

REPUBLIC OF SOUTH AFRICA

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# COLLECTIVE INVESTMENT SCHEMES CONTROL BILL

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill  
published in Government Gazette No 23253 of 28 June 2002)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

[B 28—2002]

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# BILL

**To regulate and control the establishment and administration of collective investment schemes; to amend or repeal certain laws; and to provide for incidental matters.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## PART I

## COLLECTIVE INVESTMENT SCHEMES

## Definitions

1. In this Act, unless the context indicates otherwise—
- “administration” means any function performed in connection with a collective investment scheme including—
- (a) the management or control of a collective investment scheme;
  - (b) the receipt, payment or investment of money or other assets, including income accruals, in respect of a collective investment scheme;
  - (c) the sale, repurchase, issue or cancellation of a participatory interest in a collective investment scheme and the giving of advice or disclosure of information on any of those matters to investors or potential investors; and
  - (d) the buying and selling of assets or the handing over thereof to a trustee or custodian for safe custody;
- “advisory committee” means the Collective Investment Schemes Advisory Committee referred to in section 8;
- “assets” means the investments comprising or constituting a portfolio of a collective investment scheme and includes any income accruals derived or resulting from the investments in the portfolio which are held for or are due to the investors in that portfolio;
- “association” means an association licensed in terms of section 26;
- “auditor” means a person registered under the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), and appointed by a manager in terms of section 73;
- “authorised agent” means a person authorised by a manager to solicit investments in a portfolio from members of the public or to perform a function contemplated in the definition of “administration”;
- “Board” means the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);
- “close corporation” means a close corporation incorporated in accordance with the Close Corporations Act, 1984 (Act No. 69 of 1984);
- “collective investment scheme” means a scheme, in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which—
- (a) two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; and
  - (b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed,
- but not a collective investment scheme authorised by any other Act;
- “company” means a company incorporated or registered under the Companies Act, 1973 (Act No. 61 of 1973);
- “court” means any division of the High Court of South Africa having jurisdiction;
- “custodian” means a custodian appointed in terms of section 68;
- “deed” means the agreement between a manager and a trustee or custodian, or the document of incorporation whereby a collective investment scheme is established and in terms of which it is administered, and includes the deed of a management company which immediately prior to the commencement of this Act was a management company in terms of any law repealed by this Act;
- “exchange” means an exchange licensed under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), the Financial Markets Control Act, 1989 (Act No. 55 of 1989), or an exchange outside the Republic referred to in section 45;
- “exchange securities” means securities which are listed and authorised to be dealt in on an exchange, and the prices of which are quoted in a list issued for publication by such exchange;
- “income accruals” means any dividends or interest or any other income for distribution received by the trustee, custodian or manager on behalf of investors in a portfolio in the course of any income distribution period or carried forward from

any previous income distribution period or due to such investors in respect of dividends or interest or any other income declarations made but not yet distributed;	
“investor” means the holder of a participatory interest in a portfolio in the Republic;	
“manager” means a person who is authorised in terms of this Act to administer a collective investment scheme;	5
“members of the public” includes—	
(a) members of any section of the public, whether selected as clients, members, shareholders, employees or ex-employees of the person issuing an invitation to acquire a participatory interest in a portfolio; and	10
(b) a financial institution regulated by any law, but excludes persons confined to a restricted circle of individuals with a common interest who receive the invitation in circumstances which can properly be regarded as a domestic or private business venture between those persons and the person issuing the invitation;	15
“Minister” means the Minister of Finance;	
“open-ended investment company” means a company with an authorised share capital, which is structured in such a manner that it provides for the issuing of different classes of shares to investors, each class of share representing a separate portfolio with a distinct investment policy;	20
“participatory interest” means any interest, undivided share or share whether called a participatory interest, unit or by any other name, and whether the value of such interest, unit, undivided share or share remains constant or varies from time to time, which may be acquired by an investor in a portfolio;	
“portfolio” means a group of assets including any amount of cash in which members of the public are invited or permitted by a manager to acquire, pursuant to a collective investment scheme, a participatory interest or a participatory interest of a specific class which as a result of its specific characteristics differs from another class of participatory interests;	25
“prescribed” means prescribed by regulation;	30
“registrar” means the registrar or the deputy registrar of collective investment schemes referred to in section 7;	
“regulation” means a regulation made under this Act;	
“rule” means a rule referred to in section 32;	
“sell” or “repurchase” includes exchange;	35
“solicit” means any act to promote investment by members of the public in a collective investment scheme;	
“this Act” includes a regulation, notice, rule and any other measure having the force of law made under this Act;	
“trustee” means the trustee appointed in terms of section 68.	40

### **Principles for administration of collective investment scheme**

2. (1) A manager must administer a collective investment scheme honestly and fairly, with skill, care and diligence and in the interest of investors and the collective investment scheme industry.
- (2) The assets of an investor must be properly protected by application of the principle of segregation and identification.

### **Disclosure of information**

3. Before entering into a transaction with an investor—
- (a) information about the investment objectives of the collective investment scheme, the calculation of the nett asset value and dealing prices, charges, risk factors and distribution of income accruals must be disclosed to the investor; and
- (b) information that the manager considers necessary to enable the investor to make an informed decision must be given to the investor timeously and in a comprehensible manner.

**Duties of manager**

4. (1) The manager must avoid conflict between the interests of the manager and the interests of an investor.
- (2) The manager must disclose the interests of its directors and management to the investors. 5
- (3) A manager must maintain adequate financial resources to meet its commitments and to manage the risks to which its collective investment scheme is exposed.
- (4) A manager must—
- (a) organise and control the collective investment scheme in a responsible manner; 10
  - (b) keep proper records;
  - (c) employ adequately trained staff and ensure that they are properly supervised;
  - (d) have well-defined compliance procedures;
  - (e) maintain an open and cooperative relationship with the office of the registrar and must promptly inform that office about anything that might reasonably be expected to be disclosed to such office; and 15
  - (f) promote investor education, either directly or through initiatives undertaken by an association.

**Requirement for administration of collective investment schemes**

5. No person may perform any act or enter into any agreement or transaction for the purpose of administering a collective investment scheme, unless such person— 20
- (a) is registered as a manager by the registrar or is an authorised agent; or
  - (b) is exempted from the provisions of this Act by the registrar by notice in the *Gazette*.

**Prohibition of misleading names and acts** 25

6. (1) Subject to subsection (2), no person may, except if registered as a manager under this Act, or with the specific permission of the registrar pending the lodging and disposal of an application by such person for registration as a manager under this Act, or pending the change of the name of his or her business, include in or have as part of the name of his or her business or in any description of his or her business any reference to a collective investment scheme, open-ended investment company, participatory interest, portfolio, unit, unit trust or mutual fund or any derivative thereof, and no person who is not registered as a manager or trustee or custodian under this Act or is not an authorised agent may perform any act calculated to lead the public to believe that any business carried on by such person consists of or is connected with the administration of a collective investment scheme. 30
- (2) The registrar may on application by a person who is required to change his or her name by virtue of subsection (1) allow such person to effect such change on the conditions and within the period, not exceeding 6 months, determined by the registrar.
- (3) A person who contravenes subsection (1) is guilty of an offence. 35 40

**Registrar and deputy registrar of collective investment schemes**

7. The executive officer and a deputy executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), are the registrar and the deputy registrar of collective investment schemes, respectively.

**Collective Investment Schemes Advisory Committee** 45

8. (1) The Unit Trusts Advisory Committee established by section 2B of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), continues to exist, despite the repeal of that Act by section 117.
- (2) As from the commencement of this Act the Unit Trusts Advisory Committee referred to in subsection (1) is known as the Collective Investment Schemes Advisory Committee (in this Act referred to as the advisory committee) and a reference to the Unit Trusts Advisory Committee in any law must, unless clearly inappropriate, be construed as a reference to the Collective Investment Schemes Advisory Committee. 50

(3) The members of the Unit Trusts Advisory Committee who were in office as such immediately before the commencement of this Act remain in office for the remainder of their term of office or until their membership is terminated in terms of this Act.

### **Appointment of members of advisory committee and termination of appointment**

**9.** (1) The advisory committee consists of the chairperson and at least nine other members appointed by the Minister. 5

(2) The Minister must appoint as members of the advisory committee—

- (a) one person with knowledge of collective investment schemes in securities;
- (b) one person with knowledge of collective investment schemes in property;
- (c) one person with knowledge of collective investment schemes in participation 10  
bonds;
- (d) one person with knowledge of other collective investment schemes; and
- (e) one person to represent the interests of investors.

(3) A member of the advisory committee holds office for three years and is eligible for reappointment upon the expiration of his or her term of office: Provided that if on the expiry of the term of office of a member reappointment is not made or a new member is not appointed, the former member must remain in office until an appointment has been made. 15

(4) The Minister may terminate the membership of a member of the advisory committee with good reason after having given the member sufficient opportunity to show why his or her membership should not be terminated. 20

### **Functions of advisory committee**

**10.** (1) The advisory committee may on its own initiative and must at the request of the Minister or the registrar investigate and report or advise on any policy, administrative, technical or supervisory matter concerning collective investment schemes. 25

(2) The advisory committee must advise the Minister or the registrar on any matter referred to it by the Minister or the registrar.

(3) The registrar may submit to the advisory committee any information in his or her possession which is relevant to any matter being investigated or considered by the advisory committee. 30

(4) The Commissions Act, 1947 (Act No. 8 of 1947), applies to any investigation by the advisory committee and witnesses and their evidence as if the advisory committee were a commission to which the said Act applied and the chairperson of the advisory committee were the secretary of such a commission. 35

(5) The advisory committee may call upon any person to assist it or to investigate a matter relating to collective investment schemes.

(6) Officers or employees in the office of the registrar designated by the registrar must perform the administrative work incidental to the performance of the functions of the advisory committee and its subcommittees. 40

### **Meetings of advisory committee**

**11.** (1) The advisory committee must determine the date and place of its meetings.

(2) The chairperson may at any time convene an extraordinary meeting of the advisory committee to be held at a time and place determined by him or her.

(3) The advisory committee determines its own procedure for its meetings. 45

(4) The quorum for a meeting of the advisory committee is a majority of its members.

(5) The decision of a majority of the members of the advisory committee present at any meeting thereof is the decision of the advisory committee, and in the case of an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote. 50

### **Subcommittees of advisory committee**

**12.** (1) The advisory committee may appoint one or more subcommittees, which may perform such functions of the advisory committee as the advisory committee may determine.

(2) A subcommittee consists of as many members of the advisory committee or as many other persons as the advisory committee considers necessary, and the advisory committee may at any time dissolve or reconstitute a subcommittee.

(3) The advisory committee must designate one of the members of the subcommittee as chairperson, and if the chairperson is absent from a meeting of the subcommittee, the members present must from among themselves elect a person to preside at the meeting. 5

(4) The advisory committee may make rules regarding the manner in which meetings of a subcommittee are to be convened, the procedure at, the functions of, and the quorums for such meetings and the manner in which minutes of such meetings must be kept. 10

### **Remuneration and expenses of members of advisory committee**

**13.** (1) A member of the advisory committee who is not in the full-time employment of the State or the Board must be paid such remuneration and allowances in respect of any expenses incurred in the performance of the functions of the advisory committee, as may be determined by the Board. 15

(2) The expenditure connected with the functions of the advisory committee must be paid out of the funds of the Board, whose approval must be obtained for all expenditure proposed to be incurred, or actually incurred, by the advisory committee.

## **PART II**

### **FUNCTIONS OF REGISTRAR** 20

#### **Special provision concerning powers of registrar**

**14.** (1) The registrar may conduct an investigation into the business of a person, whether registered or authorised in terms of this Act or not, who is involved in the administration of a collective investment scheme or the soliciting of investment in a collective investment scheme. 25

(2) For the purposes of an investigation in terms of subsection (1) the registrar may in writing direct such person to—

- (a) provide him or her with any information, document or record about such business;
- (b) appear before him or her at a specified time and place if the registrar has reason to believe that such person is contravening or failing to comply with this Act. 30

(3) In addition to the powers and duties conferred or imposed upon him or her by this Act, the registrar has, in respect of a person referred to in subsection (1), all the powers and duties conferred or imposed upon him or her by the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998). 35

(4) A reference in this Act to a directive, an investigation or an inspection made under this section is construed as a reference to a directive, an investigation or an inspection under the Inspection of Financial Institutions Act, 1998.

#### **Powers of registrar after investigation** 40

**15.** (1) If the registrar, after an investigation or inspection under section 14, considers that the interests of the investors of a collective investment scheme or of members of the public so require, he or she may—

- (a) apply to the court under section 346 of the Companies Act, 1973 (Act No. 61 of 1973), for the winding-up of a manager or of a collective investment scheme as if he or she were a creditor thereof; 45
- (b) apply to the court under section 427(2) of the Companies Act, 1973, for a judicial management order in respect of a manager or of a collective investment scheme as if he or she were a creditor thereof;
- (c) apply to the court under section 5 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), for the appointment of a curator for the business of the manager or for the business of a portfolio; 50
- (d) require a manager to appoint, in accordance with the registrar's directions, in place of the serving trustee or custodian, a competent person nominated by the registrar; 55

- (e) require a manager to take steps, in accordance with the registrar's directions and the provisions of section 102, for the winding-up of a portfolio of its collective investment scheme, and for the realisation of the assets and the distribution of the net proceeds thereof, together with any income accruals or other moneys available for distribution among the investors in proportion to their respective participatory interests; 5
  - (f) direct a manager or a trustee or custodian to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs disclosed by an investigation or inspection; 10
  - (g) direct a manager to withdraw from the administration of a collective investment scheme, whereupon the trustee or custodian must in accordance with the registrar's directions but subject to this Act arrange for another manager to take over the administration of the collective investment scheme; or 15
  - (h) if a person administers a collective investment scheme in contravention of this Act, apply to the court to have the collective investment scheme wound up, in which case the court may make any order it considers appropriate for the winding-up of the collective investment scheme.
- (2) The registrar may oppose any application in terms of the Companies Act, 1973 (Act No. 61 of 1973), for— 20
- (a) the winding-up of a manager;
  - (b) a judicial management order in respect of a manager; or
  - (c) the winding-up of a portfolio of a collective investment scheme in terms of section 102. 25
- (3) Any person who intends to make an application contemplated in subsection (2) must give timeous notice of such application to the registrar.
- (4) A person who refuses or fails to comply with a request or direction referred to in paragraphs (d), (e), (f) or (g) of subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment. 30

### **Cancellation or suspension of registration of manager**

- 16.** (1) The registrar may, subject to subsection (2), cancel the registration of a manager under this Act if—
- (a) he or she is satisfied that the manager has contravened or failed to comply with any provision of this Act, or any direction or requirement given or imposed under this Act, and that such contravention or failure has resulted or may result in serious prejudice to the interests of the public or of investors; 35
  - (b) he or she is satisfied, upon completion of an investigation or inspection in terms of section 14, that the manner in which a manager carries on the business of a collective investment scheme is unsatisfactory or undesirable or not calculated to serve the best interests of its investors; 40
  - (c) it is apparent that the registration of the manager was obtained through misrepresentation; or
  - (d) a manager is wound up, either voluntarily or by the court, 45
- or may, on any ground referred to in paragraph (a), (b) or (c) suspend the registration of a manager for a period not exceeding 12 months at a time subject to such conditions as the registrar may determine.
- (2) The registrar may not cancel or suspend the registration of a manager on any ground contemplated in subsection (1)(a), (b) or (c) unless he or she has— 50
- (a) notified the manager of his or her intention and of the grounds upon which he or she proposes to do so;
  - (b) allowed the manager to make representations to him or her in connection with the proposed cancellation or suspension; and
  - (c) afforded the manager a reasonable opportunity to rectify or eliminate the defect, irregularity or undesirable practice. 55
- (3) An application for reregistration as a manager by a company whose registration has been cancelled under this section must be dealt with as if it were its first application for registration.
- (4) If the registration of a manager is cancelled in terms of subsection (1)(a), (b) or (c), the provisions of this Act with regard to the continuance or the winding-up of the 60

portfolio of a collective investment scheme or the winding-up of the manager apply: Provided that the registrar may in any such case direct the former manager to defray in whole or in part the expenses incurred in continuing the administration of the collective investment scheme, or in realising any of its assets, and also any remuneration to which a trustee or custodian may be entitled. 5

(5) If the registration of a manager has been suspended under subsection (1), the manager may not, during the period of suspension, issue any fresh participatory interests, but must, in respect of participatory interests issued, continue the administration of the collective investment scheme and deal with such interests in all respects as it would have been bound to do had its registration not been suspended. 10

### **Registrar may object to certain documents**

**17.** The registrar may object to the terms of any price list, advertisement, brochure or similar document relating to a collective investment scheme published or proposed to be published by a manager or any of its authorised agents if the registrar considers the terms are calculated to mislead or are, for any other good and sufficient reason, objectionable or undesirable, and the registrar may direct the manager to discontinue or refrain from publishing or distributing any such document, or to amend its terms. 15

### **Power of registrar to impose penalties for failure or inability to comply with requirements**

**18.** (1) If a manager fails to comply with section 88(1), or is unable to comply with any other prudential or supervisory requirements imposed by or under this Act, the manager must forthwith in writing report the failure or inability to the registrar, stating the reasons for such failure or inability. 20

(2) The registrar may summarily take action under this Act against a manager referred to in subsection (1) or condone the failure or inability and afford the manager an opportunity to comply with the relevant provisions within a specified period and subject to such conditions as the registrar may determine. 25

(3) Irrespective of whether criminal proceedings in terms of this Act have been or are to be instituted against a manager in respect of any failure or inability referred to in subsection (1), the registrar may, by way of a written notice, impose upon that manager in respect of such failure or inability a fine— 30

- (a) in the case of any failure or inability to comply with section 88, not exceeding three per cent of the amount of the shortfall for each day on which such failure or inability continues;
- (b) in the case of any failure or inability to comply with any other prudential or supervisory requirement imposed by or under this Act, not exceeding one per cent of the amount of the shortfall for each day on which such failure or inability continues or in the absence of any shortfall, not exceeding one million rand; or
- (c) in the case of any failure to submit to the registrar or any other person within any period fixed by or under this Act any statement, report, return or other document or information required by or under this Act to be so submitted, not exceeding R1 000, or such other amount determined by the Minister for every day during which the failure continues. 40

(4) A fine imposed under subsection (3) must be paid to the Board within such period as may be specified in the relevant notice, and if the manager concerned fails to pay the fine within the specified period the registrar may by way of civil action in a competent court recover from that manager the amount of the fine. 45

### **Power of registrar to request audit**

**19.** (1) The registrar may direct a manager to have all books of accounts and financial statements audited and to submit the results of such an audit to the registrar within the time specified by the registrar. 50

(2) Any person who, in respect of an audit contemplated in subsection (1), gives information, an explanation or access to records which he or she knows to be false or misleading is guilty of an offence. 55

### Attendance of meetings of association and furnishing of certain documents to registrar

20. (1) The registrar or a person nominated by him or her may attend any meeting of an association or the executive committee of an association or a subcommittee of that committee, and take part in all the non-voting proceedings at such meeting. 5

(2) An executive officer of an association must on request furnish the registrar with all notices, minutes and documents which are furnished to the members of the association and the members of the executive committee or a subcommittee of that committee.

### Declaration of certain practices as irregular or undesirable

21. (1) The registrar may, with the approval of the Minister, by notice in the *Gazette* declare a particular practice or manner of administration of collective investment schemes to be an “irregular or undesirable practice” or an “undesirable manner of administration”: Provided that the Minister may give such approval only if— 10

- (a) the registrar has given notice in the *Gazette* of his or her intention to declare a practice or manner of administration to be irregular or undesirable not less than 30 days before such approval is given and if in such notice all interested persons are invited to make representations in writing to the Minister within 21 days from the date of publication of the notice; and 15
- (b) the registrar has consulted with the advisory committee.

(2) No person may, after 21 days from the date of publication of the notice whereby a practice or manner of administration has been declared to be irregular or undesirable, employ such a practice or manner of administration otherwise than for the sole purpose of fulfilling any obligations entered into before the date of such notice or to comply with any direction by the registrar under subsection (3). 20

(3) The registrar may in writing direct any person who employed a practice or manner of administration, whether before, during or after the date of the notice referred to in subsection (2), which was declared to be irregular or undesirable, to rectify in a manner required by the registrar anything which was caused by or arose out of the employment of that irregular or undesirable practice or manner of administration. 25

(4) A person who has been directed in terms of subsection (3) to rectify anything must effect such rectification within seven days after being so directed or within such longer period as the registrar may approve. 30

(5) A person who—

- (a) contravenes subsection (2);
- (b) refuses or fails to comply with a direction referred to in subsection (3); or 35
- (c) fails to comply with subsection (4),

is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

### Exemptions

22. When it is in the public interest, the registrar may exempt— 40

- (a) a manager; or
- (b) any category of persons,

from any provision of this Act on such conditions and to such extent as he or she may determine.

### Annual report by registrar 45

23. (1) The registrar must submit to the Minister an annual report concerning—

- (a) his or her activities in relation to this Act;
- (b) the activities of all managers and associations; and
- (c) all matters relating to the administration of collective investment schemes and analogous schemes. 50

(2) A report contemplated in subsection (1) must be tabled in Parliament within 14 days of publication thereof, if Parliament is then in session or, if Parliament is not then in session, within 14 days of the commencement of its next ensuing session.

## Board of Appeal

24. A person aggrieved by a decision of the registrar under a power conferred or a duty imposed upon him or her by or under this Act, may appeal to the board of appeal referred to in section 26 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), on the terms and conditions determined in that Act. 5

## PART III

### ASSOCIATION OF COLLECTIVE INVESTMENT SCHEMES

#### Application for association licence

25. (1) An association of persons carrying on the business of a collective investment scheme may apply to the registrar for an association licence. 10

(2) An application for the issue or renewal of an association licence must be made on the form determined by the registrar and be accompanied by the documents and the fee determined by the registrar: Provided that if a licence is issued after 30 June of a particular year one half of the annual fee is payable.

(3) A licence expires on 31 December of each year. 15

#### Issue or renewal of association licence

26. The registrar may on such conditions as he or she may determine issue or renew an association licence if the registrar is satisfied that—

- (a) the association is reasonably representative of the interests of the industry;
- (b) the association has sufficient financial resources for performing its functions; 20
- (c) the proposed rules of the association comply with the requirements of this Act;
- (d) the interests of the public will be served by the issue or renewal of the licence; and
- (e) the members of the association carry on the business of a collective investment scheme independently and in competition with one another. 25

#### Refusal of renewal of association licence

27. (1) The registrar may refuse to renew a licence if he or she is satisfied that during the previous year—

- (a) the rules of the association were not properly enforced;
- (b) the association did not comply with any of the requirements referred to in section 26(a), (b), (d) or (e); 30
- (c) the association did not comply with any direction, request, condition or requirement of the registrar in terms of this Act;
- (d) the association failed to give effect to a decision of the board of appeal referred to in section 24; or 35
- (e) the association did not comply with any other provision of this Act.

(2) A refusal under subsection (1) is of no force unless the registrar has by notice in writing given the association concerned his or her reasons for the intended refusal and an opportunity to show cause within a period specified in the notice why renewal should not be refused. 40

#### Cancellation or suspension of association licence

28. (1) The registrar may cancel or suspend the licence of an association on such conditions as he or she may determine if he or she is satisfied—

- (a) that the association has failed—
  - (i) to comply with the requirements referred to in sections 26(a), (b), (c) or (e) and 27(1)(a); 45
  - (ii) to comply with any direction, request, condition or requirement of the registrar in terms of this Act; or
  - (iii) to comply with any other provision of this Act, and that such failure has resulted or could result in prejudice of a material extent to the interests of the public or investors; 50

- (b) after an investigation or inspection in terms of section 14, that the manner in which the functions of an association are performed is unsatisfactory or not calculated to serve the best interests of the public or investors;
- (c) that the association has ceased to perform its functions;
- (d) that the association failed to start performing its functions within a reasonable period after its licensing; or
- (e) that the licence was obtained through misrepresentation.

(2) Cancellation or suspension of a licence under subsection (1) is of no force unless the registrar has by notice in writing given the association concerned his or her reasons for the intended cancellation or suspension and an opportunity to show cause within a period specified in the notice why its licence should not be cancelled or suspended.

### **Restriction on use of name or description implying connection with association**

**29.** A person may not use a name or description signifying or implying some connection between a company, close corporation, body, firm, business, undertaking and an association which has been licensed in terms of section 26 unless such person is a member of that association.

### **Delegation of functions of executive committee**

**30.** An executive committee of an association may, subject to such conditions as it may determine, delegate or assign any power or duty conferred upon or imposed upon it under this Act to a subcommittee or a person designated by it but is not divested or relieved of a power or duty so delegated or assigned.

### **Suspension of administration of collective investment scheme**

**31.** (1) Subject to the other provisions of this section and despite any arrangement whereby a collective investment scheme may be administered by another member of an association—

- (a) an executive committee may in accordance with the rules stop or suspend the administration of a collective investment scheme or part thereof by a member of an association;
- (b) an executive officer of an association may, for a period not exceeding 30 days, suspend the administration of a collective investment scheme or part thereof by a member of an association with the approval of 75 per cent of the members of an executive committee, if it is desirable or for the purposes of compliance with and enforcement of the rules and the other requirements of an association, without prior notice to any person and without hearing any person.

(2) Stoppage or suspension referred to in subsection (1)(a) may not be effected by the executive committee where the member concerned has not had the opportunity to make representations to the executive committee in support of the continued performance of an activity.

(3) In the case of—

- (a) a stoppage or suspension of a particular activity by an executive committee in terms of subsection (1)(a); or
- (b) a suspension of a particular activity by an executive officer in terms of subsection (1)(b),

the executive committee or executive officer, as the case may be, may permit other members of the association to continue the activity in question for the sole purpose of fulfilling any obligations entered into before the stoppage or suspension.

(4) (a) Whenever the registrar considers it desirable in the public interest he or she may, after consultation—

- (i) with the executive committee of an association, exercise any power referred to in subsection (1)(a);
- (ii) with the executive officer of an association, exercise any power referred to in subsection (1)(b); or
- (iii) with the executive committees of two associations, in a case contemplated in subparagraph (i), transfer the performance of a particular activity from one association to another; or

(iv) with the executive officers of two associations, in a case contemplated in subparagraph (ii), transfer the performance of a particular activity from one association to another.

(b) Subsections (2) and (3) apply to the exercise of the powers referred to in paragraph (a), and in such application a reference therein to an executive committee or an executive officer, as the case may be, is construed as a reference to the registrar. 5

### **Rules of association**

32. The rules of an association must provide for the matters specified in Schedule 4.

### **Power of court to declare member disqualified**

33. (1) If a court— 10

(a) convicts a member of an association of an offence in terms of this Act or of an offence of which any dishonest act or omission is an element; or

(b) finds, in proceedings to which a member of an association is a party or in which his or her conduct is called in question, that he or she has been guilty of reckless or dishonest conduct, 15

the court may declare the member concerned to be disqualified, for an indefinite period or for a period specified by the court, from carrying on the business of a member of an association.

(2) The court may, on good cause shown, vary or revoke a declaration made under subsection (1). 20

(3) The registrar of the court or the clerk of the court which has made a declaration under subsection (1) or varied or revoked a declaration under subsection (2) must as soon as possible notify the registrar and the association concerned thereof.

(4) A declaration made under subsection (1) in respect of a member does not affect any right of an executive committee to take disciplinary action against the member in terms of the rules. 25

### **Voluntary dissolution of association**

34. (1) An association may be dissolved voluntarily in the circumstances and in the manner specified for that purpose in its rules.

(2) Subject to subsection (1), the provisions of the Companies Act, 1973 (Act No. 61 of 1973), relating to the voluntary winding-up of companies apply with the necessary changes to the voluntary dissolution of an association. 30

(3) The liquidator of an association must—

(a) until the association is dissolved, send to the registrar the accounting records determined by the registrar; and 35

(b) forward to the registrar a copy of every notice or account which, in terms of the Companies Act, 1973, he or she is required to furnish to the Master of the High Court.

(4) When the affairs of an association have been completely wound up, the Master of the High Court must send a certificate to that effect to the registrar, who must cancel the association's licence, and thereupon the association is dissolved. 40

### **Winding-up of association by court**

35. (1) An order for the winding-up of an association may be granted by the court on the application of—

(a) the association or the executive committee of an association; 45

(b) one or more of its creditors;

(c) one or more of its members;

(d) jointly, any of or all the parties mentioned in paragraphs (a), (b) and (c);

(e) the provisional judicial manager or final judicial manager of the association; or 50

(f) the registrar.

(2) (a) Subject to the provisions of subsection (1), the provisions of the Companies Act, 1973 (Act No. 61 of 1973), relating to the winding-up of companies by the court apply with the necessary changes to an association.

(b) In the application of the provisions of that Act— 55

- (i) section 346(3) of that Act is construed as if after the words “except an application by” there were inserted the words “the registrar defined in section 1 of the Collective Investment Schemes Control Act, 2002, or”;
- (ii) section 346(4)(a) of that Act is construed as if after the words “lodged with the Master” there were inserted the words “and registrar defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001)”;
- (iii) section 346(4)(b) of that Act is construed as if after the word “Master” there were inserted the words “or registrar defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001)”;
- (iv) section 357 of that Act is construed as if the registrar were included among the persons to whom notice is required to be given under subsection (1)(b) of that section.

(3) An order for the winding-up of an association by the court may only be made if the court is satisfied that it is undesirable that an association be placed under judicial management.

### **Judicial management of association**

**36.** (1) A judicial management order may be granted in respect of an association by the court on the application of the persons who are entitled under section 35(1) to make an application to the court for the winding-up of an association, and section 35(2)(b)(i) and (ii) apply with the necessary changes to an application for a judicial management order.

(2) Subject to section 37, the provisions of the Companies Act, 1973 (Act No. 61 of 1973), relating to the judicial management of companies apply with the necessary changes to an association.

### **Appointment of judicial manager or liquidator**

**37.** Despite the provisions of the Companies Act, 1973 (Act No. 61 of 1973), a judicial manager or liquidator in respect of an association must be appointed by the Master of the High Court in consultation with the registrar.

### **Report by association to registrar**

**38.** An association must within two months after the end of every calendar year submit a report to the registrar concerning the activities of its members and of its own activities in relation to this Act and, within three months after the end of the financial year-end, submit to the registrar audited financial statements which fairly present the financial affairs of the association.

## **PART IV**

### **COLLECTIVE INVESTMENT SCHEMES IN SECURITIES**

#### **Definition**

**39.** In this Part, unless the context indicates otherwise, “collective investment scheme in securities” means a scheme the portfolio of which consists, subject to this Act, mainly of securities.

#### **Determination of securities or classes of securities**

**40.** The registrar may determine securities or classes of securities that may be included in a portfolio of a collective investment scheme in securities.

#### **Restrictions on administration of collective investment scheme in securities**

**41.** (1) No person other than a company which has been registered as a manager under section 42 and its authorised agent may administer any collective investment scheme in securities.

(2) Only a company which—

- (a) is a company under the Companies Act, 1973 (Act No. 61 of 1973); and
  - (b) has capital and reserves as determined in terms of section 88 available for employment in its collective investment scheme,
- may be or may remain registered as a manager under section 42.
- (3) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 5

#### **Procedure for registration of manager of collective investment scheme in securities**

- 42.** (1) A company which desires to be registered as a manager of a collective investment scheme in securities must lodge with the registrar an application for registration in the manner and form determined by the registrar, disclose the particulars determined by the registrar and pay the application fee determined by the registrar. 10
- (2) The registrar may call upon any applicant which has applied for registration under subsection (1) to furnish him or her with any further information which is relevant to the application. 15
- (3) If the registrar is satisfied that the—
- (a) deed which the applicant proposes to prepare for the purposes of the collective investment scheme in securities does not contain anything inconsistent with this Act; and
  - (b) proposed directors, management, trustee or custodian and auditors are qualified as required by or under this Act, 20
- he or she must, subject to subsection (4) and on such conditions as he or she may determine, register the applicant as a manager and issue to it a certificate of registration in the form determined by the registrar.
- (4) The registrar may not register any company as a manager under this section unless he or she is satisfied that— 25
- (a) such company complies with subsection (3);
  - (b) such company is fit to assume the duties and responsibilities of a manager; and
  - (c) the registration of such company as a manager will be in the public interest.

#### **Change of name of manager, portfolio or collective investment scheme in securities and change of shareholding or directors and removal of appointees 30**

- 43.** (1) A manager may not without the prior approval in writing of the registrar—
- (a) change the name under which it is registered under this Act or change its shareholding or directors;
  - (b) use or refer to itself by a name other than the name under which it is so registered or a literal translation thereof; 35
  - (c) use or refer to itself by an abbreviation or a derivative of such name; or
  - (d) change the name of its collective investment scheme in securities or any portfolio administered by it as approved by the registrar.
- (2) The registrar may by notice require a manager to terminate the appointment of a director or officer of that manager, if the director or officer is not fit and proper to hold the office in question. 40
- (3) When the registrar intends to act as contemplated in subsection (2), the registrar must give notice to the manager, and, unless it is impracticable to do so, the director or officer concerned, of the registrar's intention and the reasons therefor, and the director or officer must thereupon cease to perform the functions of the office in question pending the final outcome of any appeal under section 24. 45

#### **Determination of market price of securities**

- 44.** (1) A security must be valued at its fair market price.
- (2) When a manager is unable to determine a market price for a security, whether listed on an exchange or not, for the purposes of a collective investment scheme in securities, a fair market price for such security must, at the request of such manager, be determined by a stockbroker who is a member of a licensed exchange. 50
- (3) If such manager does not agree with the price determined by the stockbroker, it must refer the matter to the committee of the exchange concerned, which thereupon must determine the fair market price for such security. 55

### Foreign securities in which collective investment scheme in securities may invest

45. A manager may, subject to the provisions of this Act and any other law, invest assets of a portfolio of a collective investment scheme in foreign equity or non-equity securities if such foreign—

- (a) (i) non-equity securities are from issuers located in a country which has a foreign currency sovereign rating, and the issuer has a long-term issuer credit rating on the international scale, by a rating agency, which ratings and rating agency must be determined by the registrar: Provided that if the country or the issuer has been rated by more than one agency the lower of the ratings applies; and 5
- (ii) non-equity securities are securities to which the manager has applied the due diligence guidelines for issuers determined by the registrar; 10
- (b) (i) equity securities are traded on an exchange which has been granted full membership by the World Federation of Exchanges; or
- (ii) equity securities are securities listed on an exchange to which the manager has applied the due diligence guidelines determined by the registrar. 15

### Limitation on investment in portfolio

46. (1) The registrar may determine the manner in which and the limits and conditions subject to which securities or classes of securities may be included in a portfolio of a collective investment scheme in securities. 20

(2) The registrar may determine different manners, limits and conditions for different securities or classes of securities or different portfolios of a collective investment scheme in securities.

## PART V

25

### COLLECTIVE INVESTMENT SCHEMES IN PROPERTY

#### Definitions

47. (1) In this Part unless the context indicates otherwise—

“collective investment scheme in property” includes a scheme the portfolio of which consists of property shares, immovable property, assets determined under subsection (2) or any investment permitted under section 49; 30

“fixed property company” means a company all the issued shares of which are included in a portfolio, and the principal business of which consists in the acquisition and holding of—

(a) urban immovable property or, any undivided share or interest therein or leasehold in respect thereof; and 35

(b) such other immovable property or, any undivided share or interest therein or leasehold in respect thereof as the registrar may have approved;

“property shares” means shares in and of—

(a) a fixed property company; or 40

(b) a holding company which has no subsidiaries other than fixed property companies which are wholly owned subsidiaries as referred to in section 1(5) of the Companies Act, 1973 (Act No. 61 of 1973); and

“urban immovable property” means any piece of land registered as an erf, lot or stand in a deeds registry, including the office of the Rand Townships Registrar, which erf, lot or stand is situated in a township as defined in section 1 of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940), and, for the purposes of section 49, any piece of land registered as an erf, lot or stand in a foreign deeds registry. 45

(2) The registrar may for the purposes of this Part determine assets, other than those referred to in the definition of “collective investment scheme in property”, which may be included in a portfolio of a collective investment scheme in property.

### **Restrictions on administration of collective investment scheme in property**

- 48.** (1) No person other than a company which has been registered as a manager of a collective investment scheme in property under this Part or its authorised agent may administer a collective investment scheme in property. 5
- (2) Only a company which—
- (a) is registered as a company under the Companies Act, 1973 (Act No. 61 of 1973); and
  - (b) has capital and reserves as determined in terms of section 88 available for employment in its collective investment scheme,
- may be or may remain registered as a manager under this Part. 10
- (3) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

### **Foreign country in which collective investment scheme in property may invest**

- 49.** A manager may, subject to this Act or any other law, invest assets of a portfolio of a collective investment scheme in property in immovable property in a foreign country and property shares or participatory interests in a collective investment scheme in property in a foreign country if such foreign country has a foreign currency sovereign rating by a rating agency, which rating and rating agency must be determined by the registrar: Provided that if the country has been rated by more than one agency the lower of the ratings applies. 15 20

### **Listing of participatory interests by exchange**

- 50.** (1) A manager of a collective investment scheme in property must apply for permission for such participatory interests to be dealt in on a licensed exchange.
- (2) Chapter V of the Companies Act, 1973 (Act No. 61 of 1973), applies to the repurchase of a participatory interest by a collective investment scheme in property and for the purposes of this subsection, “shares” as referred to in that Chapter are regarded as including participatory interests in a collective investment scheme in property. 25

### **Certain provisions of Part IV to apply in respect of manager of collective investment scheme in property** 30

- 51.** Sections 42, 43 and 46 apply, in so far as they can be applied with the necessary changes, in respect of a manager of a collective investment scheme in property.

## **PART VI**

### **COLLECTIVE INVESTMENT SCHEMES IN PARTICIPATION BONDS**

#### **Definitions** 35

- 52.** (1) In this Part, unless the context indicates otherwise—
- “collective investment scheme in participation bonds” means a scheme of which the portfolio, subject to the provisions of this Act, consists mainly of assets in the form of participation bonds, and in pursuance of which members of the public are invited or permitted to acquire a participatory interest in all the participation bonds included in the scheme; 40
- “nominee company” means a nominee company which has been approved by the registrar and which—
- (a) has as its principal object to act as nominee for or representative of any person in the holding of any property in trust for such person; 45
  - (b) is precluded by its memorandum of association from incurring any liabilities except for those persons on whose behalf it holds property to the extent of their respective rights to and interests in such property;
  - (c) has entered into an irrevocable agreement with the manager in terms of which such manager has undertaken to pay all the expenses of and incidental to its formation, operations, management and liquidation, and has appointed directors responsible for the management and control of the nominee 50

company of whom more than 50 per cent are independent from the manager or its holding company or subsidiary of such holding company or fellow subsidiary of such manager;

“participant” means a person who holds a participatory interest in all the participation bonds included in a collective investment scheme in participation bonds; 5

“participation bond” means a mortgage bond over immovable property—

(a) which is described as a participation bond and is registered as such in the name of a nominee company and is included in a collective investment scheme in participation bonds; and 10

(b) which is a first mortgage bond or which ranks equally with another first participation bond and has the same mortgagor;

“principal debt” means the cash amount in money actually received by or on behalf of the mortgagor in terms of the money-lending transaction secured by a participation bond; and 15

“rules” means the rules referred to in subsection (2).

(2) The registrar may, for the purposes of this Part, make rules which are consistent with this Act for the administration of a collective investment scheme in participation bonds.

(3) Such rules do not have the force of law until published by notice in the *Gazette*.

### **Restrictions on administration of collective investment scheme in participation bonds** 20

**53.** (1) No person other than a public or private company which has been registered as a manager of a collective investment scheme in participation bonds under this Part or its authorised agent may administer any collective investment scheme in participation bonds. 25

(2) Only a company which has capital and reserves as determined in terms of section 88 available for employment in its collective investment scheme may be or remain registered as a manager under this Part.

(3) A person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 30

### **Restrictions on business of collective investment scheme in participation bonds**

**54.** (1) From the date of the coming into operation of this Part, a manager of a participation bond scheme which has been exempted by the registrar of unit trust companies in terms of section 37(2)(a) of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), may not register any further participation bond in terms of the Participation Bonds Act, 1981 (Act No. 55 of 1981). 35

(2) (a) A manager of a participation bond scheme which has been exempted by the registrar of unit trust companies in terms of section 37(2)(a) of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), and a nominee company approved by that registrar in terms of that section, is regarded as from the date of the commencement of this Part to be registered as a manager or approved as a nominee company, as the case may be, under this Part. 40

(b) The registrar must issue to a manager referred to in paragraph (a) a certificate of registration in terms of this Act. 45

(3) Within 90 days after the commencement of this Part, the manager must exchange participations in a participation bond registered in terms of the Participation Bonds Act, 1981, for a participatory interest of equal value in a collective investment scheme in participation bonds in terms of this Part.

(4) Sections 42 and 43 apply, to the extent to which they can be applied, in respect of a manager of a collective investment scheme in participation bonds. 50

### **Capacity of manager**

**55.** (1) The manager of a collective investment scheme in participation bonds may in respect of any business conducted by such manager act as a principal or as an agent.

(2) When acting as a principal in respect of a transaction which is subject to the provisions of any other law the manager is entitled to charge such finance charges as may be charged in terms of the said law in connection with a money-lending transaction. 55

### **Registration of participation bonds in name of nominee company**

**56.** (1) Despite any contrary law, a participation bond clearly described as such must be registered as such in a deeds registry in the name of a nominee company as nominee for or representative of the participants.

(2) The names of the participants need not be listed in a participation bond. 5

### **Rights of participant**

**57.** The debt secured by a participation bond is, to the extent of the participatory interest granted to any participant, a debt owing by the mortgagor to such participant and not to the nominee company, and the rights conferred by the registration of any such bond are regarded, despite the registration of the bond in the name of the nominee company, to be held by the participants. 10

### **Minimum investment period**

**58.** An agreement in terms of which a manager accepts money for investment in a collective investment scheme in participation bonds must provide that such money is invested in such scheme for a period of not less than five years. 15

### **Participatory interests rank in preference concurrently**

**59.** All participatory interests granted in any participation bond, whenever granted, shall rank in preference concurrently with one another as from the date of registration of the bond.

### **Restrictions on rights of nominee company** 20

**60.** A nominee company may not transfer, cede or in any way encumber any of its rights under a participation bond without the written consent of the registrar.

### **Collateral security in respect of participation bonds**

**61.** (1) Any collateral security, including a surety mortgage bond, collateral mortgage bond, notarial bond, suretyship, guarantee, cession, pledge or lien accepted by a manager in addition to a participation bond in order to secure— 25

(a) the debt secured by a participation bond;

(b) the due performance by a mortgagor of his or her obligations under a participation bond;

(c) the due performance by a surety of his or her obligations under a contract of suretyship relating to such debt or to the obligations of the mortgagor, 30

must be registered in the name of the nominee company as nominee for or representative of the participants, and any contract relating to such security must be drawn and executed in favour of the nominee company as nominee for or representative of the participants. 35

(2) Despite any contrary law, a contract of suretyship relating to a debt secured by a participation bond and accepted by a manager subject to subsection (1), is enforceable by the nominee company in its own name against the surety on behalf of the participants.

(3) Sections 56(2), 57, 58 and 59 apply with the necessary changes to the extent to which they can be applied, in respect of collateral security accepted by a manager for the purposes referred to in subsection (1), and a reference to a participation bond is construed so as to include a reference to a participation bond and collateral security, and a reference to a mortgagor is construed so as to include a reference to a mortgagor and the grantor of collateral security. 40

(4) This section applies with the necessary changes to any collateral security accepted before 21 June 1978 by the manager for the purposes referred to in subsection (1) and in respect of which the contract or arrangement or other document containing the terms and conditions thereof was in force at that date. 45

## PART VII

## DECLARED COLLECTIVE INVESTMENT SCHEMES

## Definition

62. In this Part, unless the context indicates otherwise—  
 “declared collective investment scheme” means a collective investment scheme other than a collective investment scheme in securities, property or participation bonds, which has been declared to be a collective investment scheme under section 63. 5

**Declaration of specific type of business as collective investment scheme for purposes of Act** 10

63. (1) The Minister may by notice in the *Gazette* declare a specific type of business to be a collective investment scheme to which this Act or any part or provision thereof applies.
- (2) The Minister may for the purposes of subsection (1)—
- (a) define the business activity of a declared collective investment scheme; 15
  - (b) specify the matters that must be included in the deed of a declared collective investment scheme;
  - (c) issue different notices for different types of declared collective investment schemes.

**Certain provisions to apply in respect of declared collective investment scheme** 20

64. Sections 41, 42, 43, 45 and 46 apply, to the extent to which they can be applied with the necessary changes, in respect of a manager of a declared collective investment scheme.

## PART VIII

## FOREIGN COLLECTIVE INVESTMENT SCHEMES 25

**Restrictions on foreign collective investment scheme to carry on business in Republic**

65. (1) The registrar may approve an application by the manager or operator of a foreign collective investment scheme to solicit investments in such scheme from members of the public in the Republic if— 30
- (a) the application is in the form determined by the registrar;
  - (b) a copy of the approval or registration by the relevant foreign jurisdiction authorising the foreign collective investment scheme to act as such is submitted;
  - (c) the foreign collective investment scheme can comply with the conditions determined by the registrar; and 35
  - (d) the fee determined by the registrar has been paid.
- (2) A scheme approved in terms of subsection (1) must, for the purposes of section 15A of the Financial Services Board Act, 1990 (Act No. 97 of 1990), be regarded as a financial institution and the provisions of that section apply, with the necessary changes required by the context, to such a scheme. 40
- (3) A person who solicits investments in a foreign collective investment scheme which is not approved in terms of subsection (1) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 45

## Reciprocity

66. (1) If in terms of any—
- (a) law of a foreign country; or
  - (b) regulatory or supervisory action taken by an authority or body in a foreign country, a manager connected with the Republic is suspended, disqualified or 50

- restricted from administering a collective investment scheme in that country under the same requirements as persons connected with that country are able to administer such a scheme, the Minister may by notice served on a person connected with that country who is administering or intends to administer a collective investment scheme in the Republic, suspend, disqualify or restrict the business of such person in a similar manner. 5
- (2) Notice may not be served in terms of subsection (1) unless—
- (a) it is in the national interest; and
  - (b) the Minister has consulted the person concerned or, if expedient, a body representing the interest of the person to be affected. 10
- (3) A notice must—
- (a) state the grounds on which it is given;
  - (b) identify the country to which the person is connected;
  - (c) specify the date on which such notice comes into force; and
  - (d) provide for a reasonable period to complete performance of transactions entered into before the date on which the notice in terms of this section comes into force or for the termination of contracts of a continuing nature. 15
- (4) A notice in terms of subsection (1) may suspend, disqualify, restrict or partially restrict the administration of a collective investment scheme by a person and may provide for— 20
- (a) the withdrawal of the registration or approval under this Act of a manager to administer a collective investment scheme in the Republic;
  - (b) the disqualification of a person from being registered or approved as a manager under this Act; or
  - (c) the restriction or partial restriction of a manager registered or approved under this Act in respect of the administration of a collective investment scheme. 25
- (5) A partially restrictive notice may prohibit a manager from—
- (a) entering into transactions of a specified kind or entering into them in specified circumstances or to a specified extent;
  - (b) soliciting investments of a specified kind or otherwise than from a specified person; or 30
  - (c) administering a collective investment scheme in a specified manner or otherwise than in a specified manner.
- (6) For the purposes of this section a person or manager is connected with a foreign country or the Republic, as the case may be, if— 35
- (a) in the case of an individual, he or she is a national of or resident in that country or the Republic and administers a collective investment scheme from a principal place of business in that country or the Republic;
  - (b) in the case of a body corporate, it is incorporated or has a principal place of business in that country or the Republic or is controlled by a person or persons connected with that country or the Republic; 40
  - (c) in the case of a partnership, it has a principal place of business in that country or the Republic or any partner is connected with that country or the Republic; or
  - (d) in the case of an unincorporated association which is not a partnership, it is formed under the law of that country or the Republic, has a principal place of business in that country or the Republic or is controlled by a person connected with that country or the Republic. 45

#### **Withdrawal of approval of foreign collective investment scheme**

- 67.** The registrar may at any time withdraw an approval under section 65 if— 50
- (a) it is desirable or in the interest of investors or potential investors to do so;
  - (b) the manager has submitted inaccurate or misleading information in its application; or
  - (c) any of the conditions referred to in section 65(1)(c) are no longer met.

## PART IX

## TRUSTEE OR CUSTODIAN

**Appointment and termination of appointment of trustee or custodian**

**68.** (1) A manager must appoint either a trustee or a custodian for its collective investment scheme depending on the structure of the collective investment scheme. 5

(2) A person may not become or act as a trustee or custodian unless that person is registered as such under section 69.

(3) When the appointment of a trustee or custodian is terminated, otherwise than as contemplated in section 69(3), that trustee or custodian must as soon as possible submit a report to the registrar stating— 10

(a) whether any irregularity or undesirable practice is contemplated, has taken place or is taking place in the conduct of the affairs of the collective investment scheme which has caused or is likely to cause financial loss to investors in a portfolio of the collective investment scheme;

(b) particulars of any such irregularity or undesirable practice; and 15

(c) the reason, if known, for the termination of the appointment.

(4) A trustee or custodian intending to retire from an appointment in terms of this section, must give to the manager and to the registrar not less than six months' notice of such intention, and during the said period of six months the manager concerned must take steps to appoint as trustee or custodian some other person competent to act as such 20 in terms of section 69.

(5) If a manager fails to take the steps mentioned in subsection (4) within the said period of six months, the registrar may, after consultation with the manager, direct the manager to appoint as trustee or custodian a competent person nominated by the registrar. 25

(6) (a) When it is impracticable for a trustee or custodian to perform any or all its duties under section 70, the trustee or custodian may appoint a representative which is independent from the manager and any of its agents, to perform such duties.

(b) A trustee or custodian of a collective investment scheme who has appointed a representative under paragraph (a), is not divested of the functions referred to in that 30 paragraph.

**Qualifications and registration of trustee or custodian**

**69.** (1) The following types of company or institution may become or act as a trustee or as a custodian, namely—

(a) a public company under the Companies Act, 1973 (Act No. 61 of 1973); 35

(b) a company or institution incorporated under a special Act, excluding a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984);

(c) an institution or branch of a foreign institution which is entitled to carry on the business of a bank under the Banks Act, 1990 (Act No. 94 of 1990); or 40

(d) an institution which is registered as an insurer under the Long-term Insurance Act, 1998 (Act No. 52 of 1998).

(2) A company or institution referred to in subsection (1) may not become or act as a trustee or custodian unless it—

(a) maintains capital and reserves together amounting to not less than 10 million 45 rand; and

(b) has been registered by the registrar as a trustee or custodian.

(3) (a) The registrar may not register any company or institution as a trustee or custodian under this section unless he or she is satisfied that—

(i) the company or institution is not, in relation to the manager, either a holding 50 company or a subsidiary or fellow subsidiary company within the meaning of those terms as defined in the Companies Act, 1973 (Act No. 61 of 1973); and

(ii) the general financial and commercial standing and independence of the company or institution is such that it is fit for performing the functions of a trustee or custodian and that the company or institution is by reason of the 55 nature of its business sufficiently experienced and equipped to perform such functions.

(b) The registrar may revoke or suspend any such registration already granted if at any time thereafter he or she ceases to be satisfied that the requirements contained in paragraph (a) are met by the trustee or custodian.

(4) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment. 5

(5) The registrar must, before revoking or suspending a registration in terms of subsection (3)(b), notify the trustee or custodian concerned of the grounds upon which such action is contemplated against it, and must give it a reasonable opportunity of showing cause why the proposed action should not be taken. 10

(6) The trustee or custodian has the right to present its case verbally to the registrar and in doing so to be represented by any other person.

### **Duties of trustee or custodian**

**70.** (1) A trustee or custodian must—

- (a) verify that the sale, issue, repurchase or cancellation, as the case may be, of participatory interests effected by or on behalf of a collective investment scheme is carried out in accordance with this Act and the deed; 15
- (b) verify that the selling or repurchase price of participatory interests is calculated in accordance with this Act and the deed;
- (c) carry out the instructions of the manager unless they are inconsistent with this Act or the deed; 20
- (d) verify that in transactions involving the assets of a collective investment scheme any consideration is remitted to it within time limits which are acceptable market practice in the context of a particular transaction;
- (e) verify that the income accruals of a portfolio are applied in accordance with this Act and the deed; 25
- (f) enquire into and prepare a report on the administration of the collective investment scheme by the manager during each annual accounting period, in which it must be stated whether the collective investment scheme has been administered in accordance with— 30
  - (i) the limitations imposed on the investment and borrowing powers of the manager by this Act; and
  - (ii) the provisions of this Act and the deed;
- (g) if the manager does not comply with the limitations and provisions referred to in paragraph (f)(i) or (ii), state the reason for the non-compliance and outline the steps taken by the manager to rectify the situation; 35
- (h) send the report referred to in paragraph (f) to the registrar and to the manager in good time to enable the manager to include a copy of the report in its annual report;
- (i) ensure that— 40
  - (i) there is a legal separation of assets held under custody and that the legal entitlement of investors to such assets is assured;
  - (ii) appropriate internal control systems are maintained and that records clearly identify the nature and value of all assets under custody, the ownership of each asset and the place where documents of title 45  
pertaining to each asset are kept.

(2) A trustee or custodian must report to the manager any irregularity or undesirable practice, whether declared in terms of section 21 or not, concerning the collective investment scheme of which it is aware and if steps to rectify the irregularity or practice in question are not taken to the satisfaction of the trustee or custodian, it must as soon as possible report such irregularity or undesirable practice to the registrar. 50

(3) The trustee or custodian must satisfy itself that every income statement, balance sheet or other return prepared by the manager in terms of section 90 fairly represents the assets and liabilities, as well as the income and distribution of income, of every portfolio of the collective investment scheme administered by the manager. 55

(4) At the request of the trustee or custodian, every director or employee of the manager must submit to the trustee or custodian any book or document or information relating to the administration by the manager of its collective investment scheme which is in his or her possession or at his or her disposal, and which the trustee or custodian may consider necessary to perform its functions. 60

(5) A person may not interfere with the performance by a trustee or custodian of its functions.

(6) A trustee or custodian of a collective investment scheme which fails to perform any of its duties referred to in this section, is guilty of an offence.

#### **Status of assets** 5

**71.** For purposes of this Act any—

(a) money or other assets received from an investor; and

(b) an asset of a portfolio,

are regarded as being trust property for the purposes of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and a manager, its authorised agent, trustee or custodian must deal with such money or other assets in terms of this Act and the deed and in the best interests of investors. 10

#### **Liability of trustee or custodian in respect of loss of assets**

**72.** The trustee or custodian must indemnify the manager and investors against any loss or damage suffered in respect of money or other assets in the custody of the trustee or custodian and which loss or damage is caused by a wilful or negligent act or omission by the trustee or custodian. 15

### **PART X**

#### **AUDITOR**

#### **Appointment and approval of auditor** 20

**73.** (1) A manager must appoint an auditor for the purpose of auditing the whole of the business of the collective investment scheme administered by it.

(2) No director or employee of a manager, trustee or custodian and no firm of which any such director or employee is a member may be appointed as an auditor of a collective investment scheme. 25

(3) A manager must within 30 days from the date of appointment of an auditor apply to the registrar for approval of such appointment.

(4) The registrar may withdraw a prior approval of the appointment of an auditor.

(5) An auditor who has been removed by a manager from his or her office as auditor, must inform the registrar thereof. 30

#### **Accounting records and audit**

**74.** (1) A manager must in respect of itself and every collective investment scheme administered by it—

(a) maintain the accounting records and prepare annual financial statements in conformity with generally accepted accounting practice; 35

(b) preserve such records in a safe place for a period of at least five years as from the date of the latest entry therein; and

(c) cause such records and annual financial statements to be audited, not later than three months after the financial year end of the manager or collective investment scheme, as the case may be, or such later date as the registrar may allow, by an auditor whose appointment has been approved by the registrar in terms of section 73. 40

(2) The auditor must—

(a) examine the accounting records and annual financial statements; 45

(b) satisfy himself or herself that the accounting records comply with the requirements of this Act; and

(c) ensure that the financial statements are properly drawn up so as to fairly represent the financial position,

and the results of the operations of the manager and every portfolio of its collective investment scheme are in accordance with generally accepted accounting practice and in the manner required by this Act. 50

(3) When the auditor of a collective investment scheme has conducted an audit in terms of subsection (2), he or she must report to the manager that the accounting records

and the annual financial statements have been examined in accordance with generally accepted auditing standards and in the manner required by this Act and state whether in his or her considered opinion they fairly present the financial position and the results of the operations of the manager and its collective investment scheme.

(4) If the auditor is unable to make such a report or to make it without qualification, he or she must include in his or her report a statement explaining the facts or circumstances which prevented him or her from making his or her report or from making it without qualification. 5

(5) The auditor's report under subsection (3) must, unless all the members present agree to the contrary, be read out at the annual general meeting of the manager. 10

(6) An auditor who fails to perform any of the duties referred to in this section, is guilty of an offence.

#### **Duty of auditor to disclose irregularity or undesirable practice**

**75.** (1) The auditor must—

(a) report to the manager any irregularity or undesirable practice in the administration of the collective investment scheme which has come to his or her notice in the ordinary course of fulfilling his or her audit responsibilities or performing other functions in terms of this Act; and 15

(b) submit a copy of such report to the registrar if there is reasonable cause to believe that such report is or might be of material significance to the registrar. 20

(2) For purposes of this section a report is of material significance to the registrar if it deals with a matter which, because of its nature or potential financial impact, has caused or is likely to cause financial loss to the scheme or any of its investors or creditors.

(3) An auditor who fails to perform any of the duties referred to in this section, is guilty of an offence. 25

### **PART XI**

#### **CONVERSION OF COLLECTIVE INVESTMENT SCHEME**

##### **Definitions**

**76.** (1) In this Part, unless the context indicates otherwise—

“applicable date”, in relation to a conversion of a collective investment scheme, means the date of the conversion; 30

“collective investment scheme” includes one or more portfolios under such scheme and may, depending on the structure of the scheme, include a manager;

“conversion” means a conversion of a collective investment scheme to any other format of a collective investment scheme permissible under this Act; 35

“conversion scheme” means a scheme regulating a conversion and governing the reciprocal rights and obligations of the parties to the conversion;

“qualifying interest”, in relation to a collective investment scheme which is converted, means any participatory interest in such scheme which was issued before the applicable date. 40

(2) A conversion scheme must—

(a) specify the basis, terms, conditions and cost of the conversion;

(b) provide for the issue of participatory interests in a collective investment scheme established by the conversion;

(c) provide for an offer, either to persons who immediately before the applicable date were investors with a qualifying interest in the collective investment scheme and to members of the public, to take up participatory interests in the collective investment scheme established by the conversion: Provided that participatory interests may be offered to members of the public to the extent to which they are not taken up by persons holding a qualifying interest in the collective investment scheme concerned immediately before the applicable date; 50

(d) provide for payment of the value of the participatory interest of any investor who chooses not to take up a participatory interest in the collective investment scheme established by the conversion or who holds a qualifying interest of a lesser value than the value determined in the conversion scheme as the minimum for a qualifying interest. 55

### Conversion of collective investment scheme

- 77.** A manager may not convert a collective investment scheme—
- (a) without the approval of the registrar; and
  - (b) unless authorised by a resolution adopted by a majority in value of investors in the manner determined by the registrar. 5

### Application for registrar's approval

- 78.** (1) A manager must apply to the registrar for his or her approval of a conversion before a resolution on the matter is passed by investors.
- (2) An application referred to in subsection (1) must be accompanied by the following documents in duplicate, namely— 10
- (a) an exposition of the reasons for the proposed conversion and of the manner in which it is proposed to effect the conversion;
  - (b) a proposed conversion scheme;
  - (c) the proposed deed;
  - (d) a proposed resolution by investors— 15
    - (i) authorising the conversion in accordance with the conversion scheme;
    - (ii) approving the provisions of the proposed conversion scheme;
    - (iii) approving the deed referred to in paragraph (c); and
    - (iv) providing for such other matters in connection with the conversion as may be considered necessary; 20
  - (e) a list of the names and employment history of the persons designated to act as the first directors of the proposed manager after the conversion.
- (3) A manager must furnish the additional particulars in connection with the conversion that the registrar may require. 25

### Consideration of application 25

- 79.** (1) The registrar may not approve a conversion if—
- (a) any of the documents referred to in section 78(2) is inconsistent with this Act or contains a provision which is undesirable;
  - (b) the basis or conditions on which a participatory interest in the proposed collective investment scheme is offered to investors or to investors and members of the public referred to in section 76(2)(c) are not reasonable or fair or might have the effect that a participatory interest in the proposed scheme may be acquired contrary to this Act or any other law; or 30
  - (c) the application does not comply with a requirement of this Act or any other law. 35
- (2) (a) For the purposes of considering the basis and conditions on which a participatory interest in any proposed collective investment scheme is offered to investors or to investors and members of the public referred to in section 76(2)(c) the registrar may, after consultation with the manager, designate a person to investigate and advise him or her on the reasonableness and fairness of the proposed basis and conditions. 40
- (b) The costs of an investigation in terms of paragraph (a) must be paid by the manager.
- (3) The registrar may not refuse an application without having afforded the manager a reasonable opportunity to amend the relevant document in accordance with the registrar's requirements. 45

### Resolution by investors

- 80.** (1) As soon as the registrar has approved a conversion, the manager must obtain a resolution passed by investors authorising the conversion.
- (2) If the investors pass a resolution authorising the conversion, the registrar must, at the request of the manager, issue a certificate to the manager confirming the registrar's approval of the conversion. 50

### Registration of memorandum and articles of association

**81.** (1) If a collective investment scheme is not a company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), and is converted into a collective investment scheme in the format of a company, it must be incorporated as a company in terms of the Companies Act, 1973, with its memorandum and articles of association complying with that Act: Provided that, subject to the requirements of the Companies Act, 1973, and any requirement of the registrar or any other authority, the conversion must be regarded as having taken place upon the registration of the memorandum and articles of association under that Act. 5

(2) The Registrar of Companies may not register the memorandum and articles of association of a company contemplated in this section unless the application is accompanied by a certificate issued in terms of section 82(1). 10

(3) For the purposes of the registration of the memorandum and articles of association of any such company in terms of the Companies Act, 1973 (Act No. 61 of 1973), the persons referred to in section 78(2)(e) must, if they accept their appointment as the first directors of the company, sign the memorandum and articles of association as if they were the subscribers of such company as contemplated in section 54(2) of the Companies Act, 1973. 15

### Certificate of registration of conversion and notice in *Gazette*

**82.** (1) Within 14 days after the applicable date the manager must forward four certified copies of its deed to the registrar, whereafter the registrar must issue the manager with a certificate of registration as a manager of the converted collective investment scheme upon payment of the registration fee determined by the registrar. 20

(2) The registrar must give notice in the *Gazette* of any conversion and the applicable date of a conversion in terms of this Part. 25

### Effects of conversion

**83.** (1) The business of a converted collective investment scheme which existed before the conversion, continues thereafter but in the converted format and from the applicable date—

- (a) the relevant provisions of this Act apply to it; 30
- (b) a reference in any document to the former collective investment scheme is construed, unless inconsistent with the context or otherwise clearly inappropriate, as a reference to the collective investment scheme in its new format;
- (c) if applicable, the persons who immediately before the conversion were directors of the manager must vacate their offices and the persons referred to in section 78(2)(e) become the directors of the manager of the converted collective investment scheme; 35
- (d) the investors holding a qualifying interest become investors in the converted collective investment scheme; and
- (e) all participatory interests issued by the former collective investment scheme and which were not repurchased or cancelled before the conversion, become participatory interests in the converted collective investment scheme. 40

(2) Except in so far as this section provides otherwise, a conversion does not derogate from the obligations of the collective investment scheme or the rights of any creditor of the collective investment scheme before the conversion. 45

### Issue of participatory interests to persons who were investors in former collective investment scheme

**84.** (1) An offer to investors holding a qualifying interest to take up a participatory interest in a collective investment scheme established by a conversion in terms of this Part must be made in writing to each individual investor, and such offer must be accompanied by a statement issued by the manager and must contain such particulars in connection with— 50

- (a) the offer, the conversion and the collective investment scheme's profit;
- (b) the scheme's business prospects;
- (c) the scheme's general state of affairs; and 55
- (d) such other affairs of the scheme as the registrar may require.

(2) The provisions of the Companies Act, 1973 (Act No. 61 of 1973), with respect to the issue of a prospectus or an offer of shares, do not apply to an offer referred to in subsection (1).

(3) Upon a request made in writing by an investor holding a qualifying interest to a manager (except a manager of a collective investment scheme in property) to apply the proceeds of such interest for the payment of a participatory interest in a converted collective investment scheme—

- (a) such qualifying interest may be redeemed immediately despite the conditions attached thereto; and
- (b) such proceeds may be applied for the payment of such participatory interest.

## **PART XII**

### **GENERAL**

#### **Restrictions on assets which may be included in or lent by portfolio of collective investment scheme**

**85.** (1) A manager may not sell or offer for sale any participatory interest in a portfolio of a collective investment scheme unless at the time of such offer the portfolio included assets in the manner, within the limits or on the conditions determined by the registrar.

(2) A manager may, subject to section 95, lend or offer to lend assets included in a portfolio in the manner, within the limits or on the conditions determined in the deed.

(3) Different manners, limits and conditions for different assets or portfolios may be determined or provided for under subsection (1) or (2).

#### **Business capacity of manager**

**86.** (1) A manager may conduct business other than administration subject to the prior approval of the registrar.

(2) The registrar may on such conditions as he or she may determine approve the application of a manager to conduct other business, if the investors in the collective investment scheme administered by the manager are not likely to be prejudiced.

#### **Definition**

**87.** For the purpose of sections 88 and 89, “liquid form” means any asset which is capable of being liquidated within seven days.

#### **Capital requirement which manager must maintain**

**88.** (1) A manager must on an ongoing basis maintain in liquid form the capital for the matters and risks determined by the registrar.

(2) The registrar may exempt the managers of a particular category of collective investment schemes from any or all the requirements referred to in subsection (1) and determine capital requirements for such managers.

(3) The registrar may exempt a manager from compliance with the requirements of this section for such period, not exceeding six months, and on such conditions as he or she may lay down.

(4) A manager who ceases to comply with subsection (1), and who has not been exempted under subsection (3), must within 30 days notify the registrar in writing to that effect.

#### **Obligation of manager to maintain capital requirement and failure to comply**

**89.** (1) A manager may not be registered or allowed to continue as a manager, unless at the time of registration and at all times thereafter the manager has nett assets in liquid form which exceed the minimum capital requirement determined under section 88.

(2) A manager who, immediately before the commencement of this Act, was a management company registered under any law repealed by this Act, must within 60 days after such commencement comply with the capital requirement determined under section 88.

**Financial statements and other information to be furnished by manager**

**90.** (1) A manager must—

- (a) not later than 90 days after the close of its financial year, send to the registrar a copy of the manager's duly audited financial statements and those of every portfolio of the collective investment scheme administered by the manager; and
- (b) on or before a date specified by the registrar, lodge with the registrar such further information and explanations in connection with the financial and other statements referred to as the registrar may request.

(2) A manager must, not later than 90 days after the close of the financial year of every portfolio of the collective investment scheme administered by the manager, send to every investor in such portfolio a report relating to the portfolio containing the information determined by the registrar.

(3) Copies of the financial statements, other statements or information referred to in subsections (1) and (2) must be kept available at every office of the manager or of its authorised agents for inspection during ordinary office hours by any investor in the collective investment scheme concerned or other person interested in investing in a participatory interest in such scheme.

(4) A manager must, in the manner determined by the registrar, lodge with the registrar—

- (a) copies of all advertisements, brochures, pamphlets, circulars and announcements published or proposed to be published by the manager or any of its authorised agents, and of all proposed additions thereto and variations thereof, signed and certified, in the manner determined by the registrar, by or on behalf of the directors of the manager, unless the manager is exempted from such an obligation by the registrar; and
- (b) a copy of every return or notice which the manager is required to furnish to the Registrar of Companies under section 216(2) of the Companies Act, 1973 (Act No. 61 of 1973).

**Exercise of voting power by manager** 30

**91.** A manager or its nominee exercising the voting power conferred on it by the assets held in a portfolio, must exercise such power in the best interest of the investors.

**Unauthorised gain derived from acquisition of assets**

**92.** A manager, director or employee of a manager may not directly or indirectly have a personal interest in or derive any pecuniary advantage from the acquisition or sale by them of any assets of a portfolio except if such advantage accrues in the ordinary course of business to them by virtue of—

- (a) any difference between the price at which a participatory interest is acquired and the price at which it is subsequently sold; or
- (b) any underwriting of participatory interests done by a manager, director or employee.

**Permissible deductions from portfolio**

**93.** (1) The amounts which may be deducted from a portfolio are—

- (a) charges payable on the buying or selling of assets for the portfolio such as brokerage, marketable securities tax, value-added tax or stamp duties;
- (b) auditor's fees, bank charges, trustee and custodian fees and other levies or taxes;
- (c) share creation fees payable to the Registrar of Companies for the creation of authorised capital or, in the case of a collective investment scheme in property, the costs incurred in the creation and issue of participatory interests;
- (d) the agreed and disclosed service charges of the manager; and
- (e) any costs incurred as a result of a collective investment scheme in property being listed on an exchange.

(2) Amounts other than those referred to in subsection (1) may not be deducted by a manager from a portfolio unless determined by the registrar.

### Calculation of price and limitation of amount of rounding-off accrual

- 94.** (1) (a) Subject to paragraph (b), a manager may not sell any participatory interest at a price which exceeds or is less than the net asset value of that participatory interest.
- (b) Where participatory interests in a new portfolio are offered to the public for the first time, the manager may make an initial offer— 5
- (i) on a specified date;
  - (ii) for a specified period;
  - (iii) of a specific number of participatory interests at a fixed price based on the price of the participatory interests on a previous date not more than 28 days prior to the closing date of the offer. 10
- (2) In making payment to the investors in a portfolio of a distribution of income accruals on the participatory interests belonging to them, a manager may round off to the nearest one cent, any amount so paid in respect of such number of participatory interests as represents the minimum number which, in terms of the portfolio's deed, must be purchased at any one time, but any amount which, by virtue of such rounding-off, is left in the portfolio, must be carried forward to the credit of investors in the next ensuing distribution. 15

### Sale of participatory interests only on payment of full purchase price and restriction on lending or borrowing of money

- 95.** (1) A manager may not— 20
- (a) sell or offer for sale any participatory interest except on terms requiring payment of the full selling price of the participatory interest to be made upon the acceptance by the manager or any of its duly authorised agents, of the investor's offer for the purchase of the participatory interest; or
  - (b) lend or advance any money. 25
- (2) A manager, other than a manager of a collective investment scheme in securities, may for the account of a portfolio borrow money for the purposes and subject to the limits and conditions determined in the deed.

### Power of manager to borrow money to bridge insufficient liquidity in a portfolio

- 96.** In the case where insufficient liquidity exists in a portfolio or where assets cannot be realised to repurchase or cancel participatory interests, the manager of a collective investment scheme in securities may borrow the necessary funds for such repurchase or cancellation on security of the assets and for the account of the portfolio in question, from a registered financial institution at the best commercial terms available and until assets can be realised to repay such a loan: Provided that the maximum amount so borrowed may not exceed 10 per cent of the market value of such portfolio at the time of borrowing. 30 35

### Matters which must be provided for in deed and exemption from and suspension of provision of deed

- 97.** (1) Every deed must set out the requirements for the administration of a portfolio and it must contain, amongst others and as far as they can be applied, provisions to regulate the matters detailed in Schedule 1 in respect of a collective investment scheme in securities and those detailed in Schedule 2 in respect of a collective investment scheme in property. 40
- (2) The registrar may by notice in the *Gazette* exempt a particular type or category of collective investment schemes from the provisions of subsection (1) and determine the matters to be complied with or to be provided for in a deed by such type or category of collective investment schemes. 45
- (3) The registrar may by notice in the *Gazette* suspend a provision of any deed and determine the matters to be complied with or suspend such a provision and determine matters in respect of which any deed must be amended. 50

### Void provisions of deed and amendment of deed

- 98.** (1) A provision in a deed which is inconsistent with this Act is void.

(2) (a) The parties to a deed may by supplemental deed amend a deed but no amendment of a deed is valid unless the consent thereto of a majority in value of investors has been obtained in the manner prescribed in the deed.

- (b) If the registrar is satisfied that any such amendment—
- (i) is required only to enable the provisions of this Act or of the deed to be given effect to more conveniently or economically; 5
  - (ii) will benefit the investors;
  - (iii) will not prejudice the interests of investors;
  - (iv) does not amend the fundamental provisions or objects of the deed; and
  - (v) does not release the trustee, custodian or the manager from any responsibility to the investors, 10

he or she may direct that such consent be dispensed with.

(3) Subject to subsection (2), a deed which immediately prior to the date of commencement of this Act was a deed in terms of any law repealed by this Act, must within 12 months from the date of commencement of this Act be amended, 15 supplemented or replaced in order to comply fully with the requirements of this Act.

### **Amalgamation of business of collective investment schemes or portfolios and cession, transfer or take-over of rights of investors**

**99.** (1) The business of two or more collective investment schemes or two or more portfolios of a collective investment scheme may not be amalgamated, and the rights of the investors in a portfolio may not be ceded or transferred to or be taken over by any other portfolio or collective investment scheme, except with the prior consent of—

- (a) investors holding a majority in value of participatory interests in each collective investment scheme or portfolio (hereinafter referred to as an original scheme or portfolio) to which a proposed amalgamation, cession, 25 transfer or take-over refers; and
- (b) the registrar, granted on such conditions as he or she in writing may determine.

(2) A copy of the transaction (hereinafter referred to as the proposed transaction) whereby the proposed amalgamation, cession, transfer or take-over is to be effected and such other particulars as may be necessary to enable the registrar to exercise his or her powers under this section, must be submitted to the registrar by the parties to the proposed transaction. 30

(3) The registrar may grant his or her consent under subsection (1)(b) only if he or she is satisfied that— 35

- (a) every investor, of whose address the manager is aware, in an original scheme or portfolio has been furnished in writing, within a reasonable period before the date determined by the registrar, with particulars of the proposed transaction and of the procedure which the parties concerned intend to follow, so as to ensure that every such investor shall, on the date on which the proposed transaction becomes effective, hold in the new scheme or portfolio such participatory interests with an aggregate money value which is not less than the lower of the nett asset value or market value, as may be fair and reasonable in the circumstances, of the participatory interests which such investor, immediately before the date on which the proposed transaction becomes effective, held in an original scheme or portfolio; 40
- (b) the proposed transaction will not be detrimental to any investor in an original scheme or portfolio; and
- (c) investors holding a majority in value of participatory interests in an original scheme or portfolio have consented to the proposed transaction. 45 50

(4) When a proposed transaction becomes effective—

- (a) the provisions of the deed of the new scheme or portfolio or of the scheme or portfolio which acquired rights by amalgamation, cession, transfer or take-over bind the investors in an original scheme or portfolio;
- (b) all the assets of an original scheme or portfolio vest in and form part of the new scheme or portfolio or, as the case may be, the scheme or portfolio which acquired such assets by amalgamation, cession, transfer or take-over; 55
- (c) the provisions of the deed of the new scheme or portfolio or of the scheme or portfolio which acquired rights by amalgamation, cession, transfer or take-over, apply to the assets referred to in paragraph (b) and to any income 60 accruals or other benefits which accrue therefrom to investors; and

- (d) an investor in an original scheme or portfolio acquires participatory interests in the new scheme or portfolio or in the scheme or portfolio which acquired rights by amalgamation, cession, transfer or take-over, having the same aggregate money value as that of the participatory interests held, immediately before the date on which the proposed transaction became effective, by such investor in an original scheme or portfolio. 5
- (5) If a proposed transaction becomes effective, every Registrar of Deeds in whose deeds registry property or other rights are registered in the name of or in favour of an original scheme or portfolio—
- (a) on production to him or her of a certificate in which the registrar states that— 10
- (i) he or she in terms of subsection (1)(b) has granted consent to the proposed transaction; and
- (ii) the amalgamation, cession, transfer or take-over in question has been carried out properly; and
- (b) on production to him or her of the title deed or other deed or document in question, 15
- must, on such title deed or other deed or document and in his or her registers or other books, make such endorsements and entries as may be necessary as a result of the said amalgamation, cession, transfer or take-over to effect or record the transfer of the said property or other rights to the new scheme or portfolio or, as the case may be, to the scheme or portfolio acquiring rights by means of the amalgamation, cession, transfer or take-over in question. 20
- (6) Except in so far as this section provides otherwise, an amalgamation, cession, transfer or take-over in terms of this section does not derogate from the rights of any creditor or any obligation relating to an original scheme or portfolio. 25
- (7) No transfer or stamp duty or registration or other fees are payable in respect of any endorsement or entry made in terms of subsection (5), and no stamp duty or other fees are payable in respect of the issue of a substituting participatory interest or the transfer of assets as a result of any amalgamation, cession, transfer or take-over in terms of this section. 30

### **Contents of price list, advertisement, brochure and similar document**

- 100.** (1) If in any price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents for the purpose of soliciting the sale of participatory interests in a collective investment scheme, the price of any participatory interest is mentioned or a particular portfolio is referred to, the undermentioned particulars must be clearly set out therein with reference to each such participatory interest or portfolio, namely— 35
- (a) the charges that may be levied by the manager, the method of calculation and the quantum of those charges and the time when they may be levied; and
- (b) the basis on which the manager undertakes to repurchase participatory interests offered to it and the basis on which selling and repurchase prices will be calculated in accordance with this Act and the terms and conditions of the deed. 40
- (2) Any reference in any price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents, to the yield to be derived from any participatory interest offered for sale by the manager, must be confined— 45
- (a) in the case of any such document published after the expiry of a period of 12 months following the date of the first offer of participatory interests to the public, to particulars of the yield, calculated in the manner specified in the deed, for the last preceding period of 12 months for which a distribution has been declared, and a statement as to any facts likely to influence future yield; and 50
- (b) in the case of any such document published within the first-mentioned period, to information as to the probable yield calculated in a manner clearly set out in such document. 55
- (3) If, in any price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents, it is stated that investors in a portfolio of the collective investment scheme are entitled to participate in its profits, there must also be stated what amount was so distributed during the previous financial year, expressed as a percentage of the aggregate market value, as at the close of that year, of all assets then held on behalf of investors in that portfolio. 60

(4) There must be included in every price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents in which participatory interests are commended to the public, a statement in clear and unambiguous terms, to the effect that the value of participatory interests in a portfolio is subject to fluctuation from time to time relative to the market value of the assets comprised in the portfolio: Provided that the registrar may, subject to such conditions as he or she may deem fit, exempt a manager or any such agent from the provisions of this subsection in relation to any advertisement or any particular type of advertisement which is of such a nature that it would be unreasonable to require the manager or such agent to comply with this subsection. 5  
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### **Principal office and public officer in Republic**

**101.** (1) A manager must maintain a principal office in the Republic, must appoint a public officer in the Republic and must notify the registrar in writing, within 30 days after the commencement of this Act, of the location and address of that office and of the name of its public officer. 15

(2) Whenever a manager has changed its principal office or has appointed a new public officer, it must within 30 days from such change or appointment give notice in writing thereof to the registrar.

(3) Process in any legal proceedings against a manager may be served at the principal office of the manager, and if such office is no longer in existence, service upon the registrar is deemed to be service upon the manager. 20

### **Winding-up of portfolio of collective investment scheme**

**102.** (1) If at the time, whether before or after the commencement of this Act, when a portfolio was first formed under a collective investment scheme, no period was fixed for the duration of that portfolio, the manager, trustee or custodian may, on application to the registrar and subject to such terms and conditions as he or she may determine, wind up that portfolio at any time. 25

(2) Despite subsection (1), any competent division of the court may, on the application of a manager, trustee or custodian, order any such portfolio to be wound up if the court is satisfied that to do so would be in the interest of investors in that portfolio. 30

(3) Upon the winding-up of a portfolio in terms of this section the manager must under the control and supervision of the trustee or custodian realise all the assets of such portfolio as soon as possible having regard to the interest of investors, but the manager incurs no liability by reason of the exercise in good faith of its discretion as to the time of realisation of any assets unless the discretion is exercised in a grossly negligent manner. 35

(4) The net proceeds of the realisation of such assets must be deposited in the trust account referred to in section 105 and must under the control and supervision of the trustee or custodian be distributed by the manager or the trustee or custodian, as the case may be, amongst the investors and the manager in proportion to their respective participatory or other interests in the portfolio. 40

(5) Pending the realisation of the assets in such winding-up the manager, trustee or custodian must on behalf of the collective investment scheme collect all income accruals in respect of such portfolio and must deposit and distribute the amounts collected in the manner prescribed in subsection (4). 45

(6) Despite the provisions of the Companies Act, 1973 (Act No. 61 of 1973), this section and sections 103 and 104 of this Act must be applied to the winding-up of a portfolio of an open-ended investment company and none of the assets of a portfolio administered by such a company may be utilised for the payment of any claim of a creditor of the company. 50

### **Manner of dealing with trust property on winding-up of portfolio**

**103.** (1) The registrar may with the approval of the court which has issued an order under section 102, if it appears to him or her that it would be in the interest of investors to continue the collective investment scheme for a period of time, direct the manager, trustee or custodian to postpone the realisation of any assets for such period or periods, not exceeding five years at a time, as the registrar may determine and, pending such realisation, to carry on the scheme in accordance with the registrar's directions and to 55

collect and deal with all income accruals, bonuses and other distributions in accordance with subsections (4) and (5) of section 102.

(2) A manager, trustee or custodian acting in accordance with a direction of the registrar given in terms of subsection (1) may terminate his or her functions as manager, trustee or custodian on giving six months' notice in writing to the registrar, and the registrar may thereupon appoint some other fit and proper person to take over the functions of the manager, trustee or custodian, subject to such conditions as the registrar may stipulate. 5

(3) As remuneration for any services rendered in terms of this section a manager, trustee or custodian or a person appointed by the registrar to take over the functions of a manager, trustee or custodian is entitled to a fee, calculated at such rate as the registrar may determine, on all moneys received by him or her in carrying out his or her duties under this section, and the registrar may authorise the amount of such fee to be deducted, in such proportions as he or she may determine, from income accruals or any moneys realised by the sale of assets in terms of this section. 10 15

#### **Separation of assets of portfolio handed to or received by manager, trustee or custodian**

**104.** For the purposes of a claim against a manager, trustee or custodian there must be excluded from the assets of the manager, trustee or custodian—

- (a) any money or other assets handed to that manager, trustee or custodian or its authorised agents by an investor for the sale or repurchase of a participatory interest; and 20
- (b) the assets of a portfolio.

#### **Separation of funds of investors and other persons**

**105.** (1) A manager must open and maintain a separate operational trust account controlled by the trustee or custodian for each or for all the portfolios administered under its collective investment scheme at a registered bank and must on the date of receipt of any payment in cash, cheque, draft or other instrument from or on behalf of an investor or on the first business day thereafter, deposit in such account either the cash, cheque, draft or other instrument by means of which such payment is made or, alternatively, deposit for same day value in such account funds equal to the amount of such payment. 25 30

(2) Funds deposited into an operational trust account referred to in subsection (1) may only be withdrawn for the purposes of making payment—

- (a) to the investor, person or manager entitled to such payment; or 35
- (b) in terms of this Act, any other law and the deed: Provided that if after such withdrawal any deposited cheque, draft or other instrument against which such withdrawal was made is not subsequently honoured, the manager must immediately pay the shortfall arising from such default into the operational trust account or cancel any participatory interest issued in respect of such defaulting payment. 40

(3) Any excess remaining in the operational trust account after payment of or provision for all claims of investors whose funds have, or should have been deposited in such account, is not trust property as determined in section 71.

(4) The division of the court having jurisdiction over a manager may, on application by an association or the registrar or by any other person having a financial interest in or claim against an operational trust account, on good cause shown, prohibit such manager from operating such account in any way and may appoint a curator to control and administer such account with such duties and powers in relation thereto as the court may deem fit. 45 50

#### **False or misleading statements**

**106.** No person may make a statement or disseminate information which he or she knows, or ought reasonably to know, is false or misleading or is likely or intended to—

- (a) induce other persons to purchase or deal in a participatory interest; or
- (b) have the effect of inflating, depressing or maintaining the price of a participatory interest. 55

### **Fraudulently inducing person to purchase or deal in participatory interests**

**107.** No person may—

- (a) by making or publishing any statement, promise or forecast which he or she knows is likely or intended to be misleading, false or deceptive; or
  - (b) by concealing material information at his or her disposal,
- induce another person to purchase or deal in a participatory interest. 5

### **Evidence**

**108.** A record purporting to have been made or kept in the ordinary course of the business of a collective investment scheme, or a copy of or an extract from such record duly certified to be correct, is on its mere production by the State in any criminal proceedings admissible as evidence of the facts contained in such record, copy or extract. 10

### **Liability for loss**

**109.** (1) (a) A person who contravenes or fails to comply with any provision of this Act or any rule or directive of an association, or regulation, notice or directive under this Act is liable to any other person for any loss or damage suffered by that person as a result of such contravention or failure. 15

(b) The defences applying to an action for damages in respect of a breach of a statutory duty are available to any defendant in an action contemplated in paragraph (a).

(2) A person who contravenes a provision of section 106 or 107 is liable to pay damages to any other person who, by dealing in or purchasing a participatory interest, suffers a loss as a result of the difference between the price at which the dealing takes place and the price at which it is likely to have taken place if the contravention had not occurred. 20

(3) The amount of damages for which a person is liable in terms of subsection (2) is limited to twice the profit gained or likely to be gained, or loss avoided or likely to be avoided, by him or her as a result of the relevant contravention. 25

(4) An action contemplated in subsection (1) or (2) does not lie after the expiration of a period of three years commencing—

- (a) in a case contemplated in subsection (1), on the day of the relevant contravention or failure; or
- (b) in a case contemplated in subsection (2), on the day of completion of the dealing in which the loss occurred. 30

(5) The registrar may bring an action in a competent court in the name of, and for the benefit of, an investor or a specific group of investors for recovery of damages for a loss referred to in subsection (2). 35

(6) Nothing contained in this section affects any liability which a person may incur under the common law or any other law but any damages previously awarded in terms of this section which arise from the same cause must be taken into consideration for purposes of any further claim referred to in this subsection. 40

### **Certain written matter to bear names of certain persons**

**110.** No person may publish or issue to the public or circulate any written comment which may influence the value of any participatory interest unless such comment is accompanied by—

- (a) the name of the person who compiled the comment, or the name of the person on the editorial staff of a newspaper or periodical whom the editor regards as having compiled the comment; or
- (b) disclosure of the source from which the comment was obtained, or the information on which it was based. 45

### **Application of Companies Act in relation to manager** 50

**111.** (1) Except where this Act expressly provides otherwise, the application of the Companies Act, 1973 (Act No. 61 of 1977), to a manager is not affected by this Act.

(2) (a) Sections 85 to 89 of the Companies Act, 1973, do not apply to an open-ended investment company.

(b) Chapter VI of the Companies Act, 1973, does not apply to any offer of participatory interests to members of the public or to investors by an open-ended investment company or a foreign collective investment scheme approved in terms of section 65.

(3) In the application of section 357 of the Companies Act, 1973 (Act No. 61 of 1973), to a manager, the registrar is regarded as having been included amongst the persons to whom notice is required to be given under subsection (1)(b) of that section. 5

(4) In the application of section 427(2) of the Companies Act, 1973, to a manager, section 346(4)(a) of that Act must be construed as if the words “or to the Registrar of Collective Investment Schemes appointed under the Collective Investment Schemes Control Act, 2002”, had been inserted in that section after the words “shall be lodged with the Master”. 10

(5) The registrar may, in respect of any manager being wound up or judicially managed, in writing direct the liquidator or the judicial manager, as the case may be, to furnish him or her with a copy of any particular account, return, statement or other document which the liquidator or the judicial manager is required under any provision of the Companies Act, 1973, to furnish to the Registrar of Companies or the Master, or to furnish him or her from time to time with copies of all or any of such accounts, returns, statements or documents as and when they are furnished to the said Registrar or to the Master. 15 20

(6) Immediately after the confirmation of the final account in the winding-up of a manager, the Master of the High Court concerned must give the registrar notice thereof.

### Delegation of functions

**112.** (1) The Minister may delegate any power conferred upon him or her by this Act to the Director-General: Finance or any other officer in the National Treasury, the Financial Services Board, an association or the registrar. 25

(2) An association may—

- (a) on such conditions as the association may determine, delegate to the chairperson, executive officer or any other officer or employee of the association any power conferred upon the association by or under this Act, including a power delegated to the association under this Act; or 30
- (b) authorise the chairperson, the executive officer or any other officer or employee of the association to perform any duty assigned to the association by or under this Act.

(3) The registrar may— 35

- (a) delegate to an officer or employee of the Board or an association any power conferred upon the registrar by or under this Act, including a power delegated to the registrar under this Act; or
- (b) authorise such officer or employee to perform any duty assigned to the registrar by or under this Act. 40

(4) Any delegation under subsection (1), (2)(a) or (3)(a) does not prohibit the exercise of the power in question by the Minister, association or registrar, as the case may be.

### Exemption from Act 57 of 1988

**113.** The Trust Property Control Act, 1988 (Act No. 57 of 1988), does not apply in respect of a collective investment scheme administered in terms of this Act. 45

### Regulations by Minister and notices by registrar

**114.** (1) The Minister may make regulations as to any matter which is required or permitted by this Act to be prescribed under this Act.

(2) The Minister may make different regulations—

- (a) in respect of a manager which is or a manager which is not a member of an association, different types of collective investment schemes or different types of portfolios; 50
- (b) prescribing, generally, any matter, whether or not connected with any matter specified in subsection (1), which is necessary or expedient to prescribe or to regulate in order for the objects of this Act to be achieved, but the generality of this provision is not limited by subsection (1). 55

- (3) The registrar may, for the purposes of this Act, by notice in the *Gazette* determine—
- (a) the records to be kept and furnished to the registrar by a manager;
  - (b) the forms, returns, documents or information and the manner and time limits for the lodgement with or transmission to the registrar or any other person; 5
  - (c) the manner in which and the period within which—
    - (i) application for the renewal of an association licence must be made; or
    - (ii) notice must be given of the issue, cancellation or suspension of an association licence;
  - (d) matters in addition to those contemplated in any other provision of this Act in respect of which fees are payable, the fee payable in respect of each such matter, and, in relation to such fees as well as fees payable under any such other provision of this Act, the persons by whom the fees are payable, the manner of payment thereof and, where it is deemed necessary, the payment of interest in respect of overdue fees; 10 15
  - (e) rules for the conduct of a collective investment scheme by a manager who is not a member of an association; and
  - (f) the circumstances under which the manager of a collective investment scheme in securities may suspend the repurchase of participatory interests and the conditions of such suspension: Provided that any offer of participatory interests for repurchase by an investor, the aggregate amount or value of which does not exceed the amount specified by the registrar, on the day of such offer, is excluded from any suspension. 20
- (4) The registrar may issue different notices—
- (a) in respect of a manager which is or a manager which is not a member of an association, different types of collective investment schemes or different types of portfolios; 25
  - (b) determining, generally, any matter, whether or not connected with any matter specified in subsection (3), which is necessary or expedient to determine in order for the objects of this Act to be achieved, but the generality of this provision is not limited by subsection (3). 30
- (5) Any matter which the registrar may or must determine in terms of this Act must be determined by notice in the *Gazette*.
- (6) Fees which are by virtue of a provision of this Act payable, and interest so payable in respect of overdue fees, are a debt due to the Board and may be recovered by the registrar by action in any competent court. 35
- (7) A regulation may provide for penalties for a contravention thereof or failure to comply therewith.

### Offences

- 115.** Any person who— 40
- (a) contravenes or fails to comply with the provisions of sections 6, 68, 92, 93, 94, 95, 96, 106, 107 or 110;
  - (b) not being a manager or an authorised agent of a manager, performs an act amounting to administration; or
  - (c) fails to comply with any direction, requirement, notice, rule or regulation 45 under any provision of this Act,
- is guilty of an offence.

### Penalties

- 116.** Subject to the provisions of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), regarding minimum sentences for serious offences, any person who is, in terms of any provision of this Act, guilty of an offence in respect of which no penalty is specifically provided, is liable to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 50

### Repeal or amendment of laws and savings

- 117.** (1) Subject to subsection (2), the laws set out in Schedule 3 are hereby repealed or amended to the extent set out in the third column thereof. 55

(2) Anything done under any provision of a law repealed or amended by subsection (1), and which could be done under a provision of this Act, is regarded as having been done under the last-mentioned provision.

(3) (a) A management company or a trustee which immediately before the date of commencement of this Act was registered as such under the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), is regarded, from the date of such commencement, as being registered as a manager or trustee under this Act. 5

(b) The registrar must issue to a manager or trustee referred to in paragraph (a) a certificate of registration in terms of this Act.

**Short title**

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**118.** This Act is called the Collective Investment Schemes Control Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE 1****MATTERS WHICH MUST BE PROVIDED FOR IN DEED OF  
COLLECTIVE INVESTMENT SCHEME IN SECURITIES****(Section 97)**

1. A deed must provide for the requirements applicable to the administration by a manager of a collective investment scheme in securities and must, amongst others and as far as applicable, contain provisions regarding the following matters:
  - (a) The investment policy to be followed in respect of each portfolio;
  - (b) the manner in which the assets of a portfolio are to be valued for purposes of calculating the selling and repurchase prices of participatory interests;
  - (c) the frequency of calculation of selling and repurchase prices of participatory interests, and the point in time at which such calculations will be performed on a specific day, which point will be referred to as the valuation point;
  - (d) if assets other than securities listed on an exchange may be included in any portfolio, the basis on which the market value of such assets is to be determined for the purposes of determining selling and repurchase prices;
  - (e) the manner in which and a point in time at which the valuation point will be applied either to the creation, sale, repurchase or cancellation of participatory interests;
  - (f) the manner in which distributions are to be calculated and settled;
  - (g) the limits, terms and conditions under which scrip may be lent;
  - (h) the limits, terms and conditions under which a manager may for the account of a portfolio borrow money;
  - (i) the charges that may be levied and the method of calculation of those charges;
  - (j) not less than three months' written notice must be given to every investor of an increase in any charge and of any change in the method of calculation which could result in an increase or the introduction of any additional charge; and
  - (k) the manner in which a deed may be amended.
2. In respect of the repurchase of participatory interests in a portfolio of a collective investment scheme in securities, a deed must provide for the following:
  - (a) It is incumbent on a manager to repurchase any number of participatory interests offered to it;
  - (b) for the purposes of subitem (a) and subject to subitem (d), the manager must determine a point in time by when repurchase requests must be received for the purpose of determining which valuation point will be utilised for the pricing calculation;
  - (c) the time determined in terms of subitem (b) may not be changed unless 30 days' prior written notice has been given to investors;
  - (d) a manager, when it receives a request for repurchase of participatory interests under circumstances determined by the registrar under section 114(3) of the Act—
    - (i) may, with the prior consent of the trustee or custodian; or
    - (ii) must, without delay when the trustee or custodian so requires, suspend the basis of the repurchase of the relevant participatory interests, if the manager, trustee or custodian, as the case may be, is of the opinion that the circumstances referred to warrant the suspension in the interest of investors; and
  - (e) the repurchase of such participatory interests must be settled in accordance with conditions determined by the registrar under section 114(3) of the Act.

**SCHEDULE 2****MATTERS WHICH MUST BE PROVIDED FOR IN DEED OF  
COLLECTIVE INVESTMENT SCHEME IN PROPERTY****(Section 97)**

A deed must provide for the requirements applicable to the administration by a manager of a collective investment scheme in property and must, amongst others and as far as applicable, contain provisions regarding the following matters:

- (a) The investment policy to be followed in respect of each portfolio;
- (b) the frequency and basis on which the assets of a portfolio are to be valued;
- (c) the manner in which participatory interests are to be created or cancelled;
- (d) the manner in which distributions are to be calculated and settled;
- (e) the limits, terms and conditions under which a manager may for the account of a portfolio borrow money;
- (f) the charges that may be levied and the method of calculation of those charges;
- (g) not less than three months' written notice must be given to every investor of an increase in any charge and of any change in the method of calculation which could result in an increase or the introduction of any additional charge; and
- (h) the manner in which a deed may be amended.

## SCHEDULE 3

## LAWS REPEALED OR AMENDED BY THIS ACT

## (Section 117)

No. and year	Short title	Extent of repeal or amendment
Act No. 54 of 1981	Unit Trusts Control Act, 1981	Repeal of the whole
Act No. 55 of 1981	Participation Bonds Act, 1981	Repeal of the whole
Act No. 51 of 1988	Financial Institutions Amendment Act, 1988	Repeal of sections 8 to 17
Act No. 64 of 1990	Financial Institutions Amendment Act, 1990	Repeal of section 12
Act No. 97 of 1990	Financial Services Board Act, 1990	Amendment of section 1 by the substitution in the definition of "financial institution" for subparagraph (iii) of paragraph (a) of the following subparagraph: “(iii) a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002, a manager, trustee or custodian registered in terms of that Act, and an authorised agent of such a manager;”
Act No. 54 of 1991	Financial Institutions Amendment Act, 1991	Repeal of sections 5 to 8
Act No. 83 of 1992	Financial Institutions Amendment Act, 1992	Repeal of section 30
Act No. 7 of 1993	Financial Institutions Amendment Act, 1993	Repeal of section 6
Act No. 104 of 1993	Financial Institutions Second Amendment Act, 1993	Repeal of sections 39 to 49
Act No. 53 of 1996	Unit Trusts Control Amendment Act, 1996	Repeal of the whole
Act No. 12 of 1998	Unit Trusts Control Amendment Act, 1998	Repeal of the whole

## SCHEDULE 4

### MATTERS TO BE PROVIDED FOR IN RULES OF ASSOCIATION

#### (Section 32)

1. Subject to the provisions of the Act and any exemption from or addition to the rules that may be granted or required by the registrar in a particular case, the rules of an association—

- (a) must provide to the satisfaction of the registrar—
  - (i) for the manner in which and the conditions under which a body corporate qualifies for membership of the association;
  - (ii) for the establishment of an executive committee from members of the association and the composition and functions of such a committee;
  - (iii) for the manner in which and conditions under which members are to carry on their business so as to ensure compliance with the principles envisaged in section 2 of the Act;
  - (iv) for the exclusion from membership if a member is controlled or administered by a person who is not of good character and high business integrity;
  - (v) for the financial requirements and requirements in respect of training and experience with which a member, its directors and its employees must comply to be admitted as a member;
  - (vi) for the exclusion of a body corporate from membership where a director of the body corporate, a person concerned in the management of the body corporate or a person who has substantial control of the body corporate, would be excluded from membership by virtue of the provisions of the Act;
  - (vii) for disclosure of information, including the risks an investor is exposed to;
  - (viii) for standards of conduct by members of an association and the investigation of complaints in respect of their activities;
  - (ix) for co-operation with the registrar by the furnishing of information to him or her in respect of the business of the members of an association;
  - (x) for the equitable and speedy settlement of disputes between members in respect of the carrying on of their business;
  - (xi) (aa) for an appropriate mechanism whereby a member which has been penalised by a committee or a competent person may appeal against the decision of the committee or person; and
    - (bb) that the membership of a member may not be suspended or terminated unless he or she has been informed of the reasons for such suspension or termination and has had an opportunity to make representations to the executive committee, and that a person who has so made representations to the executive committee is entitled to be supplied with a copy of a record of the meeting at which his or her representations were considered;
  - (xii) for the manner in which and conditions subject to which members of an association may advertise the services rendered by them;
  - (xiii) (aa) for the manner in which fees charged by members of an association for their services, are disclosed and notified to investors; and
    - (bb) for the furnishing by members of an association to their investors of other information in respect of the business conducted by the members on behalf of investors;
  - (xiv) in respect of a member of an association—
    - (aa) for the recording of the transactions effected by the members of an association, their investors and trustee or custodian;
    - (bb) for the separation of a client's funds and other corporeal or incorporeal things from the assets of the member;
    - (cc) for prohibition of the use of funds belonging to one investor to finance the dealings of another investor;
    - (dd) for prohibition of the use of an investor's funds in operating the member's own business; and

- (ee) that a member who buys any participatory interest from an investor or sells any participatory interest to an investor on his or her own account, must notify the investor concerned in advance that such participatory interest was bought or sold by the member for its own account;
- (xv) that, where relevant, a member must on request make available to an investor all information at the member's disposal for determining the current value of a participatory interest;
- (xvi) (aa) for the manner in which and conditions subject to which a participatory interest in a portfolio may be offered to members of the public;
- (bb) for the stoppage or suspension of the administration of a collective investment scheme or any part thereof by a member of an association or the quotation of prices in respect of such administration; and
- (cc) for the application of new or amended conditions imposed by an executive committee of an association upon the carrying on of existing business;
- (xvii) for ensuring delivery or settlement in respect of transactions effected by the members of an association either by the member's or the association's own arrangements or by means of arrangements made by the association with a financial institution or other association;
- (xviii) for the appointment of—
  - (aa) an executive officer by the executive committee; and
  - (bb) employees by the executive officer;
- (xix) for the dissolution of the association;
- (xx) for further measures to ensure that the business of the association in question is carried on with due regard to the interests of investors; and
- (b) may provide to the satisfaction of the registrar—
  - (i) for the effective monitoring of compliance with, and enforcement of, the rules or any arrangements made by the association with a financial institution or exchange for the rendering of services or facilities in respect of the association;
  - (ii) that a member must render sureties or security to the satisfaction of the executive committee, for the discharge of liabilities arising out of its activities;
  - (iii) (aa) that a fidelity fund must be established and maintained for the discharge, up to an amount specified in the rules, of outstanding liabilities of a member arising out of its activities; and
  - (bb) that every member must contribute to such fund.

2. (a) The association must as soon as possible after the granting of a licence, publish its rules in the *Gazette* in English and any one other official language at the expense of the association concerned and furnish the registrar with a copy thereof.

(b) No amendment, other than a suspension, of the rules is valid, unless—

- (i) the fee prescribed by the registrar has been paid;
- (ii) it has been approved by the registrar in writing;
- (iii) a date has been stipulated in the registrar's approval for the coming into operation of such amendment; or
- (iv) it is consistent with this Act.

(c) The registrar must, after considering any objection contemplated in paragraph (f), approve or disapprove an amendment referred to in paragraph (b) within a period of 60 days after expiry of the period referred to in paragraph (f).

(d) If the registrar does not disapprove of an amendment referred to in paragraph (b) within a period of 60 days after expiry of the period referred to in paragraph (f), the registrar is regarded as having approved it and such amendment comes into operation on the day immediately following upon the date of expiry of the aforesaid period of 60 days.

(e) Upon receipt of an application for approval in terms of paragraph (b), the registrar must cause to be published at the expense of the association in English and any one other official language in the *Gazette* a notice setting forth the proposed amendment.

(f) The said notice must call upon all interested persons, other than members of the association concerned, who have any objection to the proposed amendment to lodge

their objection with the registrar within a period of 30 days from the date of publication of the notice in the *Gazette*.

**3.** A rule made under this section is binding on all members and on all officers or employees of members and on every person utilising the services of a member or who concludes a transaction with a member in the course of that member's business.

**4. (a)** A rule may, in respect of each contravention or failure to comply therewith by a member or an officer or employee of a member, specify one or more of the following penalties:

- (i) A reprimand;
- (ii) censure;
- (iii) a fine not exceeding one million rand, which amount is payable to the fund referred to in of item 1(b)(iii) or, if such fund does not exist, to the relevant association;
- (iv) suspension or cancellation of membership; or
- (v) a direction to a member to terminate the employment of an officer or employee.

*(b)* The rule contemplated in paragraph *(a)* may also specify that full particulars regarding the imposition of a penalty must be published and that any member, officer or employee who contravenes or fails to comply with a rule may be ordered to pay the costs incurred in the investigation or hearing in question.

**5.** Whenever the registrar considers it desirable in the public interest, he or she may, after consultation with the executive committee of an association, amend the rules of that association by notice in the *Gazette*.

**6. (a)** Subject to the prior approval of the registrar, an executive committee may suspend any of the rules of an association for a period not exceeding 90 days at a time and may during such suspension by resolution likewise approved issue a directive to regulate the matter in question until such time as an appropriate amendment of the rules can be made in terms of this item.

*(b)* Items 3 and 4 apply in respect of any contravention of or non-compliance with a directive.

## MEMORANDUM ON THE OBJECTS OF THE COLLECTIVE INVESTMENT SCHEMES CONTROL BILL

### 1. INTRODUCTION

The Collective Investment Schemes Control Bill (“the Bill”) will replace two existing Acts, namely the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), and the Participation Bonds Act, 1981 (Act No. 55 of 1981). This Bill will provide a comprehensive legislative framework to regulate and supervise the collective investment industry based on internationally accepted principles and best practice.

The Bill will provide a modern legislative framework for the equity unit trust, property unit trust and participation mortgage bond scheme industries in line with international best practice. These products represent significant savings vehicles in South Africa as reflected in the following statistics as at 30 June 2001:

	<b>South African Unit trusts</b>	<b>Foreign CIS's</b>	<b>Property unit trusts</b>	<b>Participation bond schemes</b>
<b>Assets under management</b>	R133,8 bn	R57,1bn*	R4,9 bn	R3,9 bn
<b>Schemes</b>	29	67	6	17
<b>Portfolios</b>	372	314	8	—
<b>Number of investors</b>	2 000 000	N/A	N/A	83 346

“\* S. A. residents only”

Source : Financial Services Board

N/A—Not available

The first legislation for the regulation and supervision of the unit trust industry was promulgated in 1947 and has been amended several times in an attempt to keep abreast of developments within the industry and the needs of investors. To enable local industry to become more competitive, to remain competitive and to upgrade regulation and supervision of the industry, the revision of the current legislation has become necessary and in the public interest.

The Policy Board for Financial Services and Regulation, in its review of the regulatory framework for financial services industries, amongst others, proposed that all forms of collective investment schemes should be regulated by one Act. This Act must also provide for the establishment of new structures, which is not possible in the context of current legislation. The Association of Unit Trusts of South Africa (“AUT”) conducted a survey of opinion of the unit trust industry, the South African regulatory authorities as well as other related institutions. The AUT reviewed the legislation and regulatory approaches of selected international authorities and the principles thereof. Workshops were held on the topic. The AUT, in consultation with the Financial Services Board, compiled a document setting out the principles within which the drafting of the legislation should take place. Subsequently a committee, representative of the Financial Services Board, consumers and the industry, was appointed which prepared the Bill.

The Bill therefore provides for:

- (a) the control, regulation and supervision of all investment-based collective investment schemes including unit trust schemes and foreign collective investment schemes which want to carry on business within the Republic of South Africa;
- (b) the appointment of a representative advisory committee to advise the Minister and Registrar on the administration and supervision of collective investment schemes;
- (c) the issue of a licence, the annual renewal of such licence, and the approval of the rules of an industry association, which may be entrusted with duties and powers for the self-regulation of the conduct of its members;
- (d) the declaration, by the Minister, of a business as a collective investment scheme for the purposes of the Bill if it is considered that such business should be regulated by this Bill;
- (e) risk-based capital requirements for the managers of collective investment schemes to protect investors who wish to redeem their investments;
- (f) comprehensive disclosure to investors before entering into a transaction and principles for conduct to further protect investors;
- (g) the avoidance of conflict of interests between manager and investors; and

- (h) independent custodianship of the assets and funds representing the interests of investors.

## **2. CONCLUSION**

The Financial Services Board and the AUT believe that there is an urgent need for the introduction of the proposed legislation and that there are notable benefits to be gained for the South African economy as a whole. Some of these reasons are:

- \* The preservation of the local industry's competitive position;
- \* The stemming and reversal of losses of local investment, employment and revenue;
- \* The need for alternative and more suitable collective investment scheme formats; and
- \* Enhancement of regulation, supervision and investor protection.

These reasons are dealt with in more detail below.

## **3. S A COMPETITIVE POSITION**

The relaxation of exchange control and the integration of international financial markets have resulted in a significant increase in the investment options available to local investors in foreign jurisdictions and has furthermore been expanded by the numerous foreign financial institutions which are now actively soliciting investments from local investors. There is no quantitative data to show cross-border market penetration in South Africa by value but the current structure, which limits unit trusts, to trust-based vehicles only can be seen as a severe hindrance for local industry to compete efficiently with foreign competitors.

The proposed Bill therefore does not only set a regulatory framework which permits a diversification of trust-based collective investment schemes by allowing for more competitive company-based collective investment schemes that are now prevalent internationally. It also provides for prudential requirements and for the inclusion, into the regulatory net, of other types of financially based collective investment schemes that are not regulated at the moment.

The combination of trust structure, exchange control and taxation has, furthermore, also driven South African companies to establish off-shore investment companies and apply capital and skill to do business internationally.

It would be sensible to make it worthwhile for all those activities to be carried out in South Africa and to reverse the impression that South Africa is declining more and more as an investment destination.

## **4. INNOVATION**

It is internationally accepted that innovation is not possible within a trust-based collective investment scheme. Open-ended investment company schemes should allow much greater innovation in the collective investment scheme arena. Many such products already exist internationally and are sold to local investors. They are also used offshore by local companies but cannot be sold in South Africa at present. It would be beneficial to South Africa's balance of trade and employment prospects if these products could be designed locally and sold in the domestic and foreign markets.

The Financial Services Board and the AUT believe that the proposed legislation to allow for the diversification of collective investment schemes would serve many worthwhile purposes.

## **5. FINANCIAL IMPLICATIONS FOR STATE**

The Bill does not have financial implications for the State.

## **6. PARLIAMENTARY PROCEDURE**

The National Treasury and the State Law Advisers are of the opinion that this Bill should be dealt with in terms of section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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