



**REPUBLIC OF KENYA**  
MINISTRY OF FINANCE  
FINANCIAL AND LEGAL SECTOR TECHNICAL ASSISTANCE PROJECT

**DRAFT**  
**SECURITIES (COLLECTIVE INVESTMENT  
SCHEMES) REGULATIONS 2009**

19 June 2009

Consultancy assistance to review and strengthen legal and regulatory framework  
for the Capital Markets Authority



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## **DRAFT**

### **SECURITIES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2009**

#### **TABLE OF REGULATIONS**

##### **PART I PRELIMINARY**

###### **Regulation**

1. Citation and commencement
2. Interpretation
3. Investigations
4. Contraventions

##### **PART II ESTABLISHMENT OF SCHEMES**

5. Unit trusts
6. Investment companies

##### **PART III AUTHORIZATION OF SCHEMES**

7. Application for authorization
8. Authorization by Authority

##### **PART IV RECOGNITION OF OVERSEAS SCHEMES**

9. Application for recognition
10. Recognition by Authority

##### **PART V CUSTODIANS**

11. Appointment of custodian
12. Eligibility to be custodian
13. Custody of assets

14. General duties of custodian
15. Instructions from fund manager
16. Change of address
17. Liability of custodian
18. Register of participants
19. Notification of contraventions

## **PART VI FUND MANAGERS**

20. Appointment of fund manager
21. Eligibility to be a fund manager
22. Qualifications of directors
23. General duties of fund manager
24. Restrictions on activities of fund manager
25. Change of address
26. Liability of fund manager
27. Requests to fund manager and investment adviser
28. Units held by fund manager

## **PART VII AUDIT OF SCHEMES**

29. Appointment and eligibility of auditor
30. Audit of accounts
31. Communication with Authority

## **PART VIII SCHEME PARTICULARS AND FINANCIAL REPORTS**

32. Documents to be prepared and published by managers
33. Contents of collective investment scheme particulars
34. Contents of annual and half-yearly reports
35. Publication of collective investment scheme particulars and reports

## **PART IX**

### **GENERAL REQUIREMENTS**

36. Publication of prices
37. Units and accumulation units
38. Payments out of and into the property of a collective investment scheme
39. Creation, etc. of units, repurchases and redemptions
40. Valuation and pricing
41. Advertising
42. Fees of custodian
43. Inclusion of performance data
44. Changes to collective investment scheme documentation
45. Transactions with connected persons
46. Meetings

## **PART X**

### **RESTRICTIONS ON INVESTMENT POWERS OF SCHEMES**

47. Application of this Part
48. General investment powers
49. Core requirement
50. Spread of investments
51. Government and other public securities
52. Financial futures
53. Warrants and options
54. Investment in other collective investment schemes
55. Prohibition of real estate investments
56. Restriction on lending of money
57. Restriction on lending of property other than money
58. Unlimited liability
59. Limitations on securities in which directors or officers have interests
60. Limitations on nil-paid or partly paid securities
61. Limitations on borrowing
62. Prohibition of short selling
63. Applicability of restrictions to umbrella collective investment schemes
64. Breach of investment limits
65. Name of collective investment scheme

## **SCHEDULES**

**First Schedule:** Contents of Unit Trust Rules

**Second Schedule:** Contents of Articles of Incorporation of Investment company

**Third Schedule:** Information to be contained in Application for Authorization or Recognition

**Fourth Schedule:** Information to be disclosed in Collective Investment Scheme Particulars

**Fifth Schedule:** Contents of Financial Accounts

**Sixth Schedule:** Annual and Half-Yearly Reports

**SECURITIES  
(COLLECTIVE INVESTMENT SCHEMES)  
REGULATIONS 2009**

IN EXERCISE of the powers conferred by section 69 of the Securities Industry Act 2009 the Capital Markets Authority has made the following regulations –

**PART I  
PRELIMINARY PROVISIONS**

**1. Citation and commencement**

These regulations may be cited as the Securities (Collective Investment Schemes) Regulations 2009 and shall come into operation on the     day of 2009.

**2. Interpretation**

In these regulations, unless a contrary intention appears –

“Act” means the Securities Industry Act 2009;

“Authority” means the Capital Markets Authority established by section 4 of the Capital Markets Authority Act 2009;

“scheme particulars” means that document issued to the public containing information on a collective investment scheme calculated to invite offers by the public to subscribe for or purchase units in the collective investment scheme;

“investment adviser”, in relation to a scheme, means a person who is engaged by the fund manager or investment company under a commercial arrangement not being a mere contract of employment to supply the company with advice as to the merit of investment opportunities or information relevant to the making of judgments about the merits of investment opportunities; and

“scheme” means collective investment scheme.

### **3. Investigations**

- (1) The Authority may investigate –
  - (a) the affairs of, or of the fund manager or custodian of, any authorized unit trust,
  - (b) the affairs of, or of the fund manager or custodian of, any authorized investment company,
  - (c) the affairs of, or of the fund manager or custodian of, any recognized collective investment scheme, if it appears to the Authority that it is in the interests of the participants to do so or that the matter is of public concern.
- (2) For the purposes of an investigation under paragraph (1) the Authority, or any person duly appointed to act under its authority for the purposes of an investigation, may exercise any or all of the powers conferred by sections 27, 28 and 29 of the Capital Markets Authority Act 2009.
- (3) A person who fails, without reasonable excuse, to comply with the requirements of the Authority (or appointed person) under paragraph (2) commits an offence.

### **4. Contraventions**

A person who contravenes or fails to comply with any requirement of these regulations commits an offence and is liable on conviction to a fine of shillings [?].

## **PART II ESTABLISHMENT OF SCHEMES**

### **5. Unit trusts**

A collective investment scheme that is a unit trust shall be established by its scheme rules that shall provide for the matters specified in the First Schedule.

**6. Investment companies**

A collective investment scheme that is an investment company shall be established by its memorandum and articles of incorporation that shall provide for the matters specified in the Second Schedule.

**PART III  
AUTHORIZATION OF SCHEMES**

**7. Application for authorization**

(1) An application for the authorization of a scheme shall contain the information specified in the Third Schedule.

(2) The application shall be accompanied by the following –

- (a) the scheme’s formation documents;
- (b) the scheme particulars;
- (c) the fund manager’s latest audited report;
- (d) the custodian’s latest audited report; and
- (e) the prescribed application fee.

(3) The Authority may require the applicant to furnish additional information.

**8. Authorization by Authority**

(1) The Authority may, on an application duly made in accordance with regulation 7 and after being furnished with all such information as it may require under that regulation, make an order declaring the scheme to be an authorized collective investment scheme for the purposes of the Act if the Authority –

- (a) has been furnished with the documents specified in regulation 7;

- (b) is satisfied that the applicant complies with the eligibility conditions specified in section 58 (2) to (5) of the Act;
  - (c) is satisfied that the formation documents and scheme particulars comply with the requirements of these regulations; and
  - (d) has received the prescribed fee.
- (2) An authorization under paragraph (1) may be granted subject to such terms and conditions as the Authority considers to be necessary or desirable for the protection of participants.
- (3) The Authority shall inform the applicant of its decision on the application not later than [3] months after the date on which the application was received or, if within that period the Authority has required the applicant to furnish further information in connection with the application, from the date on which that information is furnished.
- (4) The Authority –
- (a) shall not refuse an application without first giving the applicant an opportunity of being heard; and
  - (b) if it refuses the application, shall notify the applicant in writing of the refusal and the reasons for the refusal.

## **PART IV RECOGNITION OF OVERSEAS SCHEMES**

### **9. Application for recognition**

- (1) An application for recognition of an overseas scheme shall contain the information specified in the Third Schedule.
- (2) The application shall be accompanied by the following –
  - (a) the scheme’s formation documents;

- (b) the scheme particulars;
- (c) the fund manager's latest audited report;
- (d) the custodian's latest audited report; and
- (e) the prescribed application fee.

(3) The Authority may require the applicant to furnish additional information.

#### **10. Recognition by Authority**

(1) The Authority may, on an application duly made in accordance with regulation 9 and after being furnished with all such information as it may require under that regulation, may make an order declaring the scheme to be a recognized collective investment scheme for the purposes of the Act if the Authority –

- (a) has been furnished with the documents specified in regulation 9;
- (b) is satisfied that the applicant complies with the eligibility conditions specified in section 66 (1)(a) to (f) of the Act;
- (c) is satisfied that the formation documents and scheme particulars comply with the requirements of these regulations; and
- (d) has received the prescribed fee.

(2) An order of recognition under paragraph (1) may be granted subject to such terms and conditions as the Authority considers necessary or desirable for the protection of participants.

(3) The Authority shall inform the applicant of its decision on the application not later than [3] months after the date on which the application was received or, if within that period the Authority has required the applicant to furnish further information in connection with the application, from the date on which that information is furnished.

(4) The Authority –

- (a) shall not refuse an application without first giving the applicant an opportunity of being heard; and
- (b) if it refuses the application, shall notify the applicant in writing of the refusal and the reasons for the refusal.

## **PART V**

### **CUSTODIANS**

#### **11. Appointment of custodian**

Every collective investment scheme for which authorization is requested shall appoint a custodian that has been licensed by the Authority to act as a custodian of collective investment schemes.

#### **12. Eligibility to be a custodian**

- (1) A custodian shall be a company that is –
  - (a) a bank;
  - (b) a trustee company which is a subsidiary of a bank; or
  - (c) such other company as the Authority may license if the Authority is satisfied that the company has sufficient financial resources and experience necessary to enable it effectively to conduct its business and to carry out its obligations as a custodian.
- (2) A custodian shall be independently audited and have minimum issued and paid-up capital and non-distributable capital reserves of shillings [?] or its equivalent in foreign currency.

#### **13. Custody of assets**

- (1) The custodian of a collective investment scheme shall take into its custody for safe keeping the property of the scheme by means of an agreement between the custodian and the fund manager in which the custodian accepts custody of the scheme property and agrees to observe the provisions of the formation documents and the custodian agreement.
- (2) The custodian shall hold and deal with such property in accordance with the provisions of these regulations and the formation documents of the collective investment scheme.

**14. General duties of custodian**

- (1) The custodian shall act solely in the interests of the participants in the performance of its duties.
  
- (2) The custodian shall take reasonable care to ensure that the collective investment scheme is managed by the fund manager in accordance with the provisions of these regulations and the formation documents of the scheme, and shall ensure that –
  - (a) the property of the scheme is invested;
  - (b) the scheme's income is applied, in accordance with those provisions and the formation documents;
  - (c) the value of the units is calculated by the fund manager or investment company, as the case may be;
  - (d) the sale, issue, repurchase, redemption and cancellation of units are carried out.
  
- (3) The custodian shall ensure that the methods adopted by the fund manager in calculating the value of units are adequate to ensure that the sale, issue, repurchase, redemption and cancellation prices are calculated in accordance with the provisions of these regulations and of the formation documents.
  
- (4) The custodian shall –
  - (a) carry out the instructions of the fund manager in respect of investments unless they are in conflict with the provisions of the collective investment scheme particulars or formation documents;
  - (b) take reasonable care to ensure that any investment and borrowing limitations set out in these regulations and the formation documents, and the conditions under which the collective investment scheme was authorized, are complied with;

- (c) issue a report to the participants to be included in the annual report on whether in the custodian's opinion, the fund manager has in all material respects managed the collective investment scheme in accordance with the provisions of these regulations and of the formation documents; if the fund manager has not done so, the respects in which it has not done so and the steps which the custodian has taken in respect thereof;
- (d) take reasonable care to ensure that unit certificates are not issued until subscription moneys have been paid;
- (e) ensure that any registrable investments which are held for participants in the collective investment scheme are properly registered in the names of the participants or, with the consent of the participants, in the name of an eligible nominee; and
- (f) where title to investments is recorded electronically, to ensure that entitlements are separately identified from those of the fund manager of the collective investment scheme in the records of the person maintaining records of entitlement.

**15. Instructions from fund manager**

The custodian shall carry out the instructions of the fund manager unless it has reasonable cause to believe that to do so would contravene its duties under regulation 14.

**16. Change of address**

A custodian shall notify the Authority in writing of any intended change of address of its registered office or permanent place of business in Kenya.

**17. Liability of custodian**

The custodian shall be liable to the fund manager and to the participants for any loss suffered by them as a result of –

- (a) any failure by it to perform its obligations; or
- (b) the improper performance by it of its obligations.

**18. Register of participants**

- (1) The custodian shall establish and maintain a register of the participants of the collective investment scheme in a form approved by the Authority.
- (2) The custodian may, with the prior written approval of the Authority, appoint some other person to establish and maintain the register on its behalf.
- (3) The register may be formed, in whole or in part, of records maintained by a custodian approved by the Authority.
- (4) The register shall be conclusive evidence as to the persons respectively entitled to the units standing in their name.

**19. Notification of contraventions**

The custodian shall notify the Authority in writing forthwith after becoming aware of the matter, of any failure, act or omission of the fund manager constituting a breach or contravention of any of the provisions of these regulations or of the formation documents of the collective investment scheme and of the steps taken by it to ensure that the breach or contravention is rectified as soon as is reasonably practicable.

**PART VI**  
**FUND MANAGERS**

**20. Appointment of fund manager**

- (1) Subject to paragraph (2) every collective investment scheme for which authorization is requested shall appoint a fund manager that has been licensed by the Authority to act as a fund manager of collective investment schemes.
- (2) In the case of an investment company the Authority may in its discretion permit it to be managed by its own board of directors (a self-managed scheme) who are to perform the functions of a fund manager.
- (3) Where the Authority permits an investment company to be a self-managed scheme under paragraph (2), references in these regulations

to a fund manager or the directors of a fund manager shall be deemed to be references to the directors of the self-managed scheme.

- (4) The directors of a self-managed scheme are prohibited from dealing with the scheme as principals.
- (5) In addition to compliance with regulation 46, the articles of association of a self-managed investment company shall contain the following provisions –
  - (a) that participants may convene a meeting and, by way of an ordinary resolution, remove any director considered no longer fit and proper to manage the property of the scheme; and
  - (b) that the directors' fees and remuneration shall be fixed by the participants at a general meeting.

## **21. Eligibility to be a fund manager**

- (1) A fund manager shall be a company which –
  - (a) is engaged solely in the business of collective investment scheme management;
  - (b) has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; and
  - (c) shall maintain at all times a positive net asset position.
- (2) A fund manager shall have a minimum paid-up capital of shillings [?] or its equivalent in foreign currency.

## **22. Qualifications of directors**

- (1) The directors of the fund manager must be fit and proper to act as such and, in the opinion of the Authority, possess the necessary experience for the performance of their duties.
- (2) In determining the acceptability of the fund manager, the Authority may also consider the qualifications and experience of persons employed by the fund manager.

### **23. General duties of fund manager**

The fund manager shall in the performance of its duties act solely in the interests of participants and take reasonable care to protect those interests, and in particular shall –

- (a) manage the property of the collective investment scheme in accordance with –
  - (i) the provisions of these regulations;
  - (ii) the formation documents;
  - (iii) the most recently published collective investment scheme particulars;
  - (iv) in the case of an investment company where the formation documents provide that the directors of the company may give directions, any directions from time to time so given by the directors of the company which are consistent with the provisions of subparagraphs (i), (ii) and (iii);
- (b) take all reasonable steps and exercise all due diligence to avoid the property of the collective investment scheme being invested in contravention of these regulations;
- (c) have prepared in the prescribed form the accounts required by regulation 34 and shall arrange for such accounts to be audited in accordance with regulation 30;
- (d) ensure that the formation documents are made available for inspection by the public in Kenya free of charge at all times during normal office hours, and make copies of such documents available upon the payment of a reasonable fee.

### **24. Restrictions on activities of fund manager**

The fund manager of a collective investment scheme shall not engage in any activity other than the management of collective investment schemes.

**25. Change of address**

A fund manager shall notify the Authority in writing of any intended change of address of its registered office or permanent place of business in Kenya.

**26. Liability of fund manager**

The fund manager shall be liable to the participants for any loss suffered by them as a result of –

- (a) any unjustifiable failure by it to perform its obligations; or
- (b) the improper performance by it of its obligations.

**27. Requests to fund manager and investment adviser**

The fund manager and any investment adviser appointed by the fund manager shall –

- (a) at the request of the custodian forthwith supply the custodian with such information concerning the administration of the collective investment scheme as it may reasonably require; and
- (b) comply with any directions given by the custodian for the purpose of satisfying regulation 14.

**28. Units held by fund manager**

- (1) The fund manager shall keep a daily record of units held by it, distinguishing between different types of unit and showing all acquisitions and disposals by the fund manager and the balance thereof.
- (2) The fund manager shall make the daily record available for inspection by the custodian during normal office hours and likewise supply to the custodian a copy of the record or any part of it on request.

**PART VII**  
**AUDIT OF SCHEMES**

**29. Appointment and eligibility of auditor**

- (1) The auditor of a collective investment scheme shall –

- (a) have a place of business in Kenya;
  - (b) not be a director or controller of the custodian, or the fund manager of the collective investment scheme or, in the case of an investment company, a director or controller of the company, or a partner or employee of such a person; and
  - (c) [be approved by the Authority.]
- (2) An auditor shall cease to hold his appointment as auditor of a collective investment scheme if he ceases to fulfill any of the requirements of paragraph (1), or if the Authority withdraws its approval or if the fund manager with the approval of the custodian, revokes the appointment.
- (3) In the event that the fund manager revokes the appointment of the auditor the company shall forthwith notify the Authority of such revocation and of the reasons for it.
- (4) In the event of a vacancy the fund manager shall as soon as practicable make a new appointment of an auditor who has the approval of the custodian.

**30. Audit of accounts**

The auditor shall audit the accounts required to be included in the annual report by regulation 34 and shall –

- (a) carry out the duties of an auditor in accordance with the requirements of such auditing standards as may be ordered by the Authority; and
- (b) in his report state whether or not in his opinion the accounts give a true and fair view of the financial position of the collective investment scheme as at the end of the accounting period to which they relate.

**31. Communication with Authority**

No duty to which an auditor of a collective investment scheme is subject shall be regarded as contravened by reason of his communicating in good

faith to the Authority, whether or not in response to a request from the Authority, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of the collective investment scheme and which is relevant to any function of the Authority under these regulations.

## **PART VIII SCHEME PARTICULARS AND FINANCIAL REPORTS**

### **32. Documents to be prepared and published by fund managers**

- (1) The fund manager of a collective investment scheme shall prepare and publish in accordance with the provisions of this Part the following documents relating to that collective investment scheme –
  - (a) the collective investment scheme particulars;
  - (b) an annual report for each financial year; and
  - (c) a half-yearly report covering the first six months of each financial year.
- (2) The annual and half-yearly reports shall be published not later than four months and two months respectively from the end of the accounting period to which they relate.

### **33. Contents of collective investment scheme particulars**

- (1) For the purposes of these regulations, the formation documents of a collective investment scheme shall form an integral part of the scheme particulars and shall, except as is provided for by paragraph (3) be annexed thereto.
- (2) The collective investment scheme particulars shall include –
  - (a) particulars of the matters specified in the Fourth Schedule, in so far as such information does not appear in the formation documents; and
  - (b) such further information as may be necessary to enable participants to make an informed judgement as to the investment proposed.

- (3) Notwithstanding paragraph (1), the formation documents need not be annexed to the scheme particulars if participants and potential participants are informed by the scheme particulars –
- (a) that the formation documents will be sent to them free of charge on request; or
  - (b) of the place in Kenya where such documents are available for inspection free of charge.
- (4) The collective investment scheme particulars shall be revised at least once in every twelve months but, if any significant change occurs in the matters stated therein or any significant new matter arises which ought to be stated therein before the collective investment scheme particulars are due for such an annual revision, they shall be revised immediately that change occurs or new matter arises so far as is necessary to take account of that change or matter.

#### **34. Contents of annual and half-yearly reports**

- (1) The annual report of a collective investment scheme shall include –
- (a) a statement of assets and liabilities;
  - (b) an income and distribution account;
  - (c) a capital account;
  - (d) a copy of the report of the auditor of the scheme on the above-mentioned accounts including any qualifications made by the auditor;
  - (e) a report by the fund manager to the participants on the activities of the scheme during the financial year; and
  - (f) a copy of the report by the custodian to the participants as to the manner in which the scheme has been managed during the financial year.

- (2) The financial accounts referred to in paragraph 1(a), (b) and (c) shall comply with the requirements of the Fifth Schedule.
- (3) The reports referred to in paragraph 1(d), (e) and (f) shall comply with the requirements of the Sixth Schedule.
- (4) The auditor and the custodian shall deliver their reports to the fund manager or investment company in good time to enable them to include such reports in the annual report.
- (5) A half-yearly report shall include the matters specified in Parts A and B of the Sixth Schedule.

**35. Publication of collective investment scheme particulars and reports**

- (1) The fund manager of a collective investment scheme shall send to the Authority a copy of the collective investment scheme particulars (including any revision thereof) and of every annual and half-yearly report of the collective investment scheme.
- (2) The fund manager shall supply to the Authority, on request, all information relevant to the collective investment scheme's reports and accounts.
- (3) Any advertisement or other information promoting a scheme in Kenya shall indicate that scheme particulars exist and the places where those particulars may be obtained by members of the public.
- (5) The fund manager shall not effect any sale of units in the scheme to any person unless it has offered to that person free of charge a copy of the scheme particulars, a copy of the most recent annual report (if any) and a copy of any subsequent half-yearly report.
- (5) The fund manager shall make copies of –
  - (a) the scheme particulars;
  - (b) the formation documents (if not annexed to the scheme particulars);
  - (c) the annual and half-yearly reports,

available for inspection by any member of the public free of charge during ordinary office hours at its principal place of business in Kenya and at such other places as may be specified in the collective investment scheme particulars

- (6) The fund manager shall, at the request of any participant in the scheme, supply to that person free of charge a copy of the most recent scheme particulars and annual report and of any subsequent half-yearly report.

## **PART IX GENERAL REQUIREMENTS**

### **36. Publication of prices**

The fund manager shall publish, in such manner as may be approved by the Authority, the issue, sale, repurchase and redemption prices of units in the collective investment scheme on each day that it holds itself out as willing to issue, sell, repurchase or redeem such units, and shall in any event so publish such prices at least twice a month unless the Authority authorises a reduction of the frequency to once a month if such a reduction will not prejudice the interests of participants.

### **37. Units and accumulation units**

- (1) The interests of participants in a collective investment scheme shall consist of units and each unit shall be treated as representing one undivided share in the capital property of the collective investment scheme.
- (2) Where accumulation units are in existence, any accumulation units issued otherwise than in pursuance of the initial offer shall, when issued, each represent the same number (including fractions) of undivided shares in the capital property of the collective investment scheme as each other accumulation unit then in existence.

### **38. Payments out of and into the property of a collective investment scheme**

- (1) The following expenses only may be paid out of the property of a collective investment scheme –
- (a) the costs of dealing in the property of the scheme;

**Securities (Collective Investment Schemes) Regulations 2009**  
**DRAFT**

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- (b) interest on borrowings permitted under the scheme and charges incurred in effecting or varying the terms of such borrowings;
- (c) the costs and expenses incurred in obtaining a listing of the units of the scheme on any securities exchange;
- (d) taxation and duties payable in respect of the property of the scheme, the formation documents of the scheme and the creation and sale of units;
- (e) any costs incurred in modifying the formation documents of the collective investment scheme;
- (f) any costs incurred in the preparation and publication of the scheme particulars and of any amended or supplementary particulars;
- (g) any costs incurred in respect of meetings of the participants;
- (h) any periodic charge payable to the fund manager;
- (i) the fees of the custodian;
- (j) any expenses or disbursements of the custodian which are authorized by the formation documents of the collective investment scheme to be paid out of the property of the scheme;
- (k) the fees and expenses of the auditor;
- (l) the costs incurred in respect of the distribution of income to participants;
- (m) the costs incurred in respect of the printing and posting of certificates;
- (n) the costs incurred in keeping the register;
- (o) costs reasonably incurred in respect of the publication of prices of units and in respect of the publication and distribution of the scheme particulars, annual and interim reports and accounts;

- (p) the costs incurred in the establishment of the collective investment scheme as stated in the scheme particulars, amortised over the period, not exceeding [5] years, specified in those particulars;
  - (q) the costs incurred by the fund manager and permitted by the formation documents; and
  - (r) any fees payable to the Authority.
- (2) All payments or repayments of an income nature properly payable out of or into the property of a collective investment scheme shall be paid out of or into the income property of the scheme.
  - (3) All payments or repayments of a capital nature properly payable out of or into the property of a collective investment scheme shall be payable out of or into the capital property of the scheme.
  - (4) All payments of an income nature properly payable out of the property of a collective investment scheme shall, to the extent that the income property of the scheme is insufficient to meet them when they fall due for payment, be paid out of the capital property of the scheme.

### **39. Creation, etc. of units, repurchases and redemptions**

- (1) The formation documents of a collective investment scheme shall provide for the creation, cancellation, sale, repurchase and redemption of units, the valuation of the property of the collective investment scheme and the calculation of the sale, issue, repurchase and redemption prices of units.
- (2) Subject to this regulation, a participant in a collective investment scheme shall be entitled to have his units repurchased or redeemed in accordance with the terms of the formation documents of the collective investment scheme at a price related to the net value of the property of the property to which the units relate and determined in accordance with those terms.
- (3) A collective investment scheme shall be treated as complying with paragraph (2) if the formation documents require the management or

investment company to ensure that a participant is able to sell his units on a securities exchange at a price not significantly different from that mentioned in paragraph (2).

- (4) The fund manager –
  - (a) may, with the prior agreement of the custodian of the collective investment scheme, or
  - (b) shall, if the custodian of the collective investment scheme so requires, suspend the repurchase or redemption of units at any time for a period not exceeding [4] weeks, if it or the custodian is of the opinion that there is good and sufficient reason to so suspend the repurchase or redemption of units having regard to the interests of the participants.
- (5) The fund manager shall forthwith give notice in writing of any suspension under paragraph (4), stating the reasons therefor, to the Authority.
- (6) The Authority may by notice in writing to the fund manager require it to suspend the repurchase or redemption of units for such period as shall be specified in the notice if the Authority is satisfied that such suspension is necessary in the interests of the participants or in the public interest.

#### **40. Valuation and pricing**

- (1) Offer and redemption prices shall be calculated on the basis of the net asset value of the collective investment scheme divided by the number of units outstanding.
- (2) Such prices may be adjusted by fees and charges for management of the collective investment scheme, which shall first be charged against investment income, next against dealing profits from the issue and redemption of units in the scheme, and lastly against the capital value of the investments of the scheme.
- (3) The amount or method of calculating such fees and charges shall be clearly disclosed in the scheme particulars.

#### **41. Advertising**

- (1) A collective investment scheme shall not issue or cause to be issued any advertisement for or in connection with the scheme unless its contents have been approved by the custodian, and a copy has been lodged with the Authority.
- (2) The Authority may by notice in writing either before or after the issue of an advertisement require the scheme to amend, withdraw or refrain from issuing an advertisement as in its discretion it may determine.
- (3) For the purposes of paragraphs (1) and (2), “advertisement” does not include any publication of the issue, sale, repurchase or redemption prices of units.
- (4) Advertisements of collective investment schemes shall include a warning statement that –
  - (a) the price of units, and the income from them (if the collective investment scheme pays a dividend), may go down as well as up; and
  - (b) in certain circumstances a participant’s right to redeem his units may be suspended.
- (5) Warning statements shall be printed in type of the same size as the rest of the text in the advertisement; notwithstanding this, they may be in smaller text if printed in bold type or prominently outlined.

#### **42. Fees of custodian**

Such fees of the custodian as are paid out of the property of a collective investment scheme shall be calculated and accrue and be paid in the manner determined by the formation documents of the scheme.

#### **43. Inclusion of performance data**

- (1) If performance data or estimated yield is quoted in any collective investment scheme particulars, advertisement or any other invitation to the public to invest, the Authority may require justification of the calculation.

- (2) No forecast of the collective investment scheme's performance may be made (the publication of a prospective yield does not constitute a forecast of performance).

**44. Changes to collective investment scheme documentation**

- (1) Subject to paragraph (2), no alteration may be made to the formation documents of a collective investment scheme except by a special or extraordinary resolution of participants and subject to the prior approval of the Authority.
- (2) The formation documents may be altered by the fund manager and custodian, without consulting participants, provided that the custodian certifies in writing that in its opinion the proposed alteration –
- (a) is necessary to enable compliance with fiscal or other statutory or official requirements;
  - (b) does not materially prejudice participants' interests, does not to any material extent release the custodian, fund manager or any other person from any liability to participants and does not increase the costs and charges payable from the collective investment scheme property; or
  - (c) is necessary to correct a manifest error.

**45. Transactions with connected persons**

- (1) No person shall be allowed to enter on behalf of a collective investment scheme into underwriting or sub-underwriting contracts without the prior consent of the custodian and unless the collective investment scheme provides in writing that all commissions and fees payable under such contracts and all investments acquired pursuant to such contracts shall form part of the collective investment scheme's assets.
- (2) If cash forming part of the collective investment scheme's assets is deposited with the custodian, the fund manager, the investment adviser or with any connected person of these companies (being an institution authorised to accept deposits), interest must be received on

the deposit at a rate not lower than the prevailing commercial rate for a deposit of that size and term negotiated at arm's length.

- (3) All transactions carried out by or on behalf of the collective investment scheme must be at arm's length and, in particular, any transactions between the collective investment scheme and the fund manager, investment adviser, the directors of the collective investment scheme or any of their connected persons as principal may only be made with the prior consent of the custodian.
- (4) No single stockbroker should account for [50%] or more of the collective investment scheme's transactions in value in any one financial year of the scheme.

#### **46. Meetings**

A collective investment scheme shall arrange to conduct general meetings of participants as follows –

- (a) participants must be able to appoint proxies;
- (b) votes should be proportionate to the number of units held, or to the value of units held where there are accumulation units;
- (c) the quorum for meetings at which a special or extraordinary resolution is to be considered shall be the holders of [25 %] of the units in issue, and 10 per cent if only an ordinary resolution is to be considered;
- (d) if within half an hour from the time appointed for the meeting a quorum is not present, the meeting should stand adjourned for not less than 15 days; the quorum at an adjourned meeting will be those persons present in person or by proxy;
- (e) if the possibility exists of a conflict of interest between different classes of participant there should be provision for class meetings;
- (f) an Extraordinary General Meeting shall be called for the following purposes –

- (i) to modify, alter or add to the formation documents, except as provided in regulation 44;
- (ii) to terminate the collective investment scheme (unless the means of termination of the collective investment scheme are stipulated in the formation documents, in which case termination shall be effected in accordance with the provisions of the formation documents);
- (iii) to increase the maximum fees paid to the fund manager, custodian or directors of the collective investment scheme; or
- (iv) to impose other types of fee;
- (g) the directors of the collective investment scheme, the custodian, the fund manager, investment adviser and their connected persons shall be prohibited from voting their beneficially owned shares at, or counted in the quorum for, a meeting at which they have a material interest in the business to be conducted;
- (h) an ordinary resolution may be passed by a simple majority of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting; and
- (i) a special or extraordinary resolution may only be passed by 75 % or more of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting.

## **PART X**

### **RESTRICTIONS ON INVESTMENT POWERS OF SCHEMES**

#### **47. Application of this Part**

- (1) This Part applies to all authorized collective investment schemes.
- (2) In these regulations –

“net asset value” means the net value of the property of the securities collective investment scheme after deducting-

- (a) any outstanding borrowing whether immediately due to be repaid or not;
- (b) any capital sum outstanding on a mortgage of an immovable property to secure money borrowed under regulation 61(2)(b).

#### **48. General investment powers**

- (1) The property of a collective investment scheme may be invested only in accordance with this Part and within any relevant upper limit that is specified.
- (2) The collective investment scheme particulars may restrict –
  - (a) the descriptions of asset in which the property of the collective investment scheme may be invested;
  - (b) the proportion of the capital property of the collective investment scheme to be invested in assets of any description;
  - (c) the description of transactions permitted;
  - (d) the borrowing powers of the collective investment scheme, and any such restrictions shall be observed as if they were included in this Part.

#### **49. Core requirement**

The investments of a collective investment scheme must consist solely of –

- (a) listed securities;
- (b) securities admitted to official listing or traded on or under the rules of a regulated market ;
- (c) recently issued securities provided that -
  - (i) the terms of issue include an undertaking that application will be made for admission to official listing on a securities exchange or to be admitted to listing or traded on a regulated market; and

(ii) such admission is secured within a year of issue.

**50. Spread of investments**

Subject to regulation 51, a collective investment scheme –

- (a) may invest no more than [5%] of its net asset value in the transferable securities issued by any single issuer;
- (b) may acquire no more than [10%] of any class of security issued by any single issuer.

**51. Government and other public securities**

Up to [30%] of a collective investment scheme's net asset value may be invested in Government and other public debt securities of the same issue.

**52. Financial futures**

A collective investment scheme may not enter into any futures contracts save in respect of currencies for hedging purposes.

**53. Warrants and options**

A collective investment scheme may invest no more than [10%] of its net asset value in warrants and options (in respect of transferable securities).

**54. Investment in other collective investment schemes**

- (1) A collective investment scheme may not acquire the units of any other collective investment scheme unless that other scheme is also authorized or recognized by the Authority.
- (2) In addition, such other collective investment scheme's objective may not be to invest primarily in any investment prohibited by this Part and where such collective investment scheme's objective is to invest primarily in investments restricted by this Part, such holding may not be in contravention of the relevant limitation.
- (3) A collective investment scheme may invest in aggregate no more than [5 %] of its net asset value in the units of other authorized collective investment schemes

- (4) A collective investment scheme may acquire no more than [10%] of the units of any single authorized collective investment scheme.
- (5) Notwithstanding paragraphs (2), (3) and (4), a collective investment scheme may invest all of its assets in a single collective investment scheme and be authorized as a feeder collective investment scheme, provided that –
  - (a) the underlying collective investment scheme is authorized by the Authority;
  - (b) the collective investment scheme particulars must state that the collective investment scheme is a feeder collective investment scheme into the underlying collective investment scheme; and
  - (c) the borrowing of the feeder collective investment scheme may not exceed [10 %] of its net asset value and shall be restricted to facilitating redemptions or defraying operating expenses.
- (6) No increase in the overall total of initial charges, the fund manager's annual fee or any other costs and charges borne by the participants or by the collective investment scheme shall result, if the collective investment scheme in which a collective investment scheme invests are managed by the same fund manager or by a connected person of that company.

**55. Prohibition of real estate investments**

A collective investment scheme may not invest in any type of real estate (including buildings) or interests in real estate (including options or rights but excluding shares in real estate companies).

**56. Restriction on lending of money**

- (1) None of the money in the property of any collective investment scheme may be lent.
- (2) Purchasing a debenture is not lending for the purposes of paragraph (1), nor is the placing of money on deposit or in a current account.

**57. Restriction on lending of property other than money**

- (1) None of the property of a collective investment scheme other than money may be lent by way of deposit or otherwise.
- (2) Stock lending transactions are not lending for the purposes of paragraph (1).
- (3) None of the property of the collective investment scheme may be mortgaged (except to secure money borrowed under regulation 61 (2) (b)).

**58. Unlimited liability**

A collective investment scheme may not acquire any asset that involves the assumption of any liability that is unlimited.

**59. Limitations on securities in which directors or officers have interests**

A collective investment scheme may not invest in any security of any class in any company or body if any director or officer of the fund manager owns more than one-half percent of the total nominal amount of all issued securities of that class, or, collectively the directors and officers of the fund manager own more than 5% of those securities.

**60. Limitations on nil-paid or partly paid securities**

The portfolio of a collective investment scheme may not include any security where a call is to be made for any sum unpaid on that security unless that call could be met in full out of cash by the collective investment scheme's portfolio.

**61. Limitations on borrowing**

- (1) Subject to paragraph (2), a collective investment scheme may not borrow.
- (2) A collective investment scheme may borrow –
  - (a) up to a maximum of [10%] of its net asset value provided that the borrowing is temporary; and
  - (b) in the case of an investment company, up to a maximum of [10%] of its net assets provided that the borrowing is to enable

the acquisition of immovable property essential for the direct pursuit of its business (and, together with any borrowing under (a), subject to the aggregate borrowing not exceeding in any case [15%] of the net assets of the investment company).

**62. Prohibition of short selling**

A collective investment scheme may not carry out uncovered sales of securities.

**63. Applicability of restrictions to umbrella schemes**

(1) Subject to paragraph (2), this Part shall not apply to an umbrella collective investment scheme as if it were a single collective investment scheme, but shall apply to each sub-collective investment scheme of the umbrella collective investment scheme as if each such separate part were a single collective investment scheme.

(2) The total collective investment by the sub-collective investment schemes in any class of security issued by any one issuer shall not exceed [10 per cent] of the net asset value of all the sub-collective investment schemes taken as a whole.

**64. Breach of investment limits**

If the investment limits in this Part are breached, the fund manager, as the case may be, shall take as a priority objective all steps as are necessary within a reasonable period of time to remedy the situation, taking due account of the interests of the participants.

**65. Name of collective investment scheme**

If the name of the collective investment scheme indicates a particular objective, geographic region or market, the collective investment scheme shall invest at least 70 % of its non-cash assets in securities to reflect the particular objective or geographic region or market the collective investment scheme represents.

## **FIRST SCHEDULE**

## *regulation 5*

### **CONTENTS OF UNIT TRUST RULES**

#### **1. NAME OF THE UNIT TRUST**

A statement of the name of the scheme being a name consistent with the objectives of the scheme stated in accordance with paragraph 2.

#### **2. INVESTMENT OBJECTIVES**

If an objective of the scheme is investment in a geographic area (including the whole world) a statement of that fact (specifying the area) and, if an objective of the scheme is investment in any economic sector or in all economic sectors, a statement of that fact (specifying the sectors) and, if an objective of the scheme is investment of a particular nature, a statement of that fact (specifying the particular nature).

#### **3. GOVERNING LAW**

A statement that the scheme is established under and governed by the laws of Kenya.

#### **4. TRUST DEED TO BE BINDING AND AUTHORITATIVE**

A statement that the trust deed is binding on each participant as if he had been a party to it and so to be bound by its provisions and authorises and requires the custodian and the fund manager to do the things required of them by the terms of the deed.

#### **5. DECLARATION OF TRUST**

A declaration that -

- (a) the property of the scheme (other than sums standing to the credit of the distribution account) is held by the custodian for and on behalf of the participants *pari passu*, according to the number of units held by each participant or, in a case where income units and accumulation units are both in issue, according to the number of individual shares in

the property of the scheme represented by the units held by each participant, and

- (b) the sums standing to the credit of the distribution account are held by the custodian for the purposes of distribution only.

**6. BASE CURRENCY**

A statement of what currency is the base currency of the scheme.

**7. ANNUAL ACCOUNTING PERIOD**

The dates in the calendar year on which the annual accounting begins and ends which must, in the case of an umbrella scheme, be the same for all the constituent schemes.

**8. ANNUAL INCOME ALLOCATION DATE**

The date in the calendar year (not being later than two months after the date on which the immediately preceding annual accounting period ends) which is to be the annual income allocation date which must, in the case of an umbrella scheme, be the same for all the constituent schemes.

**9. CERTIFICATES**

Provision as to the form and content of and the manner of authenticating certificates evidencing title to a holding of units.

**10. PARTICIPANTS LIABILITY TO PAY**

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

**11. DURATION OF THE SCHEME**

If the scheme is to terminate after the expiration of a particular period, a statement to that effect.

## **12. FUND MANAGER'S PERIODIC CHARGE**

Either -

- (a) a statement authorizing the fund manager to make a periodic charge payable out of the property of the scheme and specifying how it shall accrue and be paid, with a statement of the maximum of that charge expressed as an annual percentage of the value of the property of the scheme; or
- (b) a statement authorizing the fund manager to make a periodic charge payable out of the property of the scheme expressed as a specified annual percentage of the value of the property of the scheme lower than the maximum referred to in sub-paragraph (a) with authority to increase it to a larger percentage of that value (not greater than that maximum) but with effect only from the expiry of three months from the date on which the fund manager gives notice in writing to each participant entered on the register of its intention to do so.

## **13. UMBRELLA COLLECTIVE INVESTMENT SCHEMES: FUND MANAGER'S CHARGE ON AN EXCHANGE OF UNITS**

A statement authorizing the fund manager of an umbrella collective investment scheme to make a charge of a fixed amount on the exchange of units in one constituent part (other than the first such exchange by an participant in any one annual accounting period) and specifying what the maximum of that amount may be.

## **14. CUSTODIAN'S REMUNERATION**

A statement authorizing the fund manager to make payments to the custodian by way of remuneration for its services, relieving the custodian from any obligation to account for those payments to the participants or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

**15. CUSTODIAN'S REMUNERATION CHARGEABLE TO THE PROPERTY OF THE SCHEME**

A statement authorising any payments to the custodian by way of remuneration for its services to be paid (in whole or in part) out of the property of the scheme.

**16. CUSTODIAN'S DISBURSEMENTS**

The descriptions of expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of registrar, which are payable out of the property of the scheme.

**17. FUND MANAGER'S PRELIMINARY CHARGE**

A statement of the maximum percentage of the creation price of a unit in the scheme which may be included in the sale price of that unit calculated by reference that creation price as a preliminary charge receivable by the scheme fund manager.

**18. INITIAL PRICE**

A statement of the initial price of units.

**19. PERIOD OF THE INITIAL OFFER**

A statement of the length of the period of the initial offer.

**20. INVESTMENT IN OTHER SCHEMES MANAGED BY THE FUND MANAGER OR ITS ASSOCIATE**

A statement as to whether or not the property of the scheme may include units in another collective investment scheme which is managed by the fund manager or by another company in the same group as the fund manager or which is managed by any person who is a controller of the fund manager or of which the fund manager is the controller.

## **21. ACCUMULATION UNITS**

Whether under the scheme units may be accumulation units only or accumulation units as well as income units.

## **22. INTERIM INCOME ALLOCATION DATE**

A provision authorising or requiring interim allocations of income and either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the fund manager.

## **23. INVESTMENT ADVISER / FUND ADMINISTRATOR**

If the fund manager may appoint an investment adviser or a fund administrator, a statement authorizing it to do so.

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**SECOND SCHEDULE**

*regulation 6*

**CONTENTS OF ARTICLES OF ASSOCIATION  
OF INVESTMENT COMPANY**

**1. GOVERNING LAW**

A statement that the memorandum and articles of incorporation are made under and governed by the laws of Kenya, or the overseas jurisdiction, as the case may be.

**2. INVESTMENT OBJECTIVES**

If an objective of the scheme is investment in a geographic area (including the whole world) a statement of that fact (specifying the area) and, if an objective of the scheme is investment in any economic sector or in all economic sectors, a statement of that fact (specifying the sectors) and, if an objective of the scheme is investment of a particular nature, a statement of that fact (specifying the particular nature).

**3. BASE CURRENCY**

A statement of what currency is the base currency of the scheme.

**4. ANNUAL ACCOUNTING PERIOD**

The dates in the calendar year on which the annual accounting begins and ends which must, in the case of an umbrella collective investment scheme, be the same for all the constituent collective investment schemes.

**5. ANNUAL INCOME ALLOCATION DATE**

The date in the calendar year (not being later than two months after the date on which the immediately preceding annual accounting period ends) which is to be annual income allocation date which must, in the case of an umbrella collective investment scheme, be the same for all the constituent collective investment schemes.

**6. NO PARTLY PAID SHARES**

A provision that no partly paid units may be issued.

**7. INVESTMENT COMPANY'S PERIODIC CHARGE**

Either -

- (a) a statement authorising the company to make a periodic charge payable out of the property of the scheme and specifying how it should accrue and be paid with a statement of the maximum of that charge expressed as an annual percentage of the value of the property of the scheme; or
- (b) a statement authorising the company to make a periodic charge payable out of the property of the scheme expressed as a specified annual percentage of the value of the property of the scheme lower than the maximum referred to in sub-paragraph (a) with authority to increase it to a larger percentage of that value (not greater than that maximum) but with effect only from the expiry of three months from the date on which the scheme fund manager gives notice in writing to each participant entered on the register of its intention to do so.

**8. CUSTODIAN'S REMUNERATION**

A statement authorising the fund manager to make payments to the custodian by way of remuneration for its services, relieving the custodian from any obligation to account for those payments to the participants or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

**9. CUSTODIAN'S REMUNERATION CHARGEABLE TO THE PROPERTY OF THE COLLECTIVE INVESTMENT SCHEME**

A statement authorising any payments to the custodian by way of remuneration for its services to be paid (in whole or in part) out of the property of the scheme.

## **10. CUSTODIAN'S DISBURSEMENTS**

The descriptions of any expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of registrar, which are payable out of the property of the scheme.

## **11. INITIAL PRICE**

A statement of the initial price of units.

## **12. ACCUMULATION UNITS**

Whether under the scheme units may be accumulation units only or accumulation units as well as income units.

## **13. INTERIM INCOME ALLOCATION DATE**

If interim allocations of income are to be authorised or required, a provision so stating and also either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the scheme fund manager and directors.

## **14. INVESTMENT ADVISER / FUND ADMINISTRATOR**

If the fund manager may appoint an investment adviser or fund administrator, a statement authorizing it to do so.

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**THIRD SCHEDULE**

*regulation 7*

**INFORMATION TO BE CONTAINED IN APPLICATION  
FOR AUTHORIZATION OR RECOGNITION**

**General details of the collective investment scheme**

1. Name of the collective investment scheme.
2. Names of the sub-collective investment schemes (if any).
3. Structure of the collective investment scheme.
4. Applicable Act and the date and country of establishment/incorporation.
5. Quotation on any securities exchange and authorization granted by other regulatory bodies.
6. Undertakings given to other regulatory bodies.
7. Launch: date and place.
8. Dealing: daily/weekly/other.
9. Valuation of assets: daily/weekly/other.
10. Pricing: forward/historic/other.
11. Investment plans to be offered in Kenya.

**For each collective investment scheme or sub-collective investment scheme**

12. (a) Fee structure -
  - (i) level of all charges payable by participant; and
  - (ii) level/basis of calculation of all charges payable by the collective investment scheme.

- (b) For equity or bond collective investment schemes -
  - (i) investment objective and borrowing powers; and
  - (ii) currency of denomination.
- (c) Minimum initial subscription and the minimum subsequent holding.

### **Details of the parties to the collective investment scheme**

#### **13. The fund manager -**

- (a) Name
- (b) Registered/business address.
- (c) Name of the ultimate holding company.
- (d) Previously approved by the Authority to manage authorised collective investment schemes? If no, the resumes of the directors and most recent audited financial report.
- (e) Person(s) for contact with the Authority.

#### **14. In the case of an investment company, the resumes of the directors of the collective investment scheme and person(s) for contact.**

#### **15. The custodian**

- (a) Name.
- (b) Registered/business address.
- (c) Name of the ultimate holding company.
- (d) Previously approved by the Authority as custodian of authorised collective investment schemes? If no, names of the directors and most recent audited financial report.

(e) Person(s) for contact with the Authority.

**16.** The investment adviser (if any)

(a) Name.

(b) Registered/business address.

**17.** The fund administrator (if any)

(a) Name

(b) Registered/business address

**18.** For the custodian, fund manager, fund administrator and investment adviser -

(a) which, if any, of these companies are connected persons.

(b) name anyone who holds appointments, as director or officer, with more than one of these companies.

**19.** The auditor

(a) Name.

(b) Registered/business address.

**20.** The principal stockbroker (if any)

(a) Name.

(b) Registered/business address.

(c) The approximate percentage of the scheme's transactions in value of securities carried out by the principal stockbroker within the latest financial year of the scheme.

- (d) Whether the custodian, the directors of the scheme, the fund manager, fund administrator or the investment adviser is a connected person of the principal stockbroker.

**21. Lawyers in Kenya (if any)**

- (a) Name.
- (b) Person(s) for contact with the Authority.

## **FOURTH SCHEDULE**

*regulation 33(2)*

### **INFORMATION TO BE DISCLOSED IN COLLECTIVE INVESTMENT SCHEME PARTICULARS**

(Note: This list is not intended to be exhaustive. The scheme is obliged to disclose all information that may be necessary for participants to make an informed judgement.)

#### **Constitution of the scheme**

1. Name, registered address and place and date of creation of the scheme, with an indication of its duration if limited.

#### **Investment objectives and restrictions**

2. Details of investment objectives and policy, including summary of the investment and borrowing restrictions.

If the nature of the investment policy so dictates, a warning that investment in the scheme is subject to abnormal risks, and a description of the risks involved.

#### **Principals**

3. The names and registered addresses of the following parties (where applicable) -
  - (a) the fund manager and its board of directors;
  - (b) the custodian;
  - (c) the investment adviser;
  - (d) the fund administrator;
  - (e) the auditors; and
  - (f) the lawyers to the scheme.

### **Characteristics of units**

4. Minimum investment (if any).
5. A description of the different types of units, including their currency of denomination.
6. Form of certification.
7. Frequency of valuation and dealing, including dealing days.

### **Application and redemption procedures**

8. The name(s) of the daily newspaper(s) in which prices will be published.
9. Procedure for subscribing/redeeming units, and in the case of umbrella collective investment schemes, conversion of units.
10. The maximum interval between the request for redemption and the despatch of the redemption proceeds.
11. A summary of the circumstances in which dealing in units may be deferred or suspended.
12. It must be stated that no money shall be paid to any intermediary in Kenya who is not duly licensed by the Authority.

### **Distribution policy**

13. The distribution policy and the approximate dates on which dividends (if any) will be paid (if applicable).

### **Fees and charges**

14. (a) the level of all fees and charges payable by a participant, including all charges levied on subscription and redemption, and conversion (in the case of umbrella collective investment schemes); and

- (b) the level of all fees and charges payable by the collective investment scheme, including management fees, custodian fees and start-up expenses.
- 15.** Disclosure of entitlement to brokerage or other transaction benefits of any connected persons to the scheme.

### **Taxation**

- 16.** Details of Kenya and principal taxes levied on the scheme's income and capital, including tax, if any, deducted on distribution to participants.

### **Reports and accounts**

- 17.** The date of the scheme's financial year.
- 18.** Particulars of what reports will be sent to registered participants and when. If there are bearer units in issue, information must be given on where in Kenya reports can be obtained.

### **Warnings**

- 19.** The following statement and warning must be prominently displayed in the scheme particulars -
- (a) "Important - if you are in any doubt about the contents of this offering document, you should consult your stockbroker, bank, fund manager, lawyer, accountant or other financial adviser";
  - (b) a warning that the price of units and the income from them (where income is distributed) may go down as well as up.

### **General information**

- 20.** A list of formation documents and an address in Kenya where they can be inspected free of charge or purchased.
- 21.** The date of publication of the scheme particulars.

- 22.** A statement that the fund manager accepts responsibility for the information contained in the scheme particulars as being accurate as at the date of publication.

**Termination of collective investment scheme**

- 23.** A summary of the circumstances (of any) in which the scheme can be terminated.

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## **FIFTH SCHEDULE**

*regulation 34(2)*

### **CONTENTS OF FINANCIAL ACCOUNTS**

#### **General**

1. The financial accounts must contain all the information required in this Schedule; interim reports must at least contain the Statement of Assets and Liabilities and the Investment Portfolio. Where the scheme has paid or proposes to pay an interim dividend, the amount of dividend should be disclosed.
2. All accounts must contain comparative figures for the previous period except for the Investment Portfolio.
3. The items listed under the Statement of Assets and Liabilities, Revenue Statement, Distribution Statement, Statement of Movements in Capital Account and the Notes to the Accounts, where applicable, must be disclosed.

#### **Statement of Assets and Liabilities**

4. The following must be separately disclosed -
  - (1) total value of investments
  - (2) bank balances
  - (3) formation costs
  - (4) dividends and other receivables
  - (5) amounts receivable on subscription
  - (6) bank loans and overdrafts or other forms of borrowing
  - (7) amounts payable on redemption
  - (8) distributions payable

- (9) total value of all assets
- (10) total value of all liabilities
- (11) net asset value
- (12) number of units in issue
- (13) net asset value per unit

### **Revenue Statement**

- 5. (1) Total investment income net of withholding tax, broken down by category.
- (2) Total other income, broken down by category.
- (3) Equalisation on issue and cancellation of units.
- (4) An itemised list of various costs which have been debited to the scheme including -
  - (a) fees paid to the fund manager
  - (b) remuneration of the custodian
  - (c) amortization of formation costs
  - (d) directors' fees and remuneration
  - (e) safe custody and bank charges
  - (f) auditors' remuneration
  - (g) interest on borrowings
  - (h) fees paid to securities adviser, if any
  - (i) other amounts paid to any connected persons of the collective investment scheme
  - (j) legal and other professional fees
  - (k) any other expenses borne by the scheme
- (5) Taxes
- (6) Amounts transferred to and from the capital account

- (7) Net income to be carried forward for distribution

### **Distribution Statement**

- 6.** (1) Amount brought forward at the beginning of the period
- (2) Net income for the period
- (3) Interim distribution per unit and date of distribution
- (4) Final distribution per unit and date of distribution
- (5) Undistributed income carried forward

### **Statement of Movements in Capital Account**

- 7.** (1) Value of the scheme as at the beginning of the period
- (2) Number of units issued and the amounts received upon such issuance (after equalization if applicable)
- (3) Number of units redeemed and the amount paid on redemption (after equalization if applicable)
- (4) Any items resulting in an increase/decrease in value of the scheme including -
- (a) Surplus/loss on sale of investments
- (b) Exchange gain/loss
- (c) Unrealised appreciation/diminution in value of investments
- (d) Net income for the period less distribution
- (5) Amounts transferred to and from the revenue account
- (6) Value of the scheme as at the end of the period

## **Notes to the Accounts**

**8.** The following matters shall be set out in the notes to the accounts -

- (1) Principal accounting policies
  - (a) the basis of valuation of the assets of the scheme including the basis of valuation of unquoted and unlisted securities
  - (b) the revenue recognition policy regarding dividend income and other income
  - (c) foreign currency translation
  - (d) the basis of valuation of forward foreign exchange and futures contracts
  - (e) the basis of amortization of formation costs
  - (f) taxation
  - (g) any other accounting policy adopted to deal with items which are judged material or critical in determining the transactions and in stating the disposition of the scheme.

Any changes to the above accounting policies and their financial effects upon the accounts should also be disclosed.

(2) Transactions with Connected Persons

The following transactions should be disclosed:-

- (a) details of all transactions entered into during the period between the scheme and the scheme fund manager, securities adviser, the directors of the scheme or any entity in which these parties or their connected persons have a material interest; and

- (b) name of any director of the scheme or any connected person of such a director if any such person becomes entitled to profits from transactions in shares or from management of the scheme and the amount of profits to which such person becomes entitled.

(3) Borrowings

State whether the borrowings are secured or unsecured and the duration of the borrowings.

(4) Contingent liabilities and commitments

Details of any contingent liabilities and commitments of the scheme.

- (5) If the free negotiability of any asset is restricted by statutory or contractual requirements, this must be stated.

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**SIXTH SCHEDULE**

*regulation 34(3)*

**ANNUAL AND HALF-YEARLY REPORTS**

**A: Report of the fund manager**

The following matters shall be set out in every annual and half-yearly report of the fund manager –

1. The names and addresses of the following -
  - (a) the company;
  - (b) the custodian;
  - (c) any investment adviser;
  - (d) any fund administrator;
  - (e) the auditor.
2. The objectives of the scheme.
3. The company's policy for achieving the objectives of the scheme.
4. A statement that the scheme is an authorised or recognized scheme within the meaning of the Act.
5. A statement as to which category of scheme the collective investment scheme belongs. In the case of an umbrella collective investment scheme, this statement is to be made separately in relation to each constituent part.
6. A review of the company's investment activities during the period to which the report relates.
7. Particulars of any significant change in the scheme particulars made since the making of the last report by the company.
8. A statement of the amount (if any) to be distributed to participants or accumulated in respect of the period in question.

9. A statement of the total number of the units of each type in existence or deemed to be in existence at the beginning of the period to which the report relates and at the end of that period.
10. A statement of the mid-market value per unit of the property of the scheme at the beginning of the period to which the report relates and at the end of that period.
11. A statement of any subdivision or consolidation of units which has been effected during the period to which the report relates.
12. Any other significant information which would enable participants to make an informed judgement on the development of the activities of the scheme during this period and the results of those activities as at the end of that period.

### **B: Portfolio statement**

The following shall be set out in the portfolio statement included in the report to the company -

- (a) the changes in the investments in the property of the scheme since the end of the preceding accounting period showing whether they are new holdings, or changes in existing holdings, and giving a description of each holding and showing the net changes in the number of units in or the nominal value of that holding since the end of the preceding accounting period;
- (b) the total cost of purchases of investments since the last portfolio statement;
- (c) the total proceeds of sales of investments since the last portfolio statement.

### **C: Comparative table**

The following matters shall be set out in the comparative table included in the report of the company -

1. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year -
  - (a) the total net asset value;
  - (b) the net asset value per unit.
  
2. A performance record over the last ten financial years or, if the scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing the highest issue price and the lowest redemption price of the units during each of those yeashillings

### **D: Report of the auditor**

The report of the auditor to the holders for any annual accounting period shall state -

- (a) whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with these regulations and the formation documents;
- (b) without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the financial position of the scheme as at the end of that period;
- (c) if the auditor is of the opinion that proper accounting records have not been kept by the company or that the accounts are not in agreement with the company's accounting records, that fact together with any resulting qualification;
- (d) if the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the

purposes of his audit, that fact together with any resulting qualifications; and

- (e) if the auditor is of the opinion that the information given in the report of the scheme fund manager for that period is inconsistent with the accounts, that fact together with any resulting qualifications.

### **E: Report of the custodian**

The report of the custodian to the participants for any annual accounting period shall state whether in the custodian's opinion the company has managed the scheme in that period -

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the company and custodian by the formation documents, by the scheme particulars and by these regulations; and
- (b) otherwise in accordance with the provisions of the formation documents, the scheme particulars and these regulations; and if the company has not done so, the respects in which it has not done so and the steps which the custodian has taken in respect thereof.