources in the operation of the scheme, indicating the sources and the amount derived from each source, and its net profit or loss derived from such operation;
- (g) a review of the fluctuations in the selling and repurchase prices per share during the period in question including the highest and lowest selling prices and the highest and lowest repurchase price.

(3) Copies of the accounts and statements referred to in subregulation (2) shall be kept at the registered office of the fund manager and made available for inspection during ordinary office hours by any holder or other person *bona fide* interested in the purchase of shares of the scheme.

(4) A fund manager shall in addition, within a period of thirty days after receipt of a written request from the Authority, or within such further period thereafter as the Authority may allow, lodge with the Authority such further information and explanations in connection with any accounts or statement referred to in subregulation (2) as may be specified in the request.

(5) The fund manager of a mutual fund shall report to the board of directors within seven days of the creation and cancellation of shares.

## 20. Liability of a fund manager

(1) The fund manager of a collective investment scheme shall not be liable for any loss, damage or depreciation in the value of the scheme fund or of any investment comprised therein or the income therefrom which may arise by reason of depreciation of the market value of the shares and other assets in which scheme funds are invested unless such loss, damage or depreciation in the value of the scheme fund arises from negligence whether professional or otherwise, willful default or fraud by the fund manager or any of its agents, employees or associates.

(2) In the absence of fraud or negligence by the fund manager, the fund manager shall not incur any liability by reason of any matter or thing done or suffered or omitted by it in

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good faith under the provisions of the incorporation documents, information memorandum, rules of the collective investment scheme or these Regulations.

(3) The fund manager shall not be under any liability except such liability as may be expressly assumed by the fund manager under the incorporation documents, information memorandum, the rules of the collective investment scheme and these Regulations, nor shall the fund manager save as expressly provided herein be liable for any act or omission of the trustee.

## **21. Remuneration of a fund manager**

(1) The fund manager shall be entitled by way of remuneration for its services and to cover expenses and fees in performing its obligations including obligations to pay the remuneration to the trustee and the trustee disbursements and the auditors fees and expenses but excluding expenses incurred by the fund manager or the trustee for the purpose of enabling the trust to conform to legislation passed after the date hereof the expenses whereof to be paid out of the collective investment scheme portfolio to receive the following amounts, namely:—

- (a) the initial charge referred to in Regulation 65(1); or
- (b) any charge disclosed in the information memorandum.

(2) The fund manager may at any time at the fund manager's discretion waive or rebate in full or any part of the amounts mentioned in subregulation (1);

Provided that the fund manager shall report to the trustee or board of directors any such changes and give the reasons therefor.

## **22. Removal of a fund manager**

(1) A fund manager shall be removed immediately on the happening of any of the following events:—

- (a) if a court of competent jurisdiction orders liquidation of the fund manager (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the trustee, board of directors, as the case may be, and the Authority); or
- (b) if a receiver is appointed for the undertaking of the fund manager's assets or any part thereof; or
- (c) if for good and sufficient reason the trustee or board of directors, as the case may be, is of the opinion and so states in writing to the Authority that a change of fund manager is desirable in the interest of the holders.

(2) A fund manager shall be removed by three months notice in writing by the trustee or board of directors to the fund manager as the case may be—

- (a) if an extra-ordinary resolution is passed by the holders removing the fund manager; or
- (b) if the holders of three quarters majority in value of the shares in existence (excluding shares held or deemed to be held by the fund manager or by any associate of the fund manager) request in writing to the trustee or board of directors as the case may be, that the fund manager be removed.

## **23. Resignation of a fund manager**

A fund manager may resign by giving three months notice, to the trustee or board of directors as the case may be, of the collective investment scheme, and shall give reasons for the resignation.

## **24. Service of notice and handing over**

(1) Notice shall be deemed to have been served seven days from the date of its dispatch and shall come into effect four days after it is served and such termination will be deemed to be effective ninety days after the notice comes into effect.

(2) During the last thirty days of the notice period given under Regulations 22 and 23 the fund manager shall:—

- (a) hand over, transfer and deliver to a fund manager, appointed in writing by the trustee or board of directors and licensed by the Authority to succeed the outgoing fund manager, all information within itself in relation to its contractual duties to the scheme including—
  - (i) statements pertaining to the entire scheme fund;
  - (ii) investment portfolio including details of the cost of such investments and estimated yields;
  - (iii) statements pertaining to all incomplete transactions; and
  - (iv) any other information as may reasonably be required by the scheme.
- (b) hand over, transfer and deliver all records of accounts required to be maintained by a fund manager under Regulation 18, as may be reasonably required by the incoming fund manager:

Provided that copies of the said information shall be submitted to the Authority within the same period.

## TRUSTEE

### 25. Obligation to appoint a trustee

Subject to these Regulations, a collective investment scheme shall in writing appoint as trustee a person approved by the Authority.

### 26. Eligibility for appointment of a trustee

(1) No person shall be appointed a trustee of a collective investment scheme unless such person is a bank or financial institution approved for that purpose by the Authority.

(2) A trustee of a collective investment scheme may in relation to the fund manager or custodian of such collective investment scheme, be a holding company or a subsidiary company within the meaning of the terms as defined in section 154 of the Companies Act (Cap. 486) or be deemed by the Authority to be otherwise under control of substantially the same persons or consist of substantially of the same shareholders provided that the investment in a related company shall be limited to ten percent of the total funds managed by the fund manager.

(3) The Authority may revoke any approval already granted if at any time thereafter a trustee ceases to satisfy the requirements of these Regulations.

[L.N. 165/2002, r. 3.]

### 27. Duties and obligations of a trustee

(1) In the case of a unit trust, a trustee shall cause proper books of accounts to be kept by the fund manager, in respect of the unit trust and shall make available annually in such manner as may be prescribed by the Authority, audited statement of accounts in respect of the unit trust, together with a summary of any amendments of the trust deed that have been made since the date of the last statement.

(2) The trustee of a collective investment scheme, shall serve the scheme in compliance with the trust deed, and the trustee's duties shall include the following, to—

- (a) ensure that the custodian takes into custody all the collective investment scheme portfolio and holds it in trust for the holders in accordance with these Regulations;
- (b) take all steps and execute all documents which are necessary to secure acquisitions or disposals properly made by the fund manager in accordance with the trust deed, incorporation documents and these Regulations;
- (c) collect any income due to be paid to the scheme and or claim any repayment of tax and direct any income received in trust for the holders to the custodian in accordance with these Regulations or the trust deed;

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- (d) keep such records as are necessary—
  - (i) to enable it to comply with these Regulations; and
  - (ii) to demonstrate that such compliance has been achieved.
- (e) execute all documents as are necessary and take all steps to ensure that instructions properly given to it by the fund manager as to the exercise of rights (including voting rights) attaching to the ownership of collective investment scheme portfolio are carried out;
- (f) exercise any right of voting conferred by any of the collective investment scheme portfolio which is in shares in other collective investment schemes managed or otherwise operated by the fund manager;
- (g) execute and deliver to the fund manager or its nominee upon the written request of the fund manager from time to time such powers of attorney or proxies as the fund manager may reasonably require, in such name or names as the fund manager may request, authorising such attorneys and proxies to vote consent or otherwise act in respect of all or any part of the collective investment scheme portfolio;
- (h) forward to the fund manager and the custodian without delay all notices of meetings, reports, circulars, proxy solicitations and other documents of a like nature received by it as registered holder of any investment;
- (i) ensure that the collective investment scheme is managed by the fund manager in accordance with the agreement of service with the fund manager, these Regulations, the incorporation documents, the information memorandum and the rules of the collective investment scheme;
- (j) issue a report to be included in the annual report of the collective investment scheme on whether in the opinion of the trustee, the fund manager has in all material respects managed the scheme in accordance with the provisions of these Regulations, incorporation documents, the information memorandum and the rules of the collective investment scheme, and if the fund manager has not done so, the respect in which it has not done so and the steps which the trustee has taken in respect thereof;
- (k) ensure that decisions about the constituents of the collective investment scheme portfolio do not exceed the powers conferred on the fund manager; and
- (l) ensure that the fund manager maintains sufficient records and adopts such procedures and methods for calculation of prices at which shares are issued and redeemed to ensure that those prices are within the limits prescribed by these Regulations, the incorporation documents, the information memorandum and the rules of the collective investment scheme.

Provided that if the trustee is not satisfied with any matters specified in this Regulation it must inform the Authority.

(3) In this rule 'voting' includes giving any consent or approval of any arrangement, scheme or resolution or any alternation in or abandonment of any rights attaching to any part of the collective investment scheme portfolio and 'right' includes a requisition or joining in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement or to consent to any short notice of any meeting.

## **28. No delegation of duties of a trustee**

A trustee shall not delegate to the fund manager, his agent or associate—

- (a) any function of oversight in respect of the fund manager; or
- (b) any function of custody or control of the collective investment scheme portfolio.



**29. Resignation of trustee**

(1) A trustee shall not be entitled to resign except upon the appointment of a new trustee. If a trustee wishes to resign it shall give three months notice in writing to that effect to the fund manager and the Authority and the fund manager shall appoint within two months after the date of such notice, some other qualified person as the new trustee upon and subject to such person entering into a trust deed supplemental to the trust deed comprised in the incorporation documents. If the fund manager is unable to appoint a new trustee as aforesaid within such period of two months, the trustee shall be entitled to appoint a qualified company selected by it as the new trustee on the same basis as aforesaid.

(2) In this clause the expression "qualified person" means a company qualified to act as trustee in terms of these Regulations.

**30. Removal of a trustee**

(1) A trustee shall be removed by the 'fund manager in writing immediately on the happening of any of the following events, that is if—

- (a) a court of competent jurisdiction orders its liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation under a scheme approved by the Authority);
- (b) a manager or a receiver is appointed over any of its assets; or
- (c) the trustee ceases to carry on business as a bank or financial institution.

(2) A trustee shall be removed by three months notice in writing given to the trustee by the fund manager with the approval of the Authority if—

- (a) the trustee fails or neglects after reasonable notice from the fund manager to carry out or satisfy any duty imposed on the trustee in accordance with the trust deed, the incorporation documents, the information memorandum, the rules of the collective investment scheme or these Regulations; or
- (b) the holders, by extra ordinary resolution resolve that such notice be given.

(3) The fund manager shall by deed supplemental to the trust deed appoint as trustee some other qualified person with the approval of the Authority to replace a trustee who has been removed.

**31. Matters to be provided for in the trust deed**

(1) A collective investment scheme trust deed shall make provisions on all the matters specified in the Third Schedule of these Regulations.

(2) Every trust deed shall prescribe the rules for the administration of the collective investment scheme complying with provisions of the Third Schedule and including the following—

- (a) appointment of a custodian;
- (b) the issue of a receipt evidencing the purchase of the shares of the collective investment scheme;
- (c) the issue of a certificate of entitlement to the holders within thirty days specifying shares held by each holder and showing the transactions in the holder's account during the preceding month, and that such certificate shall be *prima facie* evidence of the title of the holder to the units or shares;
- (d) authentication of every share certificate by the trustee, provided that before it is issued by the fund manager to the purchaser, the trustee shall not countersign any share certificate unless it has received from the fund manager a full account of the cash proceeds of the issue of that certificate or securities to the required value, together with all documents necessary to effect transfer thereof;
- (e) the funds of the collective investment scheme to be deposited in the trust account(s) with the custodian approved by the Authority and the securities of the collective investment scheme be kept with such custodian;

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- (f) that—
- (i) any funds for investment accruing from the issue of shares;
  - (ii) dividends, interest or any other income accruing on underlying securities;
  - (iii) the proceeds of capital gains, rights or bonus issues; and
  - (iv) any funds received by the fund manager from the realization of underlying securities,
- be accounted for in full to the trustee by the fund manager and the custodian and deposited in the trust account(s):
- (g) that the proceeds of capital gains, rights and bonus issues be vested in the collective investment scheme for the benefit of the holders;
  - (h) all transactions of the collective investment scheme portfolio be individually reported to the trustee by the fund manager by the next working day following such transaction;
  - (i) the obligation of the fund manager to repurchase, subject to such terms and conditions as may in terms of the trust deed apply, any number of shares offered to it, on such basis as may be prescribed in the trust deed;
  - (j) that the specific method of calculation of the value of the collective investment scheme portfolio and of the share value at which holders shall transact their holdings with the collective investment scheme, should be acceptable to the Authority including the specific time of the day, the week or date of the month and time for taking the valuation of securities, and the particulars relating to valuation given in Part VI of these Regulations;
  - (k) the fee charged by the fund manager (which shall be the only monies payable to the fund manager annually) be disclosed in the financial reports of the collective investment scheme;
  - (l) the accounts and financial records of a collective investment scheme be maintained in a system and manner acceptable to the Authority;
  - (m) the fees payable to the trustee and the custodian of the collective investment scheme portfolio be disclosed in the financial reports of the collective investment scheme; and
  - (n) amendment of the trust deed be in accordance with the provisions of the trust deed, these Regulations, the incorporation documents, the information memorandum and with the prior approval of the Authority.
- (3) Every such trust deed shall further prescribe—
- (a) the investment policy to be followed in respect of the scheme concerned;
  - (b) the manner in which the selling price of shares is to be calculated;
  - (c) the terms and conditions on which the fund manager will repurchase shares and the manner in which repurchase price is to be calculated;
  - (d) the manner in which shares can be transferred from one holder to another;
  - (e) if applicable, the manner in which additional shares are to be calculated;
  - (f) the manner in which yield from shares is to be calculated; and
  - (g) the manner in which the initial charge and other charges are to be calculated.
- (4) The Authority may authorize any—
- (a) inclusion in the trust deed or the information memorandum as the case may be of any provisions that in its opinion is deemed to be consistent with international market practices; or
  - (b) omission from the trust deed or the information memorandum as the case may be of any information whose inclusion would otherwise be required under these Regulations if in the opinion of the Authority such information would be inconsistent with the international market practices or would be inappropriate

to the nature of the collective investment scheme or would not be in the best interest of the holders.

(5) The parties to a trust deed may by a supplemental deed alter or rescind any provisions of such trust deed or add further to the provisions thereto, but no alteration or rescission of, or addition to a trust deed shall be valid—

- (a) unless the consent thereto of the holders and the Authority has been obtained in the manner prescribed in the trust deed; or
- (b) the Authority is satisfied that any such alteration, rescission or addition does not contain anything inconsistent with the provisions of the Act or with sound financial principles.

(6) A provision in any trust deed, whether entered into before or after the commencement of these Regulations purporting to relieve any party from liability to the holders on account of his own negligence, shall be void.

[L.N. 165/2002, r. 5.]

### **32. Remuneration of trustee**

The agreement between the fund manager, the trustee and the board of directors, as the case may be, shall make provision on the computation of the fee in respect of the trustee's services which will be disclosed to the holders in the annual report each year and the trustee shall in addition to such remuneration be entitled to be repaid by the fund manager on demand the amount of all its disbursements other than disbursements expressly required or authorised to be paid out of the collective investment scheme portfolio.

#### **CUSTODIAN**

### **33. Obligation to appoint a custodian**

Every collective investment scheme shall appoint a custodian approved by the Authority.

### **34. Eligibility for appointment of a custodian**

(1) No person shall be appointed a custodian of a collective investment scheme unless such person is a bank or financial institution approved for that purpose by the Authority.

(2) A custodian of a collective investment scheme may in relation to the fund manager or the trustee of such collective investment scheme, be a holding company or a subsidiary company within the meaning of the terms as defined in section 154 of the Companies Act (Cap. 486) or be deemed by the Authority to be otherwise under control of substantially the same persons or consist substantially of the same shareholders, provided that the investment in a related company shall be limited to ten percent of the total funds managed by the fund manager.

(3) The Authority may revoke the approval of a custodian if at any time thereafter the custodian ceases to satisfy the requirements of these Regulations.

[L.N. 165/2002, r. 4.]

### **35. Duties of a custodian**

(1) A custodian shall render custodial services to the collective investment scheme pursuant to a written agreement between the custodian and the board of directors, fund manager or trustee as the case may be, including the following—

- (a) to maintain the custody of all the collective investment scheme portfolio and hold it to the order of the trustee or fund manager in accordance with the provisions of these Regulations, the incorporation documents, the information memorandum and the rules of the collective investment scheme;
- (b) to receive and keep in safe custody title documents, securities and cash amounts of the collective investment scheme;
- (c) to open an account in the name of the collective investment scheme for the exclusive benefit of such collective investment scheme;

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- (d) to transfer, exchange or deliver in the required form and manner securities held by the custodian upon receipt of proper instructions from the fund manager, trustee or board of directors, as the case may be;
- (e) to require from the fund manager, board of directors or trustee, such information as it deems necessary for the performance of its functions as a custodian of the collective investment scheme;
- (f) to promptly deliver to the trustee or fund manager or to such other persons as the fund manager or trustee may authorize, copies of all notices, proxies, proxy soliciting materials received by the custodian in relation to the securities held in the collective investment scheme portfolio, all public information, financial reports and stockholder communications the custodian may receive from the issuers of securities and all other information the custodian may receive, as may be agreed between the custodian, trustee or fund manager, as the case may be, from time to time;
- (g) to exercise subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the fund manager or the trustee as the case may be;
- (h) to exercise the same standard of care that it exercises over its own assets in holding, maintaining, servicing and disposing of the collective investment scheme portfolio and in fulfilling obligations in the agreement;
- (i) where title to investments are recorded electronically, to ensure that entitlements are separately identified from those of the fund manager or the trustee, as the case may be, of the collective investment scheme in the records of the person maintaining records of entitlement;
- (j) to attend general meetings of the holders and be heard at any general meeting on matters which concern it as custodian.

Provided that the custodian shall in executing its duties exercise the degree of care expected of a prudent professional custodian for hire.

(2) A custodian discharging its contractual duties to the scheme shall not contract an agent to discharge those functions; except where a portion of the collective investment scheme portfolio is invested in offshore investments, in which case the custodian may engage the services of an overseas sub-custodian approved by the trustee or board of directors, with the notification of such appointment to the Authority.

(3) The agreement between the custodian and the trustee or board of directors or fund manager, as the case may be, shall make provision on the computation of the fee in respect of custodial services which shall be disclosed to the holders in the annual report each year.

### **36. Records to be maintained by a custodian**

The custodian must keep such books, records and statements as may be necessary to give a complete record of:

- (a) the entire fund of the collective investment scheme portfolio held by the custodian; and
- (b) each and every transaction carried out by the custodian on behalf of the collective investment scheme,

and shall permit the trustee, board of directors, the fund manager or a duly authorized agent of the Authority to inspect such books, records and statements within the premises of the custodian at any time during business hours.

### **37. Reports by a custodian**

The custodian must provide to the fund manager, trustee or board of directors as the case may be, and on the Authority—

- (a) a written statement at agreed reporting dates which lists all assets of the scheme in the scheme account(s) together with a full account of all receipts and payments made and other actions taken by the custodian;
- (b) advice or notification of any transfers of collective investment scheme portfolio or securities to or from the scheme account(s) indicating the securities acquired for the account(s) and the identity of the party having physical possession of such securities;
- (c) a copy of the most recent audited financial statements of the custodian prepared together with such information regarding the policies and procedures of the custodian as the fund manager, trustee or board of directors may request in connection with the agreement or the duties of the custodian under that agreement; and
- (d) provide a report annually to the Authority demonstrating that compliance with these Regulations, the incorporation documents, the information memorandum and the rules of the collective investment scheme, has been achieved.

### **38. Resignation of a custodian**

(1) The custodian shall not be entitled to resign except upon the appointment of a new custodian and if the custodian wishes to resign it shall give three months notice in writing to that effect to the board of directors or the fund manager, as the case may be and the Authority and the custodian shall give reasons for the resignation.

(2) The fund manager shall appoint within two months after the date of a notice under subregulation (1) some other qualified person as the new custodian upon and subject to such person being approved by the Authority and entering into an agreement similar to the agreement comprised in the incorporation documents.

(3) If the fund manager is unable to appoint a new custodian as within the period of two months, the custodian shall be entitled to appoint a qualified company selected by it as the new custodian on the same basis as a custodian appointed under Regulation 34.

(4) On receipt of the notice by the trustee, board of directors or the fund manager as the case may be, the agreement between the board of directors, fund manager as the case may be and the custodian shall be deemed to have been terminated.

(5) In the event the custodian desiring to retire or ceasing to be registered as a custodian with the Authority, the fund manager, may with the approval of the Authority appoint another eligible person to be a custodian in its place.

### **39. Removal of a custodian**

(1) A custodian shall be removed in writing immediately on the happening of any of the following events, that is if—

- (a) a court of competent jurisdiction orders its liquidation, except a voluntary liquidation for the purpose of reconstruction or amalgamation approved by the Authority; or
- (b) a statutory manager or a receiver is appointed over any of its assets; or
- (c) the custodian ceases to carry on business as a bank or financial institution.

(2) A custodian shall be removed by three months notice in writing given by the fund manager to the custodian if—

- (a) the custodian fails or neglects after reasonable notice from the fund manager, trustee or board of directors as the case may be, to carry out or satisfy any duty imposed on the custodian in accordance with the agreement; or
- (b) the holders, by extra ordinary resolution resolve that such notice be given, and the fund manager appoint as custodian some other qualified institution with the approval of the Authority.

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(3) In the event of a termination of the agreement provided for under Regulation 38(4), or from the date of a winding up order issued by a competent court against the custodian, the custodian shall immediately hand over, and deliver all assets, documents and funds including those from the bank accounts of the collective investment scheme held by such custodian to the custodian appointed in writing by the board of directors, fund manager or trustee, as the case may be, and approved by the Authority, within thirty days from the date of such termination.

(4) Within twenty days from the termination of the agreement, the custodian shall submit to the Authority an audit report indicating the assets, liabilities and an inventory of the scheme fund, securities and title documents of the scheme assets which have been handed over, transferred and delivered to the appointed custodian.

(5) A copy of the notice given to the custodian for termination of services by the fund manager shall be given to the trustee and the board of directors.

(6) In the event of any disagreement between the fund manager, the trustee or the board of directors as the case may be and the custodian, notification shall be made to the Authority by the fund manager giving reasons for the termination of services of the custodian.

#### **UMBRELLA SCHEMES AND INVESTMENT COMPANIES**

#### **40. Meaning of umbrella scheme**

A promoter of a collective investment scheme may establish two or more sub-funds under the management of one fund manager (hereinafter called an umbrella scheme).

#### **41. Minimum requirements for umbrella schemes**

(1) An umbrella scheme does not qualify for approval from the Authority to operate unless each of its proposed sub-funds qualify for a separate approval to operate as a collective investment scheme, except as provided in Regulation 80.

(2) Subject to the provisions of subregulation (4), if for a period of twenty-four consecutive months commencing at any time after the first issue of any shares of an umbrella scheme, shares in respect of less than two sub-funds are in issue, the trustee or board of directors of the scheme shall take such action as is necessary to change the category of the scheme or to cause shares in respect of more than one sub-fund to be in issue.

(3) If subregulation (2) becomes, or should reasonably be expected by the trustee or board of directors to become, applicable, the fund manager shall, prior to or forthwith upon, the expiry of the twenty-four month period notify the holders and the Authority of any action proposed in order to comply with subregulation (2).

(4) Sub regulation (2) shall not apply if, on or prior to the expiry of the twenty-four month period, winding up of the umbrella scheme has commenced.

#### **42. Allocation of costs for umbrella schemes**

In so far as any of the collective investment scheme portfolio of an umbrella scheme, or any assets to be received as part of the collective investment scheme portfolio, or any costs, charges or expenses to be paid out of the collective investment scheme portfolio, are not attributable to one sub-fund only, the umbrella scheme shall allocate such assets, costs, charges or expenses between and among the sub-funds in a manner which is fair to the holders of the umbrella scheme generally.

#### **43. Reports**

Regulation 19 (fund manager's reports) shall be applied as if each sub-fund were a separate collective investment scheme.

#### **44. Special provisions relating to investment companies**

(1) Every collective investment scheme incorporated as an investment company shall list on an approved securities exchange within six months of a period of expiry of two years after the date of registration of the collective investment scheme.

(2) The minimum amount to be raised for a collective investment scheme set up as an investment company shall be twenty five million shillings.

(3) The investment company with the express approval of the Authority shall offer its securities for sale.

(4) The investment company will be registered as a collective investment scheme upon providing proof that it has raised the minimum amount of twenty-five million shillings.

(5) In the event that the minimum amount of twenty-five million shillings is not raised then the investment company shall refund the monies received as subscriptions to the subscribers.

## PART VI – PRICING, VALUATION AND DEALING OF SHARES

### INITIAL OFFER

#### 45. Application

This subpart applies to the setting up of a new scheme by way of an initial offer, and during the period of such offer.

#### 46. Compliance with incorporation documents

A fund manager shall not issue or sell shares of a collective investment scheme otherwise than at a price calculated in accordance with these Regulations, the incorporation documents, the latest information memorandum and the rules of the collective investment scheme.

#### 47. Period of initial offer

A period of initial offer shall not exceed thirty days from the date of launch, to be so specified in the initial information memorandum and subject to the provisions of Regulation 46, an initial offer shall remain open for the prescribed period.

#### 48. Creation of shares during initial offer

(1) The fund manager shall create or in the case of a unit trust, instruct the trustee to create shares in the scheme at the beginning of the first day of business in the initial offer period and during the period.

(2) At or before, the beginning of the day referred to in subregulation (1) the fund manager must irrevocably choose, in respect of that initial offer, to proceed either under paragraph (3)(a) ('up and running') or under paragraph (3)(b) ('pay over and wait') and in the case of a unit trust, notify its choice to the trustee.

(3) Where on any business day during the period of initial offer the fund manager assumes any obligation to issue shares, it must, depending on its choice under paragraph (2), either—

- (a) create shares or instruct the trustee (in the case of a unit trust), at the beginning of the next business day, to create shares in the scheme in such number at least as will enable the fund manager immediately to fulfill that obligation, whether from the shares so created or from other shares; or
- (b) proceed as follows—
  - (i) pay to the custodian or trustee (in any case where the purchaser has sent a remittance) on the day of receipt of the remittance or on the next business day, the total amount (or the total amount less the total of the fund manager's preliminary charge, if any, in respect of those shares); and
  - (ii) as soon as the period of the initial offer has come to an end, create shares or in the case of a unit trust, instruct the trustee to create shares in the scheme in such number at least as will enable the fund manager to fulfill its obligation to issue shares whether from the units so created or from other shares.

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(4) The instructions given by the fund manager to the trustee shall state, in relation to each type of share to be created, the number to be created, expressed either as a number of shares or as an amount in value or as a combination of the two.

(5) The trustee must create shares on receipt of instructions by the fund manager given under this rule, and must not, during an initial offer create shares otherwise.

#### **49. Initial price**

(1) The initial issue price and offer period, which shall not exceed thirty days from the date of the launching, shall be prescribed in the incorporation documents and the latest information memorandum and the proceeds of the issue shall be remitted by the fund manager to the custodian of the collective investment scheme with advice to the trustee.

(2) The initial issue of shares of a new fund shall not be less than the issue price paid by investors during the launching and offer period less the fund manager's fee and service charges prescribed in the incorporation documents and the latest information memorandum.

#### **50. Determination of selling and re-purchase price**

(1) The selling price and repurchase price quoted by the fund manager shall be based on the net asset and value of the fund in this respect, the value of an investment in securities listed and quoted on the securities exchange shall be the value based on the last done market price which is the last transacted price of the securities.

(2) In the event of a suspension in the quotation of securities for a period exceeding fourteen days, or such shorter period as determined by the trustee, the value of such securities shall be based on other methods such as the net tangible assets of the issuer of the securities and the nominal value of the securities.

(3) With respect to unlisted securities, the valuation shall be based on methods that are fair and reasonable and that are acceptable to the fund manager and approved by the trustee.

#### **51. Pricing of additional shares**

The price of additional shares created and payable by the fund manager to the trustee, after the offer period of the initial offer of new fund shall be based on the net asset value of the fund. The same basis in the computation of the price shall also be applicable to the price payable by the trustee on redemption by way of cancellation of shares.

#### **52. Valuation point for selling price**

The value of the fund to be used in determining the selling price quoted by the fund manager and the price payable by the fund manager to the trustee on creation of additional shares shall be the net asset value at the end of the business day immediately preceding the business day on which the written request to buy and create shares is received by the fund manager and the trustee respectively.

#### **53. Valuation point for repurchase price**

The value of the fund to be used in determining the repurchase price quoted by the fund manager and the price payable by a trustee of a collective investment scheme on the redemption of units shall be the net asset value at the end of the business day on which the written request to repurchase and redeem is received by the fund manager and the trustee respectively.

#### **54. Allowance for service charge**

In addition to the selling price which is derived from the net asset value, the fund manager may charge a service fee as disclosed in the information memorandum and such charge shall be disclosed separately in the application form.



**55. Determination of repurchase price**

The repurchase price quoted by the fund manager shall be the net asset value of the fund. However, if the determination of the repurchase price is computed on a different basis, the repurchase price so computed and quoted by the fund manager shall not be less than the net asset value of the fund and no deductions, other than deductions for incidental expenses such as stamp duty shall be made from the computed repurchase price.

**56. Calculation of net asset value per share**

(1) The formula to be adopted to determine the value of the fund per share is to divide the value of the assets of the fund less its liabilities (including such provisions and allowances for contingencies as the fund manager may think appropriate) by the number of shares issued and fully paid.

(2) The net asset value of the fund and the net asset value per share shall be calculated by the fund manager as at the end of each business day.

(3) Liabilities shall include the amount of any accrued fees and expenses at the relevant valuation date of the fund.

(4) The number of units in issue shall be those units that are issued and fully paid.

**REDEMPTION AND CANCELLATION OF SHARES****57. Cancellation of shares**

(1) Where the fund manager wishes that shares be cancelled, it shall cancel such shares and in the case of a unit trust, instruct the trustee to cancel such shares; and any instruction given by the fund manager shall state, in relation to each type of shares to be cancelled, the number to be cancelled, expressed either as a number of shares or as an amount in value or as a combination of the two.

Provided that at any moment of such instruction the fund manager shall not have any outstanding obligation to issue shares, which by cancellation of shares, would prevent the fund manager from fulfilling any such instruction.

(2) The trustee shall cancel the units on receipt of instructions given by the fund manager.

(3) On cancellation of shares and on delivery to the custodian or the trustee as the case may be of such evidence of the title to those shares, as the custodian or trustee may reasonably require, the custodian or the trustee shall, within two business days of the instructions given by the fund manager pay the repurchase price of the shares—

- (a) to the person who was the holder of those shares; or
- (b) in accordance with the relevant provisions of the information memorandum, trust deed and incorporation documents.

**58. Repurchase price**

The repurchase price payable for each share by the custodian or the trustee shall be based on the net asset value of the fund.

**59. Timing of instructions to create or cancel units**

(1) A fund manager may at any time give instructions to the trustee to create or to cancel units.

(2) Where instructions are given at a time which is less than twelve hours after the last valuation point and before the next valuation point the instructions must be given by reference to the price calculated or being calculated for the last valuation point.

(3) Where instructions are given at a time which is more than twelve hours after the last valuation point:

- (a) instructions must be given by reference to the price next to be calculated; and
- (b) the trustee shall create or cancel the units only after the next valuation point has been reached.

**OPERATIONAL REQUIREMENTS (DEALING)****60. Dealing**

(1) Every collective investment scheme shall stipulate in the information memorandum the days when dealings in its shares shall be computed.

(2) In the event of a scheme not dealing on a daily basis, there shall be at least one regular dealing day every two weeks.

(3) Suspension in dealings may be provided for only in exceptional circumstances having regard to the interest of all the holders.

(4) The fund manager shall immediately notify the Authority if dealing has been cancelled or suspended and the fact of the cancellation shall be published immediately following such decision and at least once every week during the period of suspension, in the newspaper in which the scheme's prices are normally published.

**61. Fund manager's obligation to issue or redeem shares**

(1) Subject to the provisions of subregulation obligation to (2), the fund manager shall at all times during the dealing day issue or redeem shares of the scheme at a price arrived at under these Regulations.

(2) Subregulation (1) shall not apply if the—

- (a) number or value of the shares sought to be issued or redeemed is less than any number or value stated in the information memorandum as the minimum number or value to be purchased or held or redeemed;
- (b) fund manager believes on reasonable grounds that the number or value of shares sought to be issued would lead to the holding by any one person or by any one person and any other person appearing to the fund manager to be acting in concert with that person of more shares than any number stated in the information memorandum as the maximum number to be purchased or held; or
- (c) fund manager has reasonable grounds, having regard to the interests of all the holders relating to the circumstances of the person concerned, for refusing to issue units to or redeeming shares from such person.

(3) This Regulation shall also apply during an initial offer in so far as it relates to the issuing of shares.

**62. Restrictions on issued shares in an investment company**

No person shall after expiry of six months from the closing date of the initial offer period have beneficial interest in shares of collective investment scheme set up as an investment company representing more than twenty five per cent of the collective investment scheme's issued shares.

**63. Issue price parameters**

(1) The fund manager's price for issue of shares shall not exceed the maximum issue price, that is, a price fixed by the fund manager and notified to the custodian or the trustee: and that maximum issue price itself must not exceed the total of—

- (a) the relevant creation price, and
- (b) the current initial charge.

(2) In the case of an initial offer, the fund manager's price for issue of shares shall not exceed the initial price.

**64. Redemption price parameters**

(1) A fund manager's price for redemption of shares shall not be less than the relevant minimum repurchase price already notified to the trustee.

(2) The minimum repurchase price shall not be less than the relevant repurchase price.

(3) In case of an umbrella fund, the maximum price at which shares in one constituent part may be exchanged for shares in another such part shall not exceed the relevant maximum issue price (less any preliminary charge) of the new shares; and the minimum price at which the old shares may be taken in exchange shall not be less than the equivalent minimum repurchase price.

## 65. Charges on Issue

(1) If the trust deed or the information memorandum so permits, the issue price may include an initial charge which may be expressed either as a fixed amount or calculated as a percentage of the creation price and such initial charge shall not exceed the amount stated in the information memorandum as the current initial charge.

(2) A fund manager wishing to increase the current initial charge, shall give a ninety day notice in writing after obtaining approval from the trustee or board of directors, as the case may be, of that increase and the date of its commencement to the trustee and all persons who ought reasonably to be known to the fund manager to have made an arrangement for the purchase of shares at regular intervals and the information memorandum shall be revised in accordance with these Regulations to reflect the new initial charge and the date of its commencement.

## 66. Charges on redemption or cancellation

If the trust deed or the information redemption memorandum so permits, the amount payable as proceeds of redemption may be arrived at after deduction of a charge for the benefit of the fund manager, and that charge may be expressed either as a fixed amount, or calculated as a percentage of the proceeds of redemption which would otherwise have been payable.

Provided that—

- (a) the amount or percentage may be expressed as diminishing over the time during which the holder has held the shares, but may not be expressed as liable to vary in any other respects;
- (b) where the fund manager is permitted to make a deduction, the amount shall not exceed the amount that would be derived by applying the rate or method prescribed in the information memorandum at the date on which the relevant shares were issued;
- (c) where the trust deed or information memorandum of a scheme, whenever executed, is modified so as to include the provision on fund manager's charge on redemption the modification shall be expressed so as to apply only to shares issued after the date on which the modification takes effect; and
- (d) the fund manager shall not rely on the introduction of the charge on redemption or increase in the rate or method of the charge, unless—
  - (i) the fund manager has obtained approval to the introduction or increase of the charge from the trustee or board of directors, as the case may be and thereafter has given a notice in writing of introduction or increase of the charge on redemption and of the date of its commencement to all persons who ought reasonably to be known to the fund manager to have made an arrangement for the purchase of shares at regular intervals;
  - (ii) the fund manager has revised the information memorandum in accordance with these Regulations and incorporation documents and to reflect the new charge, rate or method and the date of its commencement, and.
  - (iii) ninety days have elapsed since the revised information memorandum became available.

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**67. Dilution Levy**

(1) The fund manager shall have the power to require either or both of—

- (a) the payment of a dilution levy in respect of the issue or sale of shares or any class of shares; and
- (b) the deduction of a dilution levy in respect of the redemption or the cancellation of shares or any class of shares.

(2) Any payment or deduction provided for under subregulation (1) shall become due the same time as payment becomes due in respect of the relevant issue, save redemption or cancellation.

(3) A dilution levy may be imposed only in a manner that is, so far as practicable, fair to all holders and potential holders and the maximum rate must be disclosed in the current information memorandum.

**68. Payment on Redemption**

(1) On agreeing to redeem shares, the fund manager shall, within the period specified in subregulation (2) pay the appropriate proceeds of redemption to the holder.

(2) The period provided for under subregulation (1) expires at the close of business on the sixth (6) business day next after the valuation point immediately following receipt by the fund manager of the request to redeem.

(3) Nothing in this Regulation shall require the fund manager to part with money in respect of a cancellation or redemption of shares where it has not yet received money due on the earlier issue or sale of those shares from the holder.

(4) The amount to be paid by the fund manager as the proceeds of redemption of a share shall not be less than the price of a share of the relevant class notified or to be notified to the custodian in respect of the last valuation point or, for a redemption at a forward price, to be notified in respect of the next valuation point less—

- (a) any redemption charge permitted under Regulation 66;
- (b) any withholding taxes or other taxes to be deducted; and
- (c) any dilution levy permitted under Regulation 67.

**69. Notification of price to the trustee or custodian**

(1) Forthwith upon completion of a valuation the fund manager shall notify the custodian or the trustee, as the case may be, of—

- (a) the creation price;
- (b) the repurchase price;
- (c) the maximum issue price;
- (d) the minimum repurchase price; together, in the case of an umbrella fund; and
- (e) the maximum issue price for shares in any part on an exchange of shares.

(2) The prices to be notified under subregulation (1) are those relevant to deals based on prices determined at that valuation day.

(3) Any notification under paragraph (1) shall include a statement of the number of shares owned by the trustee or fund manager as the case may be, for the scheme at that valuation day or notified point if there is one.

**70. Publication of price**

(1) The fund manager shall publish on the business day following any valuation, the repurchase price of those shares and the maximum selling price and if there is one, the current initial charge and redemption charge if any which shall be the relevant prices last notified to the trustee or custodian under Regulation 69.

(2) Publication required by subregulation (1) shall not be in less than two daily newspapers of national circulation published in the English language.

(3) During the period of the initial offer, the fund manager shall not agree to issue shares of the scheme at a price other than the initial price.

## VALUATION

### 71. General

(1) For the purposes of determining the price which shares of any class in a unit trust or a mutual may be issued, cancelled, sold or redeemed, the fund manager shall carry out a valuation of the collective investment scheme portfolio at each valuation point for the unit trust or mutual fund, or a sub fund of an umbrella scheme, as the case may be, at each valuation point.

(2) An investment included in the collective investment scheme portfolio for which different prices are quoted according to whether it is being bought or sold shall be valued at its mid-market price.

(3) For the purposes of the preceding paragraphs, there shall be excluded from the value of an investment or other part of the collective investment scheme portfolio and fiscal charges or commissions or other charges that were paid or would be payable on the acquisitions or disposals of the investment or other part of the collective investment scheme portfolio.

(4) There must be at least two valuation points in each calendar month and if there are only two valuation points in any calendar month they must be two weeks apart.

(5) The frequency of regular valuation points and the manner in which valuations will be carried out, must be specified in the information memorandum.

(6) Subregulations (1) to (5) shall not apply to a collective investment scheme set up as an investment company under the Companies Act and listed on a securities exchange.

## INCOME

### 72. Annual income allocation date

(1) A collective investment scheme shall have an annual income allocation date which is the date in the calendar year stated in the most recently published information memorandum as the date on or before which, in respect of each annual accounting period, an allocation of income is to be made.

(2) The annual income allocation date shall be a date within three calendar months after the relevant accounting reference date.

### 73. Annual allocation of income

(1) At the end of each accounting period, the trustee, board of directors or the fund manager, as the case may be, shall arrange for the custodian to transfer the income of a collective investment scheme portfolio to an account to be known as 'the distribution account'.

(2) The trustee, board of directors or the fund manager, as the case may be, are not obliged to comply with subregulation (1) if it appears to them that the average the allocations of income from the distribution account to the holders would be less than such minimum amount as may be prescribed in the information memorandum.

(3) Any income that in accordance with subregulation (2) is not transferred to the distribution account must be carried forward to the next accounting period and be regarded as received at the start of the next period and the fund manager shall disclose the maximum number of periods in which any income in accordance with this subregulation can be carried forward.

(4) The calculation of the available income shall be as follows—

- (a) take the aggregate of the income of a collective investment scheme portfolio received or receivable for the account of the collective investment scheme in respect of the period;

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- (b) deduct the charges and expenses of the collective investment scheme paid or payable out of the income of the collective investment scheme portfolio in respect of the period;
- (c) add the fund manager's best estimate of any relief from tax on such charges and expenses;
- (d) make such other adjustments as the fund manager considers appropriate (in the case of subparagraph (i) and (ii), after consulting the auditors) in relation to—
  - (i) taxation;
  - (ii) the proportion of the price received or paid for shares that is related to income (taking account of any provisions in the incorporation documents relating to equalisation);
  - (iii) potential income which is unlikely to be received until twelve months after the income allocation date;
  - (iv) income which should not be accounted for on an accrual basis because of lack of information about how it accrues;
  - (v) any transfer between income and capital account; and
  - (vi) any other adjustments that the fund manager considers appropriate after consulting the auditors.
- (e) on or before the annual income allocation date, the fund manager shall allocate the available income to the shares of each class in issue taking account of the provision of its incorporation documents relating to the proportion of available income attributable to each class in the case of an umbrella scheme.

#### **74. Annual allocation to accumulation shares**

(1) The amount of income allocated to accumulation shares shall with effect from the end of the allocation to annual accounting period, become part of the capital of accumulation the collective investment scheme portfolio and the interests of the holders in the amount shall be satisfied by an adjustment as at the end of the period, in the proportion of the value of the collective investment scheme portfolio to which the price of a share of the relevant class is related.

(2) The adjustments under subregulation (1) shall be such as will ensure that the price of an accumulation share of the relevant class remains unchanged notwithstanding the transfer of the income to the capital of the collective investment scheme portfolio.

#### **75. Annual distribution to holders of income shares**

(1) Subject to subregulation (2), where the shares in issue in a collective investment scheme are or include income shares, on or before each annual income allocation date, the fund manager shall give the custodian timely instructions sufficient to enable the custodian to distribute the income allocated to income shares amongst the holders in accordance with the number of such shares held or deemed to be held by them respectively at the end of the relevant annual accounting period and the custodian shall pay the distribution in accordance with the instructions.

(2) In calculating the amount to be distributed under subregulation (1), the fund manager shall—

- (a) deduct any amounts previously allocated by way of interim allocation of income in respect of that annual accounting period; and
- (b) deduct and carry forward in the income account such amount as shall be necessary to adjust that allocation of income to the nearest one hundredth of a cent (or the equivalent amount in the base currency) per income share or such lesser fraction as the trustee or board of directors, as the case may be, from time to time determine.

**76. Interim allocation of income**

(1) This Regulation applies if at any time the most recently published information memorandum—

- (a) states that an allocation of income will be made before the annual income allocation date in any year in respect of a period ('hereinafter referred to as an interim accounting period') within the annual accounting period; and
- (b) specifies a date as the interim income allocation date in relation to that interim accounting period.

(2) In a case such as that provided for under subregulation (1), Regulations 73, 74 and 75 shall apply so as to secure the making of an interim allocation of income as if—

- (a) the interim accounting period in question and all previous interim accounting periods in the same annual accounting period taken together, were the annual accounting period;
- (b) the interim income allocation date were the annual income allocation date; and
- (c) the trustee or board of directors were to treat as the available amount of income for the interim allocation a sum which, in the opinion of the fund manager, would be available for allocation of income if the interim accounting period and all previous interim accounting periods in the same annual accounting period taken together were an annual accounting period.

**77. Income equalization**

An information memorandum may provide that an allocation of income whether annual or interim to be made in respect of each share issued or sold during the accounting period in respect of which that income allocation is made shall include a capital sum to be referred to as 'income equalisation'.

## PART VII – INVESTMENT, BORROWING, LENDING

**78. Broad investment guidelines**

(1) All investments of a collective investment scheme made by the fund manager shall—

- (a) be consistent with the objectives of the scheme;
- (b) be transferable;
- (c) have a ready price or value; and
- (d) have adequate proof of title or ownership to allow proper custodial arrangements to be made.

(2) The book value of the investments of a collective investment scheme portfolio shall not exceed the following limits—

- (a) securities listed on a securities exchange in Kenya - 80%;
- (b) securities issued by the Government of Kenya — 80%;
- (c) immovable property — 25%
- (d) other collective investment schemes including umbrella schemes — 25%;
- (e) any other security not listed on a securities exchange in Kenya — 25%;
- (f) off-shore investments - 10%;

Provided that:—

- (i) no limits shall apply to investment of the collective investment scheme portfolio in an interest bearing account, product or financial instrument of or issued by a bank or financial institution as defined by the Banking Act; or and insurance company as defined in the Insurance Act (Cap. 487);
- (ii) the book value of an investment in an interest bearing account, financial product or instrument of or issued by any single bank or financial institution or insurance company or a combination of any such investment in a single bank,

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financial institution or insurance company shall not in aggregate exceed 25 % of the collective investment scheme portfolio and net asset value;

- (iii) the book value of a collective investment scheme's holding of securities relating to any single issuer shall not exceed twenty five per cent of the collective investment scheme's properties net asset value; and
- (iv) a collective investment scheme established for the investment of retirement benefits schemes shall comply with the investment guidelines prescribed under the Retirement Benefits Act;
- (v) subregulation 78(2)(c) and (e) shall not apply to a collective investment scheme established as an investment company

(3) A fund manager shall not apply any part of the collective investment scheme portfolio in the acquisition of any investments which are for the time being, partly paid or otherwise in the opinion of the trustee likely to involve the trustee in any liability contingent or otherwise.

(4) The limits and restrictions in this Part shall be complied with at all times based on the most up-to-date value of the collective investment scheme portfolio, but a five percent allowance in excess of any limit or restriction shall be permitted where the limit or restriction is breached through the appreciation in value of the collective investment scheme portfolio.

## **79. Restriction on borrowing and lending**

No collective investment scheme shall—

- (a) lend all or any part of the collective investment scheme portfolio; or
- (b) assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person.

## **80. Investment and borrowing powers for umbrella schemes**

Regulations 78 and 79 shall not apply to subfunds of an umbrella scheme.

### **ADVERTISEMENTS AND PUBLIC ANNOUNCEMENTS**

## **81. Advertising only for approved schemes**

(1) No person shall advertise or make other invitations to the public or a section of the public in Kenya to invest in a collective investment scheme which has not obtained approval from the Authority.

(2) Every advertisement or invitation to the public, or a section of the public shall be submitted to the Authority at least forty-eight hours before the date of publication, and may be used until such a significant or material changes arise in the information contained in the advertisement, invitations, public announcement or other promotional materials, after which a new submission for approval may be made to the Authority.

## **82. General contents**

(1) Any advertisement or invitation or other promotional material to the public or a section of the public, which includes information on the trustee, shall be accompanied by the trustee's written consent.

(2) If a collective investment scheme is described as having been approved by the Authority it shall be stated that, in giving this approval, the Authority does not take responsibility for the financial soundness of the scheme or for the correctness of any statements made or opinions expressed in this regard.

(3) Advertisements shall include a warning statement that—

- (a) the price of shares, and the income therefrom if the collective investment scheme pays dividends may go down as well as up; and
- (b) investors are reminded that in certain specified circumstances their right to redeem their shares may be suspended.

(4) Warning statements shall be written in such a manner as to be capable of being read with reasonable ease by anyone reading the advertisement.



**MEETINGS****83. General and extra-ordinary meetings**

(1) The trustee, board of directors, fund manager or holders, as the case may be, shall convene a general meeting within three months after the relevant meetings.

(2) The trustee, board of directors, fund manager or holders, as the case may be, may convene an extra-ordinary meeting of holders at any time but not later than six weeks after receipt of the requisition.

(3) A requisition shall—

- (a) state the objects of the meeting;
- (b) be dated;
- (c) be signed by holders who, at that date, are registered as the holders of shares representing not less than one-tenth in value of all of the shares in the collective investment scheme then in issue;
- (d) be deposited at the head office of the collective investment scheme.

(4) A requisition may consist of several documents deposited with the fund manager at the same time, each being in like form and signed by one or more holders.

**84. Notice of meetings**

(1) Not less than twenty-one days written notice, inclusive of the date on which the notice is deemed to be served and the day of the meeting, shall be given to the holders of a general meeting.

(2) Subregulation (1) shall not apply to notice of an adjourned meeting.

(3) The non-receipt of notice by a holder shall not invalidate the proceedings at any meeting.

**85. Quorum**

(1) The quorum at a meeting of holders shall be specified in the information memorandum or the trust deed.

(2) No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of the meeting.

(3) If within half an hour from the time appointed for the meeting a quorum is not present the meeting, if convened on the requisition of holders, shall be dissolved and in any other case it shall stand adjourned to such day and time not being less than seven days thereafter and to such place as may be appointed by the chairman if any has been appointed pursuant to the incorporation documents or otherwise by the trustee, board of directors or fund manager, as the case may, be and if at such adjourned meeting a quorum is not present within fifteen minutes from the time appointed for the meeting, the holders present shall comprise the quorum.

(4) Notice of any adjourned meeting of holders shall be given and such notice shall state that the holders present at the adjourned meeting whatever their number and the number of shares held by such holder or holders shall form a quorum.

**86. Resolutions**

(1) Except where an extraordinary resolution is specifically required or permitted by these Regulations, any resolution required under the Companies Act or these Regulations shall be passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of holders.

(2) In the case of an equality of votes cast, in respect of a resolution, put to a general meeting, any chairman appointed pursuant to the incorporation documents shall be entitled to a casting vote in addition to any other vote he may have.

(3) An extra-ordinary resolution shall mean a resolution passed at an extra-ordinary meeting as defined in Regulation 83 (2).

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[Subsidiary]**87. Voting Rights**

(1) On a show of hands, every holder who, being an individual is present in person or, being a corporation, is present by its representative duly authorized in that regard, shall have one vote.

(2) Votes may be given either personally or by, proxy or in any other manner permitted by the incorporation document and the voting rights attached to each shall be such proportion of the voting rights attached to all of the shares in issue as the price of the share bears to the aggregate price or prices of all the shares in issue at the date specified in Regulation 84 and a holder entitled to more than one vote need not, if he votes, use all his votes or cast all his votes in the same way.

(3) In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and for this purpose, seniority shall be determined by the order in which the names stand in the register of holders.

(4) No director of a collective investment scheme shall be entitled to be counted in the quorum of, and no director or any associate of the director shall be entitled to vote at, any meeting of a collective investment scheme except in respect of any shares which the director or his associate holds on behalf of or jointly with a person who, if himself the registered holder would be entitled to vote and from whom the director or its associate, as the case may be, has received voting instructions, and accordingly, shares held by any director shall not, except as mentioned in this subregulation be regarded as being in issue.

**88. Proxies**

(1) A holder entitled to attend and vote at a meeting of a collective investment scheme is entitled to appoint another person to attend and vote in his place whether such other person is a holder or not.

(2) Except insofar as the incorporation documents otherwise provides a holder shall be entitled to appoint more than one proxy to attend on the same occasion but a proxy shall be entitled to vote only on a poll.

(3) Every notice calling a meeting of the holders in the collective investment scheme shall contain a reasonably prominent statement that a holder entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him.

(4) An instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy shall not be required to be received by the collective investment scheme or any other person more than forty-eight hours before the meeting or adjourned meeting in order that the appointment may be effective.

**89. Holders to be notified**

In this Part, "holders" shall mean only the persons who were holders seven days before the notice of the relevant meeting was deemed to have been served in accordance with Regulation 84 (1), but excluding any persons who are known to the fund manager not to be holders at the time of the meeting.

**90. Special resolutions required for amendments to incorporation documents**

(1) The incorporation documents of a collective investment scheme may be amended by an extraordinary resolution subject to subregulation (2).

(2) An amendment to the incorporation documents may be made by resolution of the directors if—

- (a) the instrument of incorporation provides for amendment to be made in such manner; and
- (b) the amendment is required solely—

- (i) to implement any change in the law, including a change brought by an amendment of these Regulations; or
  - (ii) as a direct consequence of any such change; or
  - (iii) to change the name of the collective investment scheme; or
  - (iv) to remove from the incorporation documents obsolete provisions; or
  - (v) to make any other change to the instrument of incorporation which the board of directors consider does not involve any holder or potential holder in any material prejudice, and
- (c) it would not introduce or affect any provision relating to the descriptions of the transferable securities in which the collective investment scheme portfolio may be invested unless it is required solely to reflect the introduction of a new sub-fund.

#### **91. Service of notices and other documents**

(1) Any notice or document required to be Service of served upon a holder shall be deemed to have been duly notices and served if it is sent by post to or left at holder's address other appearing in the register documents

(2) Any notice required to be served or information to be supplied or given to any other person, including the Authority, shall be in writing or in such other form as enables the recipient to know or to record the time of receipt and to preserve a legible copy of the notice.

(3) Any notice or document served by post shall be deemed to have been served on the fourth day following that on which the letter containing the same is posted, and in providing such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted; and any notice or document left at a registered address or delivered other than by post shall be deemed to have been served on the day it was so left or delivered.

### **ACCOUNTS AND AUDIT**

#### **92. Obligation to appoint an auditor**

The fund manager shall at the outset and upon any vacancy, appoint an auditor for the collective investment scheme.

#### **93. Qualifications of an auditor**

A person shall not be qualified for appointment as auditor unless he is a member of and holds a valid practicing certificate issued by the Institute of Certified Public Accountants of Kenya.

#### **94. Independence**

An auditor shall be independent of the trustee, board of directors, fund manager and the custodian, their agents or associates.

#### **95. Accounting period**

Every collective investment scheme shall have an annual accounting period ending the last day of December in each year; but the fund manager shall publish and submit to the Authority an un-audited interim report for the half-year period ending on the last day of June in each year within thirty days from the end of that month.

[L.N. 100/2009, r. 2.]

#### **96. Audit of annual report**

The fund manager shall cause the scheme's annual report to be audited, and such report shall contain the information provided in the Fifth Schedule.

## PART VIII – AMALGAMATION AND RECONSTRUCTION

**97. General**

(1) In this part, 'amalgamation' means a scheme of arrangements whereby the whole of the collective investment scheme portfolio becomes the collective investment scheme portfolio (but not the first collective investment scheme portfolio) of a regulated collective investment scheme and whereby holders in the collective investment scheme receive shares in the regulated collective investment scheme and reference to a collective investment scheme includes a sub-fund or equivalent separately pooled part of such a scheme.

(2) "Reconstruction" in relation to a collective investment scheme (which in this definition includes a sub-fund) is a scheme of arrangement whereby:—

- (a) part of the collective investment scheme portfolio becomes the collective investment scheme portfolio of a regulated collective investment scheme (which includes a sub-fund or equivalent separately pooled part, of a regulated collective investment scheme); or
- (b) the whole of that collective investment scheme portfolio becomes the collective investment scheme portfolio of two or more regulated collective investment schemes; or
- (c) the whole of that collective investment scheme portfolio becomes the first collective investment scheme portfolio of a regulated collective investment scheme.

**98. Amalgamation and reconstruction**

(1) Neither a collective investment scheme nor an Amalgamation sub-fund of an umbrella fund shall be subject to an amalgamation or reconstruction which would result in its holders becoming holders in any body other than a regulated collective investment scheme that complies with these Regulations.

(2) Where for the purpose of an amalgamation or reconstruction, it is proposed that the collective investment scheme portfolio or collective investment scheme portfolio attributable to a sub-fund of an umbrella scheme, should become the collective investment scheme portfolio of another regulated collective investment scheme or sub-fund (or equivalent separately pooled part) of a regulated collective investment scheme, the proposal shall not be implemented without the sanction of an extraordinary resolution of the holders of the collective investment scheme or as the case may be, of the class or classes of shares related to the sub-fund.

(3) Where it is proposed that a collective investment scheme or a sub-fund of an umbrella scheme should receive a collective investment scheme portfolio of another collective investment scheme as a result of amalgamation or reconstruction of some other collective investment scheme or sub-fund (or equivalent separately pooled part) of such a scheme or of a body corporate, then the proposal shall not be implemented without the sanction of an extraordinary resolution of the holders of the collective investment scheme or, as the case may be, of the class or classes of shares related to the sub-fund unless subregulation (4) applies.

(4) This subregulation applies if the trustee or board of directors of the collective investment scheme are reasonably satisfied that the inclusion of the collective investment scheme portfolio concerned—

- (a) is not likely to result in any material prejudice to the interests of the holders of the collective investment scheme; and
- (b) is consistent with the objectives of the collective investment scheme or its sub-fund.

(5) The fund manager shall obtain the approval of the Authority in writing, of the proposed amalgamation or reconstruction and shall submit a copy of the extraordinary resolution by the holders approving the amalgamation or reconstruction within two days after holding of the extraordinary meeting.

## SUSPENSION AND RESUMPTION OF DEALINGS IN SHARES

### 99. Suspension and resumption of dealings in shares

(1) The fund manager may, at any time, with prior agreement of the trustee or directors as the case may be, or shall without delay, if the trustee or board of directors, as the case may be, so require, suspend the issue, cancellation, sale and redemption of shares (referred to in this Regulation as 'dealings in shares') if the fund manager, or the trustee or board of directors as the case may be, are of the opinion that due to exceptional circumstances there is good and sufficient reason to do so having regard to the interests of holders.

(2) At the time of suspension under paragraph (1) the fund manager shall:—

- (a) inform the Authority of the suspension, stating the reason for its action; and
- (b) forthwith give written confirmation of the suspension and the reasons for it to the Authority.

(3) During the period of suspension, none of the obligations in Part VI relating to the issue, cancellation, sale or redemption of shares or to the valuation of the collective investment scheme portfolio shall apply.

(4) The suspension of dealings in shares shall cease as soon as practicable after the trustee or board of directors as the case may be are no longer of the opinion referred to in subregulation (1) and in any event within twenty-eight days of the commencement of the suspension of dealings in shares.

(5) Before the suspension of dealings in shares ceases, the fund manager shall inform the Authority of the proposed resumption and forthwith after the resumption shall confirm the resumption by giving notice in writing to the Authority.

(6) This Regulation may be applied to one or more classes of shares without being applied to other classes of shares in an umbrella scheme and shall apply to a sub-fund as it applies to the collective investment scheme, but by reference to the shares of the class or classes related to the sub fund and to the collective investment scheme portfolio attributable to the sub-fund, however, for the purpose of subregulation (1), the fund manager shall have regard to the interests of all the holders in the collective investment scheme or the umbrella scheme.

## WINDING UP OF COLLECTIVE INVESTMENT SCHEMES

### 100. When a collective investment may be wound up

(1) A collective investment scheme shall not be wound up otherwise than by a court order except under the provisions of these Regulations—

- (a) unless and until effect may be given in accordance with the provisions relating to winding up given in the Companies Act, to a proposal to wind up the affairs of a company otherwise than by the court, and provided that the Authority shall have first exercised its powers to intervene in the management of the collective investment scheme before an application is made to court for winding up of the collective investment scheme;
- (b) unless a statement has been prepared and sent or delivered to the Authority in accordance with paragraphs 3(a), 4 and 5 and received by the Authority prior to satisfaction of the condition in paragraph 1 (a).

(2) Subject to subregulation (1) and the subsequent provisions of this Regulation, a collective investment scheme shall be wound up under these Regulations if an extraordinary resolution to that effect has been passed; or when the period (if any) fixed for duration of the collective investment scheme by its incorporation documents, expires or the event occurs, on the occurrence of which its instrument of incorporation provides that the collective investment scheme is to be wound up.

(3) On or before a notice is given to the Authority in the event of a proposal to wind up the affairs of the collective investment scheme otherwise than by the court, the trustee or board of directors shall commence to make a full enquiry into the collective investment

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scheme's affairs so as to ascertain whether the scheme will be able to meet all its liabilities (which include contingent and prospective liabilities) and the fund manager shall prepare a statement, which shall reflect the results of such enquiry, and either—

- (a) confirm that the collective investment scheme will be able to meet all its liabilities within twelve months of the date of the statement; or
  - (b) state that such confirmation cannot be given.
- (4) The statement referred to in subregulation (3) shall—
- (a) relate to the collective investment scheme's affairs at the date which must not be more than twenty-one days prior to the date on which notice is given to the Authority; and
  - (b) be approved by the trustee or board of directors and be signed on their behalf by the fund manager, and if it is given under paragraph (a) of subregulation (3) of this Regulation by at least one other director or alternatively be signed by the fund manager and contain a statement signed by the auditor to the effect that in his opinion the enquiry required by subregulation (3) has been properly made and is fairly reflected by the confirmation.
- (5) Following compliance with subregulation (4), the statement referred to in subregulation (3) must be sent or delivered to the Authority and a copy sent to the custodian.

### **101. Consequences of commencement of winding up**

(1) In this Regulation the 'effective time' means either the time at which the both conditions of referred to in subregulation (1) of Regulation 100 are satisfied or, if later, the time, determined in accordance with subregulation (2) of Regulation 100, at which the collective investment scheme shall be wound up.

- (2) Immediately following the effective time—
- (a) regulations pertaining to pricing, dealing, investment and borrowing powers shall cease to apply to the collective investment scheme;
  - (b) the collective investment scheme shall cease to issue and cancel shares;
  - (c) the fund manager shall cease to sell or redeem shares or to arrange for the collective investment scheme to issue to cancel them;
  - (d) no transfer of a share shall be registered and no other change to register or holders shall be made without the sanction of the trustee or board of directors, as the case may be; and
  - (e) the collective investment scheme shall cease to carry on its business, except so far as may be required for its beneficial winding up; however the corporate state and corporate powers of the scheme and (subject to the preceding provisions of this Regulation) the powers of the trustee or board of directors shall continue until the collective investment scheme is dissolved.
- (3) The fund manager shall as soon as practicable after the effective time:
- (a) publish in not less than two daily newspapers of national circulation published in the English language management's decision to wind up the collective investment scheme and the date of commencement of the winding up; and
  - (b) if the fund manager has not previously notified the holders of the proposal to wind up, give written notice of the commencement of the winding up to the holders.

### **102. Manner of winding up**

(1) The fund manager shall, as soon as practicable after the effective time cause the collective investment scheme portfolio to be utilized and the liabilities of the collective investment scheme to be met out of the proceeds.

(2) The fund manager shall give instructions to the custodian as to how such proceeds (until utilized to meet liabilities or make distributions to holders) shall be held and such

instructions shall be with a view to the prudent protection of the creditors and holders against loss.

(3) Provided there are sufficient liquid funds available after making adequate provision for the expenses of the winding up and the discharge of the liabilities of the collective investment scheme remaining to be discharged, the fund manager may arrange to make one or more interim distributions out of such funds to the holders proportionately to the right to participate in collective investment scheme portfolio attached to their respective shares as at the effective time.

(4) When the fund manager has caused all the collective investment scheme portfolio to be realized and all of the liabilities of the collective investment scheme known to the fund manager to be met, the fund manager shall make a final distribution, on or prior to the date on which the final account is sent to the holders in accordance with Regulation 103, of the balance remaining (net of a provision for any further expenses of the collective investment scheme) to the holders in the same proportions as provided in sub-regulation (3).

(5) Subregulations 1 to 4 are subject to the terms of any scheme of amalgamation or reconstruction sanctioned by an extraordinary resolution of the collective investment scheme passed on or before the effective time.

### 103. Final account

(1) As soon as the collective investment scheme's affairs are fully wound up including distribution or provision for distribution in accordance with Regulation 102 (3), the fund manager shall prepare an account of the winding up showing how it has been conducted and how the collective investment scheme portfolio has been disposed of and the account shall, following its approval by the trustee or board of directors as the case may be, be signed on their behalf by the fund manager and the trustee or at least one other director as the case may be and the account once signed, shall be the 'final account' for the purposes of these Regulations.

(2) The final account shall state the date on which the collective investment scheme's affairs were fully wound up and the date stated shall be regarded as the final day of the accounting period of the scheme then running of the 'final accounting period'.

(3) The collective investment scheme's auditor shall make a report in respect of the final account, which shall state the auditor's opinion as to whether the final account has been properly prepared for the purpose of subregulation (1).

(4) Within two months of the end of the final accounting period, the fund manager shall send a copy of the final account and the auditor's report on it to the Authority, and to each person who was a holder (or the first named joint holders) immediately before the final accounting period.

### 104. Duty to ascertain liabilities

(1) The fund manager shall have a duty to use all reasonable endeavours to ensure that all the liabilities of the collective investment scheme are discharged prior to the completion of the winding up.

(2) The duty in subregulation (1) relates to all liabilities of the scheme of which—

- (a) the fund manager is, or becomes, aware prior to the completion of the winding up; or
- (b) the fund manager would have become aware of prior to the completion of the winding up had it used all reasonable endeavours to ascertain the liabilities of the collective investment scheme.

(3) If the fund manager rejects any claim against the collective investment scheme in whole or part, the fund manager shall forthwith send to the claimant written notice of its reasons for doing so.

(4) If after the effective time the fund manager becomes of the opinion that the collective investment scheme will be unable to meet all its liabilities within twelve months of the date of the statement provided under subregulation 3 (a) of Regulation 100—

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- (a) the fund manager shall notify the trustee or board of directors as the case may be immediately; and
- (b) the trustee or board of directors as the case may be shall forthwith present a petition or cause the collective investment scheme to present a petition for the winding up in accordance with the provisions in the Companies Act (Cap. 486).

**105. Accounts and reports**

(1) While a collective investment scheme is being wound up:—

- (a) the annual and half-yearly accounting periods shall continue to run;
- (b) the provisions about annual and interim allocation of income shall continue to apply; and
- (c) annual and half-yearly reports shall continue to be required.

(2) The fund manager need not send to each holder a copy of any report relating to an accounting period or half-yearly accounting period which began after the effective time, if the trustee or board of directors of the collective investment scheme as the case may be, after consulting the Authority, are satisfied that the interests of the holders are not such as to require the report to be sent to the holders, but a copy of the report shall be sent or supplied free of charge to any holder requesting the same.

**106. Liability of a fund manager**

(1) The fund manager shall be personally liable to meet any liability of a collective investment scheme wound up under these Regulations (whether or not the collective investment scheme has been dissolved) that was not discharged prior to the completion of the winding up, except to the extent that the fund manager can show that it has complied with Regulation 104.

(2) If the proceeds of the realization of the assets attributable, or allocated to a particular sub fund of an umbrella scheme are insufficient to meet the liabilities attributable or allocated to that sub-fund, the fund manager shall pay to the scheme for the account of that sub-fund the amount of the deficit, except and to the extent that the fund manager can show that the deficit did not arise as a result of any failure by the fund manager to comply with these Regulations.

(3) The obligations of the fund manager under this Regulation shall not affect any other obligation of the fund manager under these Regulations or the general law.

**107. Additional provisions applicable to umbrella schemes**

(1) Liabilities of an umbrella scheme attributable, or allocated in accordance with Regulation 42 to a particular sub-fund shall be met out of the scheme collective investment scheme portfolio attributable or allocated to such sub-fund.

(2) In this Part—

- (a) references to shares are references to shares of the class(es) related to the sub-fund to be terminated;
- (b) references to holders are references to holders of such shares;
- (c) references to a resolution or extra-ordinary resolution are references to such resolution passed at a meeting of holders of shares of the class or classes referred to in paragraph (a);
- (d) references to collective investment scheme portfolio are references to collective investment scheme portfolio allocated or attributable to the sub-fund to be terminated; and
- (e) references to liabilities are references to liabilities of the company allocated or attributable to the sub-fund to be terminated.



**108. Capital Markets Tribunal**

Any dispute or difference which may arise between the holders, fund manager, trustee or the board of directors as the case may be, custodian and the other or others shall be referred to the Capital Markets Tribunal, established under Section 35A of the Act.

**PART IX – EMPLOYEE SHARE OWNERSHIP PLANS (ESOPS)****109. Approval of and registration with the Authority**

(1) A listed company may set up an employee share ownership plan (hereinafter referred to as ESOP) to enable its employees own shares of the listed company subject to approval of the Authority.

(2) Every ESOP shall be registered with the Authority.

**110. ESOP Unit trust**

An Employee Share Ownership Plan shall be structured as a unit trust (the ESOP Unit Trust).

**111. Requirements for ESOPS**

An ESOP Unit Trust shall comply with the following requirements—

- (a) application and registration for an ESOP Unit Trust shall be accompanied with the following information and documents—
  - (i) proposed trust deed and scheme rules;
  - (ii) names of the proposed trustees;
  - (iii) board of directors resolution approving the establishment of ESOP Unit Trust and the appointment of the proposed trustees;
  - (iv) shareholders' approval for the establishment of the ESOP Unit Trust and the terms of the trust deed (where already obtained); and
  - (v) any other information that the Authority may require.
- (b) every trust deed to an ESOP Unit Trust shall include the following particulars—
  - (i) parties to the trust deed;
  - (ii) interpretation of terms used in the trust deed;
  - (iii) declaration of trust;
  - (iv) appointment and removal procedures for trustees;
  - (v) procedure for creation and issuance of units;
  - (vi) method of pricing and valuation of units;
  - (vii) procedure for repurchase of units;
  - (viii) procedure for income distribution;
  - (ix) apportionment of unit holders' entitlements in respect of dividends, rights and capitalization issues;
  - (x) company's and trustees covenants;
  - (xi) restrictions on the trustees;
  - (xii) trustees fees and charges;
  - (xiii) liability of the trustees;
  - (xiv) register of unit holders and records of trust fund charges and commissions;
  - (xv) audit and periodic reports;
  - (xvi) procedures for winding up;
  - (xvii) applicable law;
  - (xviii) procedure for variation of trust deed;

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- (xix) procedure for settlement of disputes.
- (c) Every ESOP Unit Trust shall have scheme rules which shall include the following:—
  - (i) eligibility for membership;
  - (ii) procedure for saving and/or acquisition and repurchase of units;
  - (iii) maximum individual holding;
  - (iv) employee rights in respect to units;
  - (v) pricing and valuation of units;
  - (vi) in case of an options scheme there shall be a procedure for granting options, maximum limit, executive rights in respect to units and entitlement in the event of reconstruction or winding up.

**112. Investment parameters**

An ESOP Unit Trust shall acquire or purchase shares of the listed company from time to time as may be required by the rules of the ESOP.

Provided that an ESOP Unit Trust shall not acquire or purchase any securities other than the shares of the listed company for which it is established.

**113. Minimum number of trustees**

There shall be at least three trustees of an ESOP Unit Trust save that a trust corporation may act as sole trustee of an ESOP Unit Trust.

**114. Creation of units**

The trustees of an ESOP Unit Trust shall hold the certificates representing the shares of the listed company in the trustees' names and create corresponding units in the same denominations as the listed company's shares purchased by the trustees to be allotted and issued to the employee entitled thereto under the ESOP.

**115. Certificate of entitlement to holders**

The trustees shall issue to every employee entitled to the units under the ESOP a certificate of entitlement representing the number of units owned by the employee in the ESOP Unit Trust within thirty days of receiving the company's certificate of entitlement against which such units were issued and maintain a register of all unit holders.

**116. Rights on the certificate of entitlement**

The certificates representing the units owned by employees shall not be transferable nor traded at any securities exchange but the units represented therein may, at the option of the unit holder be pledged or re-purchased by the trustees for cash.

**117. Price of units**

The rules of the ESOP shall prescribe the price at which an ESOP Unit Trust shall allot the units to the employee, the price at which the trustees shall re-purchase units and the liability for incidental expenses but such re-purchase shall reflect the latest traded price of the company's shares at the securities exchange.

**118. Surrender of certificates by employee**

On termination of employment of an employee, the employee shall surrender all certificates representing the units held by such employee in an ESOP Unit Trust to the trustees at such time as prescribed by the ESOP rules.

**119. Redemption or transfer**

At the option of the employee, the trustees Redemption shall upon receipt of the surrendered certificates, either—

- (a) transfer in a private transaction in accordance with the prescribed procedure for private transactions, to the name of the employee, the number of shares of the listed company corresponding in value to the units represented in the surrendered share certificate and cause the employee's name to be registered as the owner of such shares in the register of the listed company; or
- (b) re-purchase the surrendered units.

## **120. Exchange of units not permitted**

Save as provided in these Regulations, the trust deed of an ESOP Unit Trust shall not permit the exchange of units of an ESOP Unit Trust with shares of the listed company.

## **121. Audit**

The trustees of an ESOP Unit Trust shall cause an audit of the ESOP to be carried out once every year by qualified persons and shall submit a copy of the auditor's report to the unit holders and the Authority within sixty days of the completion of the audit.

## **122. Winding up**

An ESOP Unit Trust may be varied or wound up in accordance with its rules but three months' notice of intention to wind up an ESOP Unit Trust shall be given to the unit holders and the Authority.

## **123. Disclosures**

Every listed company shall disclose any options granted to employees under the ESOP and disclose the total value of the ESOP (including the number of shares purchased from the exchange and the number of units created and issued under the ESOP) in its annual report.

### **SPECIAL INTEREST COLLECTIVE INVESTMENT SCHEMES**

## **124. Definition**

For the purposes of these Regulations, a special interest collective investment scheme means a collective investment scheme established by a promoter for the purposes of facilitating investment by a special group of individuals with a common interest in a listed company and may include farmers, distributors, supplier, among others.

## **125. Approval and registration with the Authority**

(1) A promoter may set up a special interest collective investment scheme for the purposes of investing in the securities of a specified listed company subject to the approval of the Authority.

(2) Every special interest collective investment scheme shall be registered with the Authority.

## **126. Special interest unit trust**

A special interest collective investment scheme shall be structured as a unit trust and the promoter shall notify the listed company upon approval and registration with the Authority.

## **127. Requirements for special interest unit trust**

A special interest collective investment special scheme shall comply with the following requirements—

- (a) application and registration for a special interest unit trust shall be accompanied with the following information and documents—
  - (i) proposed trust deed and scheme rules;
  - (ii) names of the proposed trustees;
  - (iii) board of directors or promoter resolution approving the establishment of a special interest collective investment scheme and the appointment of the proposed trustees;

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- (iv) holders approval for the establishment of the special interest collective investment scheme and the terms of the trust deed (where already obtained); and
  - (v) any other information that the Authority may require.
- (b) every trust deed to a special interest collective investment scheme shall include the following particulars—
  - (i) parties to the trust deed;
  - (ii) interpretation of terms used in the trust deed;
  - (iii) declaration of trust;
  - (iv) appointment and removal procedures for trustees;
  - (v) procedure for creation and issuance of units;
  - (vi) method of pricing and valuation of units;
  - (vii) procedure for repurchase of units;
  - (viii) procedure for income distribution;
  - (ix) apportionment of unit holders' entitlements in respect of dividends, rights and capitalization issues;
  - (x) trustees covenants;
  - (xi) restrictions on trustees;
  - (xii) trustees fees and charges;
  - (xiii) liability of the trustees;
  - (xiv) register of holders and records of trust fund charges and commissions;
  - (xv) audit and periodic reports;
  - (xvi) procedures for winding up;
  - (xvii) procedure for variation of trust deed; and
  - (xviii) procedure for settlement of disputes.
- (c) every special interest collective investment scheme shall have scheme rules which shall include the following—
  - (i) eligibility of membership;
  - (ii) procedure for saving and/or acquisition and repurchase of units;
  - (iii) maximum individual holding;
  - (iv) holders rights in respect of units;
  - (v) pricing and valuation of units; and
  - (vi) entitlement to holders in the event of reconstruction or winding up.

**128. Investment parameters**

A special interest collective investment scheme shall acquire or purchase shares of the listed company from time to time as may be required by the rules of the scheme:

Provided that a special interest collective investment scheme shall not acquire or purchase any securities other than the shares of the listed company for which it is established.

**129. Minimum number of trustees**

There shall be at least three trustees of a special interest collective investment scheme.

**130. Creation of units**

The trustees of a special interest collective investment scheme shall hold the certificates representing the shares of the listed company in the trustees' names and create corresponding units in the same denominations as the listed company's shares purchased

by the trustees to be allotted and issued to the holder entitled thereto under the special interest collective investment scheme.

### **131. Certificate of entitlement to holders**

The trustees shall issue to every holder entitled to the units under the special interest collective investment scheme a certificate of entitlement representing the number of units owned by the holder in the special interest collective investment scheme within thirty days of receiving the company's certificate of entitlement against which such units were issued and maintain a register of all unit holders.

### **132. Rights on the certificate of entitlement**

The certificates representing the interest of a holder shall not be transferable nor traded at any securities exchange but the units represented therein may, at the option of the holder be pledged or repurchased by the trustees for cash.

### **133. Price of units**

The rules of the special interest collective investment scheme shall prescribe the price at which that unit trust shall allot units to the holders or potential holders, the price at which the trustees shall re-purchase units and the liability for incidental expenses but such re-purchase shall reflect the latest or previous day's traded price of the company's shares at the securities exchange.

### **134. Redemption or transfer**

At the option of the holder, the holder shall surrender the certificates to the trustee who shall upon receipt of the surrendered certificates either—

- (a) transfer in a private transaction in accordance with the prescribed procedure for private transactions to the name of the holder, the number of shares of the listed company corresponding in value to the units represented in the surrendered share certificate and cause the holder's name to be registered as the owner of such shares in the register of listed company; or
- (b) re-purchase the surrendered units.

### **135. Exchange of units not permitted**

Save as provided in these Regulations, the trust deed of a special interest collective investment scheme shall not permit the exchange of units of the scheme with shares of the listed company.

### **136. Audit**

The trustees of a special interest collective investment scheme shall cause an audit of the scheme to be carried out once every year by qualified persons and shall submit a copy of the auditor's report to the holders and the Authority within sixty days of the completion of the audit.

### **137. Winding up**

A special interest collective investment scheme may be varied or wound up in accordance with its rules but three month's notice of intention to wind up the scheme shall be given to the holders and the Authority.

### **138. Disclosures**

Every listed company shall disclose an special interest collective investment scheme which has an acquired or is to acquire shares, the number of shares purchased from the exchange and the aggregate holding of the scheme in the listed company in its annual report.

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## FIRST SCHEDULE

## FORMS

**FORM 1**

(r. 5)

**THE CAPITAL MARKETS ACT**

[CAP. 485A]

**APPLICATION TO REGISTER A COLLECTIVE INVESTMENT SCHEME****(1)** Promoter: State name and address of the fund.**(2)** Constitution:

(a) State the legal form of the collective investment scheme—

- (i) mutual fund;
- (ii) unit trust;
- (iii) investment company.

(b) State the name of the country or jurisdiction where the collective investment scheme is constituted.

(c) State the title of the law under which the collective investment scheme is or is to be constituted.

(d) State certificate of incorporation

**(3)** Key Officers:

(a) State name, address, place of birth and citizenship of:

- (i) directors;
- (ii) chief executive.

(b) State educational and professional qualifications of the key officers.

(c) Give details of business, occupation or employment history of the key officers.

**(4)** References:

Give two personal references and a bank reference of the key officers.

**(5)** Functionaries:

State names, addresses and business activities of each of the collective investment scheme's—

- (a) fund manager;
- (b) administrators;
- (c) investment advisers;
- (c) custodians; and
- (d) Trustees.

**(6)** Prior Registration:

State if the collective investment scheme is now or has been registered, licensed, recognized or authorized under any law or regulations relating to mutual funds, collective investment schemes/funds or securities in any country or jurisdiction.

**(7)** Refusal or Disciplinary Measures:

Has the collective investment scheme, any of its officers, managers, administrators, investment advisers or custodians been the subject of—

- (a) refusal of an application for registration, licence, recognition or authorization; or
- (b) suspension, cancellation or revocation of registration, licence, recognition or authorization, by any authority in any country or jurisdiction?

YES/NO. If yes, provide details.

**(8)** Civil Proceedings:

*Capital Markets*

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Has a judgment been rendered or any suit, action or proceedings pending against any officer of the collective investment scheme or of any of its functionaries listed in question (5) above, in civil proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation or similar conduct? YES/NO

If yes, provide details.

(9) Offences:

Has any key officer of the collective investment scheme or any of its functionaries listed in question (5) above been or is being charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings relating to fraud or theft arising out of dealing in mutual funds, collective investment schemes/funds or securities?

If so, provide details

(10) Bankruptcy:

Has any key officer of the collective investment scheme or of any of its functionaries listed in question 5 above been—

- (a) declared bankrupt or been party to bankruptcy or insolvency proceedings?
- (b) subject to proceedings relating to winding — up, dissolution or creditors' arrangements; or
- (c) subject to proceedings relating to receivership or creditors' compromise;

in any country or jurisdiction? If so, provide details.

**AFFIDAVIT**

I, ..... as a director of ..... Limited, the promoter of the proposed collective investment scheme, do depose and say that I. have read and understood the questions in this application form and hereby certify under oath that the foregoing answers and statements are true, correct and complete to the best of my knowledge, information and belief.

Sworn before

Name and Signature of Deponent

me .....

Commissioner of Oaths

at the city of ..... this ..... day ..... 20 .....

FORM 2

(r. 7)

THE CAPITAL MARKETS ACT

(CAP. 485A)

CERTIFICATE OF REGISTRATION

The CAPITAL MARKETS AUTHORITY hereby certifies that ..... has this day been registered as a unit trust/mutual fund/investment company\* under the provisions of Section 30 (4) of the Capital Markets Act (Cap 485A of the Laws of Kenya).

Dated the ..... day of ..... 20 .....

Chairman

Chief Executive

**SECOND SCHEDULE**

[r. 8 (1)]

**THE INCORPORATION DOCUMENTS****1. Particulars of the Promoters**

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2. Information Memorandum
3. Trust Deed
4. Management Agreement
5. Custody Agreement
6. Rules of the Scheme

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### THIRD SCHEDULE

[r. 31]

#### MATTERS TO BE PROVIDED FOR IN A TRUST DEED

##### PART I – THE TRUST

- (1) Interpretation — definition of terms used in the Trust Deed.
- (2) The constitution of the collective investment scheme

A statement of the name, address and registered office of the collective investment scheme. If the collective investment scheme is to terminate after the expiration of a particular period, a statement to that effect.

- (3) Declaration of trust

A declaration that, subject to the provisions of the deed and all rules of the collective investment scheme for the time being in force, the collective investment scheme portfolio (other than sums standing to the credit of the distribution account) is held by the trustee on trust for the holders of the shares *pari passu* according to the number of shares held by each holder, and the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in accordance with these Regulations.

- (4) Objects of the trust
- (5) Trust Deed to be binding and authoritative

A statement that the deed is binding on each holder as if he had been a party to it and is bound by its provisions and authorizes and requires the trustee and the fund manager to do the things required or permitted of them by the terms of the deed.

- (6) The investment policy and authorized investments

The categories in which the funds of the collective investment scheme may invest as well as the investment and borrowing restrictions.

- (7) Valuation of the collective investment scheme portfolio
- (8) Restricted economic or geographical objectives

If there are to be any restrictions on the geographic areas or economic sectors in which investment of capital of the collective investment scheme portfolio may be made, a statement of what they are.

- (9) Holder's liability to pay

A provision that a holder is not liable to make any further payment after he has paid the purchase price of his shares and that no further liability can be imposed on him in respect of the shares which he holds.

- (10) Certificates

A provision requiring the fund manager or the trustee to issue certificates representing shares to holders whose names are entered on the register.

A provision authorizing the trustee to charge a fee for issuing any document, recording, or for amending, an entry on the register, otherwise than on the issue or sale of shares.

##### PART II – THE FUND MANAGER

- (11) Appointment of a Fund Manager



A declaration that the scheme will at all times be managed and administered by a fund manager licensed by the Capital Markets Authority.

(12) Fund Manager's capital

A provision that the fund manager shall at all times maintain a paid-up share capital as prescribed by the Authority.

(13) Duties of a Fund Manager

A description of duties to be carried out by the fund manager.

(14) Fund Manager's preliminary charge

A statement authorizing the fund manager to make a preliminary charge to be included in the issue price of a share, specifying a maximum to that charge expressed either as a fixed amount in the base currency or as a percentage of the creation price of a share.

(15) Fund Manager's periodic charge

A statement authorizing the fund manager to make a periodic charge payable out of the income of the collective investment scheme portfolio, and a statement that provides for the charge to be expressed as annual percentage (to be specified in the information memorandum) of the value of the collective investment scheme portfolio (and the statement may provide for the addition to the charge of value added tax, if any, payable thereon), specifying the accrual intervals and how the charge is to be paid, and the maximum charge expressed as an annual percentage of the value of the collective investment scheme portfolio.

(16) Fund Manager's remuneration

A provision that expressly details the fund manager's entitlement by way of remuneration for its services and to cover its expenses in performing its obligations under this Deed.

(17) Reports by Fund Manager to Trustee

A provision that expressly requires the fund manager to make periodic reports to the trustee, board of directors and the Authority.

(18) Fund Manager's powers

A provision detailing the powers and discretions of the Fund Manager.

(19) Documents to be prepared by the Fund Manager

A provision detailing the documents to be prepared for signature and execution by the trustee.

(20) Retirement, Substitution, Suspension or Liquidation of Fund Manager

Provisions on the circumstances under which the fund manager may retire, be replaced or suspended.

(21) Removal of the Fund Manager

Provisions on the circumstances under which the fund manager may be suspended.

### PART III – TRUSTEE

(22) Appointment of Trustee

A provision setting out the name, address and the terms and conditions of service for the trustees.

(23) Trustee's share capital

(24) Role, powers, duties and obligations of trustee

(25) Registration and retention of securities by the trustee

(26) Legal proceedings by or against the trustee

(27) Trustee's remuneration

A statement authorizing any payments to the trustee by way of remuneration for his services to be paid (in whole or in part) out of the collective investment scheme portfolio

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and specifying the basis on which that remuneration is to be determined and how it should accrue and be paid.

(28) Retirement and appointment of new trustee

Provisions on the circumstances under which the trustee may retire or be replaced.

(29) Removal of trustee

Provisions on the circumstances under which the trustee may be removed.

#### PART IV – CUSTODIAN

(30) Appointment of custodian by trustee

(31) Duties of a custodian

(32) Records to be maintained by a custodian

(33) Reports by a custodian

(34) Retirement of a custodian

(35) Removal of a custodian

#### PART V – UNIT PORTFOLIO

(36) Issue and purchase of units

(37) The creation of units

(38) The cancellation of units

(39) The redemption of units

#### PART VI – MUTUAL FUNDS

(40) Issue and purchase of shares

(41) Cancellation of shares

(42) Redemption of shares

#### PART VII – VALUATION

(43) Details on the method used for valuation of units or shares

#### PART VIII – MEETINGS

(44) Notice of meetings

(45) Quorum for a meeting

(46) Voting rights

(47) Proxies

(48) Resolutions

(49) Amendments to incorporation documents

#### PART IX – SUSPENSION AND TERMINATION

(50) Winding up of a unit trust or mutual fund

(51) Manner of winding up

(52) Manner in which collective investment scheme portfolio to be dealt with on liquidation of fund manager

(53) Termination of a sub-fund of an umbrella company

#### PART X – OTHER MATTERS TO BE PROVIDED FOR IN THE TRUST DEED

(54) Every trust deed of a unit trust shall prescribe the rules for the administration of the unit trust concerned and shall inter alia contain provisions to the following effect namely that—

- (a) the trustee shall, subject to the terms of the trust, hold the underlying securities in trust for the unit holders;
- (b) certificates shall be issued to unit holders within seven days of any purchase;

- (c) the trustee shall countersign, graphically or otherwise, every certificate before it is delivered by the fund manager to a purchaser;
  - (d) the trustee shall not so countersign any certificate unless it has received from the fund manager a full account of the cash proceeds of the issue of that certificate or securities to the required value, together with all documents necessary to effect transfer thereof;
  - (e) the monies of the units trust shall be kept in a trust account at a licensed bank;
  - (f)
    - (i) any monies for investments accruing from the issue of securities;
    - (ii) dividends, interest or any other income accruing on underlying securities;
    - (iii) the proceeds of capital gains, rights or bonus issues; and
    - (iv) any money received by the unit trust fund manager from the realization of underlying securities,
 shall be accounted for in full to the trustee and deposited in a trust account or accounts;
  - (g) the securities of the unit trust shall be kept with a custodian approved by the Authority;
  - (h) the proceeds of capital gains, rights and bonus issues shall be invested in the unit trust scheme concerned for the benefit of the unit holders;
  - (i) all transactions of the unit trust collective investment scheme portfolio be individually reported to the trustee by the fund manager within two weeks of such transaction;
  - (j) the funds of the unit trust be invested on accordance with the investment limits prescribed by the Authority;
  - (k) it shall be incumbent upon the fund manager to repurchase, subject to such terms and conditions as may in terms of the trust deed apply, any number of units offered to it;
  - (l) the specific method of calculations of the value of the unit trust and of the unit at which unit holders shall transact their holdings with the unit trust shall be acceptable to the Authority;
  - (m) the specific date of the week or month and time for taking valuation of securities;
  - (n) the valuation of securities be at the last stock exchange transaction prices at or prior to that time and date;
  - (o) the unit value be the market valuation of all monies and properties of the funds of the unit trust divided by units outstanding at that time; and
  - (p) the initial charge, which shall be the only deductible charge from unit values in transaction with unit holders be stated.
  - (q) the fee charge by the fund manager which shall be the only monies payable to the fund manager shall be stated and shall be an annual fee;
  - (r) the accounts and financial records of the unit trust be maintained in a system acceptable to the Authority;
  - (s) the fees payable to the trustee and the custodian of the collective investment scheme portfolio shall be stated; and
  - (t) the trust deed may be amended in the manner prescribed in the trust deed.
- (55) Every such trust deed shall further prescribe—
- (a) the investment policy to be followed in respect of the scheme concerned;
  - (b) the manner in which the selling price of units is to be calculated;
  - (c) the terms and conditions on which the fund manager will repurchase units and the manner in which the repurchase price is to be calculated;

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- (d) if applicable, the manner in which additional units for sale to the public are to be created;
- (e) the manner in which the yield from units is to be calculated;
- (f) the manner in which the initial charge and the service charge are to be determined;
- (g) the manner in which units are to be cancelled.

PART X – CERTAIN VOID PROVISIONS OF TRUST  
DEED, AND AMENDMENTS TO TRUST DEED

(56) Any provision in a trust deed relating to the unit trust which is inconsistent with any provision of the Capital Markets Act or these regulations shall be void.

(57) The parties to a trust deed may by a supplemental deed alter or rescind any provisions of such trust deed or add further provisions thereto, but no alterations or rescission of or addition to any trust deed shall be valid—

- (a) unless the consent thereto of unit holders has been obtained in the manner prescribed in the trust deed:

Provided that if the trustee is satisfied that any such alienation, rescission or addition is required only to enable the provision of the trust deed to be given effect to more conveniently or economically or otherwise to benefit the unit holders, will not prejudice the interests of the unit holders and does not alter the fundamental provisions or objects of the trust deed or operate to release the trustee or the unit trust fund manager from any responsibility to the unit holders, such consent may be dispensed with; or

- (b) unless the Authority is satisfied that any such alteration, rescission or addition does not contain anything inconsistent with the provisions of the Capital Markets Act or with sound financial principles.

(58) A provision in any trust deed, whether entered into before or after the commencement of these Regulations purporting to relieve any party thereto from liability to the unit holders on account of his own negligence shall be void.

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FOURTH SCHEDULE

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PARTICULARS OF INFORMATION MEMORANDUM

*(NOTE: This list is not intended to be exhaustive. The board of directors of the scheme or the fund manager or trustee, as the case may be, are obliged to disclose any information which may be necessary for investors to make an informed judgment).*

**1. Prominent statement**

Prominent statement on the period for which the prospectus is valid.

**2. Disclaimer**

The following statement shall be contained on the front cover of the prospectus:

"Permission has been granted by the Capital Markets

Authority to offer to the public the securities which are the subject of this issue. As a matter of policy, the Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus".

**3. The Collective Investment Scheme**

State—

- (a) the name of the collective investment scheme;

- (b) that the collective investment scheme is a unit trust or a mutual fund or;
- (c) where the duration of the collective investment scheme is not unlimited, when it may terminate;
- (d) that the holders are not liable for the debts of the collective investment scheme;
- (e) particulars of registration of the collective investment scheme;
- (f) the address of its head office and its branch office;
- (g) the address of the place in Kenya for service on the collective investment scheme of notices or other documents required or authorized to be served on it, if different from (f);
- (h) the date of the licence granted by the Authority to operate as a collective investment scheme;
- (i) the base currency for the collective investment scheme;
- (j) the maximum and minimum sizes of the collective investment scheme's capital;
- (k) the circumstances in which the collective investment scheme may be wound up under the rules of the collective investment scheme and a summary of the procedure for, and the rights of the holders under, such a winding up; and
- (l) in the case of an investment company, the fact that the minimum subscription value of Kenya shillings 25 million must be attained during the offer period and what would occur if the expected amount is not received during the initial offer.

#### 4. Investment Objectives and Policy

Give sufficient information to enable a shareholder to ascertain—

- (a) the investment objectives (e.g. capital growth or income) of the collective investment scheme or of each sub-fund of an umbrella scheme;
- (b) the collective investment scheme's investment policy for achieving investment objectives referred to under (a) including the general nature of the portfolio and any intended specialization (e.g. economic sector, geographical area or type of investment);
- (c) the extent (if any) to which the policy under (b) does not envisage remaining fully invested at all times; and
- (d) any restrictions in the range of transferable securities in which investment may be made, including restrictions in the extent to which the collective investment scheme may invest in any category of investment, indicating (where appropriate) where the restrictions are tighter than those imposed by the Regulations.

(2) Where all or part of the remuneration of the fund manager is to be treated as a capital charge, it must be made clear that the investment objectives of the collective investment scheme are to treat the generation of income as a higher priority than capital growth or as the case may be, to place equal emphasis on the generation of income and on capital growth and that (in either case) this may accordingly constrain capital growth.

(3) List any individual eligible securities markets through which the collective investment scheme may invest or deal.

(4) State the extent (as a percentage of the total) to which the collective investment scheme intends to invest its assets in any one security or sector and whether or not it has done so.

(5) State the policy in relation to the exercise of borrowing powers by the collective investment scheme.

(6) In the case of a collective investment scheme, which may invest in other collective investment schemes state the extent to which the collective investment scheme portfolio

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may be invested in the shares of collective investment schemes, which are managed by the fund manager or by an associate of the fund manager.

## 5. Distributions

State—

- (a) the date on which the collective investment scheme's annual accounting period is to be in each year;
- (b) if there are interim accounting periods, what they are and the policy in relation to interim distributions (whether interim distribution will be made and if so, the policy on smoothing of income distributions within an annual accounting period);
- (c) the date or dates in each year on or before which payment or accumulation of income is to be made or take place;
- (d) if applicable, the policy on payment of income equalisation;
- (e) how distributable income is determined; and
- (f) if applicable, that unclaimed distributions may be forfeited and summarize the relevant provisions of the instrument of incorporation.

## 6. The characteristics of shares in the collective investment scheme

State—

- (a) where there is more than one class of shares in issue or available for issue, the names of such classes, the rights attached to each class in so far as they vary from the rights attached to other classes;
- (b) how holders may exercise their voting rights and what these are; and
- (c) what the method is for conversion between shares of different classes; and
- (d) in what circumstances, if any, a mandatory redemption, cancellation or conversion of shares from one class to another may be required.

## 7. The Fund Manager

State the following particulars of the fund manager—

- (a) name;
- (b) the nature of corporate form;
- (c) the date of incorporation;
- (d) the address of registered office;
- (e) the address of head office if different from (d);
- (f) if it is a subsidiary, the name and place of incorporation of ultimate holding company;
- (g) the amount of issued share capital and how much of it is paid up;
- (h) the date of licence with the Authority to operate as fund manager;
- (i) whether the fund manager is in any capacity in relation to any other regulated collective investment schemes and if so the names of the schemes and the nature of the capacity in relation to those schemes; and
- (j) a summary of the material provisions of the contract between the collective investment scheme and the fund manager which may be relevant to the holders including provisions relating to terminations, compensation on termination and indemnity.

## 8. Other directors of the collective investment scheme

State—

- (a) the names and positions of the directors in the collective investment scheme;

- (b) the main business activities of each of the directors (other than those connected with the business of the collective investment scheme);
- (c) the manner, amount and calculation of the remuneration of directors;
- (d) in summary form, the main terms of each contract of service between the collective investment scheme and a director; and
- (e) if the director is a body corporate in a group of which any other corporate director of the collective investment scheme is a member, a statement of that fact.

#### 9. The Trustee

State the following particulars on the trustee—

- (a) name and address;
- (b) date and place of its incorporation;
- (c) if it is a subsidiary, the name of its ultimate holding company and the date and place of its incorporation;
- (d) the address of its registered office (if different from (a));
- (e) the address of its head office if that is different from (a) and (d); and
- (f) a description of its principal business activity.

#### 10. The Custodian

State the following particulars on the custodian—

- (a) Name and address;
- (b) the date of incorporation;
- (c) if it is a subsidiary, the name of its ultimate holding company and its place of incorporation;
- (d) the address of its registered office (if different from (a));
- (e) the address of its head office (if different from (a) and (d));
- (f) a description of its principal business activity; and
- (g) a summary of the material provisions of the contract between the collective investment scheme and the custodian, which may be relevant to holders including provisions relating to the remuneration of the custodian.

#### 11. The Auditor

State the name and address of the auditor of the collective investment scheme.

#### 12. The Register of Holders

State the address in Kenya where the register of the holders is kept and can be inspected by the holders.

#### 13. Payments to the Fund Manager

State the payments that may be made to the fund manager out of the collective investment scheme portfolio whether by way of remuneration for its services or reimbursement of expenses. For each category of remuneration, specify—

- (a) the current amounts of such remuneration;
- (b) how will it be calculated and accrue and when it will be paid;
- (c) if notice is to be given to holders of the fund manager's intention to introduce a new category of remuneration for its services or to increase any amount currently charged, particulars of that increase and when it will take place;
- (d) whether all or part of the remuneration is to be treated as a capital charge—
  - (i) that fact; and

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- (ii) the actual or maximum amount of the charge which may be so treated: and
- (iii) if notice has been given to holders of an intention to propose an increase in the maximum amount of that charge at a meeting of holders and particulars of that proposal.

**14. Other Payments out of the Collective Investment Scheme Portfolio**

Provide details of—

- (a) any liability of the collective investment scheme reimburse costs incurred by any of its directors, its custodian or any third party;
- (b) any remuneration payable by the collective investment scheme to any third party; and
- (c) the types of other charges and expenses that may be taken out of the collective investment scheme portfolio.

**15. Movable and immovable property**

Give an estimate of any expenses likely to be incurred by the collective investment scheme in respect of movable and immovable property in which the collective investment scheme has an interest.

**16. Sale and redemption of shares**

State—

- (a) the dealing days and times in the dealing day on which the fund manager will be available to receive requests for the issue and redemption of shares;
- (b) the procedures for effecting the sale and redemption of shares and the settlement of transactions;
- (c) whether certificates will be issued in respect of registered shares;
- (d) the steps required to be taken by a holder in redeeming shares before he can receive the proceeds;
- (e) the circumstances in which the redemption of shares may be suspended;
- (f) the days and time on which recalculation of the price will commence;
- (g) the amounts of the following minima (if they apply) for each type of share in the collective investment scheme—
  - (i) the minimum number of shares which any one person may hold;
  - (ii) the minimum value of shares which any one person may hold;
  - (iii) the minimum number of shares which may be the subject of any one transaction of shares or redemption;
  - (iv) the minimum value of shares which may be subject of any one transaction of sale or redemption;
- (h) the circumstances in which the fund manager may arrange for, and the procedure for, a cancellation of shares;
- (i) In which local newspaper the most recent price will be published and how often the prices will be published;
- (j) the time period for the custodian to pay the repurchase price of the shares to the holder.

**17. Valuation of the collective investment scheme portfolio**

State—

- (a) how frequently and at what time of the day the collective investment scheme portfolio will be valued for the purpose of determining the price at which shares in the collective investment scheme may be purchased from or redeemed



by the fund manager and a description of any circumstances in which the collective investment scheme portfolio may be specially valued;

- (b) the basis on which the collective investment scheme portfolio will be valued; and
- (c) how the price of the shares of each class will be determined.

#### 18. Dilution levy

State—

- (a) what is meant by dilution and by dilution levy; and
- (b) the fund manager's policy on imposing a dilution levy.

#### 19. Forward and historic pricing

- (1) Disclose the fund manager's normal basis of dealing.
- (2) Disclose the basis of the management fee and the service charge.

#### 20. Initial charge

If the fund manager makes a preliminary charge state—

- (a) the current amount or rate of the initial charge; and
- (b) if notice has been given to holders of the fund manager's intention to introduce a initial charge or to increase the rate or amount currently charged, particulars of that introduction or increase and when it will take effect.

#### 21. Redemption charge

If the fund manager may make a redemption charge, state—

- (a) the amount of that charge, or if it is a variable, the rate or method of arriving at it;
- (b) if the amount, rate or method has been changed, that the details of any previous amount, rate or method may be obtained from the fund manager on request;
- (c) if notice has been given to holders of the fund manager's intention to introduce a redemption charge or to propose a change in the rate or amount or method which is adverse to the holders, particulars of that proposal; and
- (d) how the order in which shares acquired at different times by a holder shall be determined insofar as necessary for the purposes of the imposition of the redemption charge.

#### 22. General information

State—

- (a) when annual and half yearly reports will be published;
- (b) the address at which copies of instruments of incorporation, any amending instrument and most recent annual and half yearly reports may be inspected and from which, copies may be obtained.

#### 23. Umbrella collective investment scheme

- (a) State, in the case of an umbrella collective investment scheme—
  - (i) whether or not a shareholder is entitled to exchange shares in one sub-fund for shares in any other sub-fund;
  - (ii) whether or not an exchange of shares in one sub fund for shares in any other sub-fund is treated as a redemption and a sale and will be subject to taxation on capital gains or withholding tax, as the case may be;

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- (iii) subject to (i) and (ii), that in no circumstances will a holder who exchanges shares in one sub-fund for shares in any other sub fund be given a right by law to withdraw from or cancel that transaction;
  - (iv) what charges, if any, may be made on exchanging shares in one sub-fund for shares in another sub-fund;
  - (v) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of the collective investment scheme portfolio, which are not attributable to any particular sub fund;
  - (vi) in respect of each sub fund, the currency in which the collective investment scheme portfolio allocated to it will be valued and the price of shares calculated and payments made, if this currency is not the base currency of the umbrella collective investment scheme; and
  - (vii) if there are shares in respect of less than two sub funds in issue the effect of Regulation 42.
- (b) In the application of this Schedule to an umbrella scheme, information required—
- (i) shall state in relation to each sub fund where the information for any sub fund differs from that for any other;
  - (ii) shall state for the collective scheme as a whole but only where the information is relevant to the collective investment scheme as a whole;
  - (iii) shall contain a statement to the effect that the sub funds of an umbrella scheme are not 'ring fenced' and the event of an umbrella scheme being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may have to be met out of the assets attributable to other sub-funds.

**24. Marketing outside Kenya**

*(List other countries in which marketing and selling of collective investment shares will occur)*

An information memorandum which is prepared for the purpose of marketing shares in states outside Kenya shall state the following—

- (a) that all formalities and requirements of such country have been fulfilled;
- (b) what special arrangements have been made—
  - (i) for paying in that country amounts distributable to holders residing in that country;
  - (ii) for redeeming in that country the shares of holders resident in that country;
  - (iii) for inspecting and obtaining copies in that country of the instrument of incorporation and the amendments thereto, of the prospectus and of the annual and half yearly reports; and
  - (iv) for making public the prices of shares of each class.
- (c) how the collective investment scheme will publish in that country the following information that:
  - (i) annual and half yearly reports are available for inspection;
  - (ii) a distribution has been declared;
  - (iii) amendments have been made to the incorporation documents;
  - (iv) the information memorandum has been revised or that changes have been made to the arrangements under paragraph (a).

The information memorandum will state that the shares are to be marketed in that country.

**25. Additional information**

State any other material information which is within the knowledge of the fund manager or which the fund manager would have obtained by making of reasonable inquiries—

- (a) which investors and their advisers would reasonably require and reasonably expect to find in an information memorandum to enable them to make an informed judgement about the merits of investing in the collective investment scheme and the extent and characteristics of risks accepted by so participating;
- (b) including a statement of any risk factors in the collective investment scheme that may reasonably be regarded as presenting for reasonably prudent investors of moderate means;
- (c) in the case of an investment company, information on whether there is a minimum subscription value which must be raised during the limited offer period.

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## FIFTH SCHEDULE

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### INTERIM AND ANNUAL REPORTS

Except as stated the following matters shall be set out in every annual and half yearly report of a collective investment scheme.

#### **Part I - Report of the Trustee or Board of Directors/Fund Manager (as the case may be)**

1. The names and addresses of the following—
  - (a) the fund manager;
  - (b) the Trustee;
  - (c) the custodian; and
  - (d) the Auditor.
2. The names of all the directors.
3. A statement that—
  - (a) the collective investment scheme is an approved collective investment scheme within the meaning of the Capital Markets Act; and
  - (b) the holders are not liable for the debts of the collective investment scheme.
4. A statement on the nature of the funds in the collective investment scheme (i.e. price index funds, securities funds, money market funds, etc) or an umbrella scheme, as the case may be.
5. The investment objectives of the collective investment scheme.
6. The collective investment scheme's policy for achieving that objective.
7. A review of the collective investment scheme's investment activities during the period to which the report relates.
8. Particulars of any significant change in memorandum made since the date of the last report.
9. Particulars of any significant change in the incorporation documents since the date of the last report.
10. A statement of any sub-division or consolidation of shares which has been effected during the period to which the report relates.

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11. Any other significant information which would enable shareholders to make an informed judgement on the development of the activities of the collective investment scheme during this period and the results of those activities as at the end of that period.

12. In the case of a report relating to an umbrella scheme—

- (a) information required under the above paragraphs shall be given in respect of each sub-fund if it would vary from that given in respect of the umbrella scheme as a whole and paragraph 4 shall apply as if it required a statement in respect of each sub-fund; and
- (b) the report shall contain statements to the effect that—
  - (i) there are and/or as the case may be, in the future there may be, other sub funds of that umbrella collective investment scheme; and
  - (ii) a sub-fund is not a legal entity, if the assets attributable to any sub-fund were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other sub-funds of the umbrella scheme.

### **Part II - Comparative table**

1. A performance record over the last 5 calendar years, or if the collective investment scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing—

- (a) the highest and the lowest price of a share of each class in issue during each of those years; and
- (b) the net income distributed for a share of each class during each of those years, taking account of any sub-division or consolidation of shares that occurred during that period.

2. As at the end of each of the last three annual accounting periods (or all of the collective investment scheme's accounting periods, if less than three) the total value of the collective investment scheme portfolio at the end of each of those years and the price for a share of each class and the number of shares of each class in issue at the end of each of those years.

3. If in the period covered by the table—

- (a) the collective investment scheme has been subject of any event (such as an amalgamation or reconstruction but excluding any issue or cancellation of shares for cash) having a material effect of the size of the collective investment scheme; or
- (b) there have been changes in the investment objectives of the collective investment scheme, an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

4. In the case of an umbrella scheme paragraphs 1 to 3 shall not apply and the information required under each of paragraphs 1 to 3 shall instead be given in respect of each sub-fund of the umbrella scheme.

### **Part III - Report of the custodian**

The report of the custodian to the holders for any annual accounting period shall contain statements;

(a) which may be in summary form, describing the duties of the custodian under Regulation 35 and in respect of the safekeeping of the collective investment scheme portfolio.

(b) to the effect of whether—

- (i) the issue, sale, redemption and cancellation, and calculation of the price of the collective investment scheme's shares and the application of the collective investment scheme's income have been carried out in accordance with these Regulations; and

- (ii) the investment and borrowing powers and restrictions applicable to the collective investment scheme in accordance with these Regulations and the documents of incorporation have been exceeded.

#### **Part IV - Report of the Auditor**

The report of the auditor to the shareholders in respect of the accounts of the collective investment scheme shall state—

(a) Whether in the auditor's opinion, the accounts have been properly prepared in accordance with these Regulations;

(b) Whether, in the auditor's opinion, the accounts give a true and fair view of the net income and the net gains or losses,

on the collective investment scheme portfolio for the annual accounting period in question and the financial position of the collective investment scheme or the sub-fund as at the end of that period;

(c) If the auditor is of the opinion that proper accounting records for the collective investment scheme have not been kept or that the accounts are not in agreement with those records, that fact; and

(d) If the auditor has not been given all the information and explanation which, to the best of his knowledge and belief, are necessary for the purpose of his audit, that fact; and

(f) If the auditor is of the opinion that the information given in the report of the directors for that period is inconsistent with the accounts, that fact.

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