



**Formation Documents Disclosure Requirements- Unit Trust**  
*Regulation 6 and Part II- Second Schedule Capital Markets (Collective Investment Scheme Regulations) 2023*

<b>Para.</b>	<b>Requirement</b>	<b>Met Y, N or N/A</b>	<b>Comments</b>
1.	The registration documents, trust deed and any supplemental deed thereto shall contain a statement of the name of the scheme which shall be a name not inconsistent with the approved scheme's status		
2.	A statement—  a) in all cases of the relevant category of approved collective investment schemes to which the scheme belongs, in so far as categories are specified, under scheme regulations; and  b) in the case of an umbrella fund, identifying, in the case of each constituent part, to which of the relevant categories in so far as categories are specified, that part would belong if it were itself the subject of a separate approval under Regulation 15.		
3.	A statement that the registration documents are made under and governed by the laws of Kenya		
4.	A statement that the registration documents are binding on each participant as if he or she had been a party to it and is bound by its provisions and authorises and requires the trustee and the fund manager to do the things required or permitted of them by the terms of the deed		
5.	A statement of what currency is the base currency of the scheme		

6.	A statement that, subject to any restriction in these regulations or the trust deed, the scheme has the power to invest in any securities market approved by the Authority		
7.	<p>A declaration that, subject to the provisions of the registration documents and all scheme regulations for the time being in force;</p> <p>a) the property of the scheme, other than sums standing to the credit of the distribution account, is held by the trustee in trust for the participants on an equal basis according to the number of participatory interests held by each participant or, in the case where income and accumulation participatory interests are both in issue, according to the number of undivided shares in the property of the scheme represented by the participatory interests held by each participant</p> <p>b) the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in accordance</p>		
8.	A provision that a participant is not liable to make any further payment after he or she has paid the purchase price of his or her units, and that no further liability can be imposed on him or her in respect of the units which he or she holds.		
9.	If the scheme is to terminate after the expiration of a particular period, a statement to that effect		
10.	<p>A statement-</p> <p>(a) authorising the fund manager to make a preliminary charge to be included in the issue price of a unit; and</p> <p>(b) specifying a maximum to that charge expressed either as a fixed amount in the base currency or as a percentage of the creation price of a unit</p>		
11.	A statement authorising the fund manager to make a periodic charge payable out of the property of the scheme, and any statement under this paragraph must where applicable		

	<p>(a) provide for the charge to be expressed as an annual percentage, to be specified in the incorporation documents and taken in accordance with this Schedule, of the value of the property of the scheme and the statement may provide for the addition to the charge of value added tax, if any, payable on it;</p> <p>(b) specify the accrual intervals and how the charge is to be paid; and</p> <p>(c) specify a maximum to that charge expressed as an annual percentage to the value of the assets under management.</p>		
12.	A statement authorising the fund manager of an umbrella fund to make a percentage charge or a charge of a fixed amount on the exchange of units in one constituent part for units in another (other than the first such exchange by a participants in any one annual accounting period) and specifying what the maximum of that percentage or amount may be		
13.	A statement authorising the fund manager to charge on redemption out of the proceeds of redemption.		
14.	<p>A statement authorising any payments to the trustee by way of remuneration for his or her services to be paid, in whole or in part, out of the assets under management and</p> <p>(a) specifying the basis on which that remuneration is to be determined;</p> <p>(b) how it should accrue and be paid; and</p> <p>(c) the maximum remuneration payable</p>		
15.	If there are to be any restrictions on the geographic areas or economic sectors in which investment of the assets under management may be made, a statement of what they are.		
16.	A provision that participants in the scheme apart from the fund manager shall be confined to persons who hold participatory units such that any gain accruing upon their disposal at any time will be wholly exempt		

	from income tax in Kenya otherwise than by reason of residence		
17.	<p>The trust deed shall contain—</p> <p>(a) a provision authorising the issue of a document evidencing ownership accompanied by a statement of how the participants are to identify themselves; and</p> <p>(b) a provision authorising the trustee to charge a fee for issuing any document recording, or for amending, an entry on the register, otherwise than on the issue or sale of participatory interests</p>		
18.	<p>Any provision—</p> <p>(a) dealing with a matter not referred to in this Part, the Schedule the inclusion of which serves to enable the scheme, the fund manager or the trustee to obtain any privilege or power conferred by these regulations; or</p> <p>(b) which is expressly contemplated in these regulations</p>		
19.	Any provision, which in all material respects has the same effect as a provision contained, at the time when the provision is made, in this Act or in scheme regulations		
20.	A provision authorising grouping for equalisation under these regulations and, if grouping is to be permitted for periods within an accounting period, what those periods are to be		
<b>PART II</b>	<b>FUND MANAGER</b>		
21.	<p><b>Appointment of a Fund Manager</b> A declaration that the scheme will at all times be managed and administered by a fund manager licensed by the Capital Markets Authority.</p>		
22	<p><b>Fund Manager's capital</b> A provision that the fund manager shall at all times maintain a paid-up share capital as prescribed by the Authority.</p>		
23	<p><b>Duties of a Fund Manager</b> A description of duties to be carried out by the fund manager.</p>		
24	<b>Reports by Fund Manager to Trustee</b>		

	A provision that expressly requires the fund manager to make periodic reports to the trustee, board of directors and the Authority.		
25	<b>Fund Manager's powers</b> A provision detailing the powers and discretions of the Fund Manager.		
26	<b>Documents to be prepared by the Fund Manager</b> A provision detailing the documents to be prepared for signature and execution by the trustee.		
27	<b>Retirement, Substitution, Suspension or Liquidation of Fund Manager</b> Provisions on the circumstances under which the fund manager may retire, be replaced or suspended.		
28	<b>Removal of Manager</b> Provisions on the circumstances under which the fund manager may be suspended.		
<b>PART III</b>	<b>TRUSTEE</b>		
29	<b>Appointment of Trustee</b> A provision setting out the name, address and the terms and conditions of service for the trustees.		
30	<b>Trustee's share capital</b>		
31	<b>Role, powers, duties and obligations of trustee</b>		
32	<b>Registration and retention of securities by the trustee</b>		
33	<b>Legal proceedings by or against the trustee</b>		
34	<b>Trustee's remuneration</b> A statement authorizing any payments to the trustee by way of remuneration for his services to be paid (in whole or in part) out of the collective investment scheme portfolio and specifying the basis on which that remuneration is to be determined and how it should accrue and be paid.		
35	<b>Retirement and appointment of new trustee</b> Provisions on the circumstances under which the trustee may retire or be replaced.		
36	<b>Removal of trustee</b> Provisions on the circumstances under which the trustee may be removed.		
<b>PART IV</b>	<b>CUSTODIAN</b>		
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38	Duties of a custodian		

39	Records to be maintained by a custodian		
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44	The creation of units		
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47	Details on the method used for valuation of units or shares		
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54	Winding up of a unit trust or mutual fund		
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56	Manner in which collective investment scheme portfolio to be dealt with on liquidation of fund manager		
57	Termination of a sub-fund of an umbrella company		
58	<b>Composition of funds.</b>  In establishing the different funds, a scheme shall be guided by the following criteria on composition of the funds		
	a) Money Market Fund: Invests only in interest-earning money market instruments which have a maximum weighted average tenor of eighteen months and includes credit rated or guaranteed commercial papers, Government securities, call deposits, certificate of deposit including fixed		

	deposits in commercial banks and deposit taking institutions and any other like instruments as specified by the Central Bank of Kenya from time to time		
	b) Equity Fund: The fund shall invest a minimum of 60% of the market value of its asset under management in equities listed locally on a securities exchange, listed in other regulated exchanges or unlisted equities at all times. Any funds not invested in equities shall only be invested in cash and cash equivalents		
	c) Fixed Income Fund: The fund shall invest a minimum of 60% of the market value of its asset under management in fixed income securities at all times. Any funds not invested in fixed income instruments shall only be invested in cash and cash equivalents. Fixed-income securities refer to financial instruments with a fixed maturity and may or may not make periodic payments of interest and the principal is paid at maturity;		
	d) Balanced Fund: The fund shall invest in all eligible asset classes at all times provided that investments in money market, equities and fixed income instruments shall each have a maximum exposure of 60% of the market value of assets under management		
	<p>Provided that—</p> <p>(i) investments in unlisted securities in East African Community partner states shall be up to a maximum of 10% of Assets Under Management;</p> <p>(ii) a fund may invest in a money market fund or another fund of similar constituent assets subject to a maximum limit of up to 20%;</p> <p>(iii) investments in off-shore listed securities shall be a maximum of 10% of Assets under Management;</p>		

	<p>(iv) investments in off-shore unlisted securities shall be a maximum of 5% of Assets under Management;</p> <p>(v) other alternative investments to a maximum of 10% where applicable;</p> <p>(vi) the market value of an investment in an interest bearing account, financial product or instrument of or issued by any single bank or financial institution or insurance company or a combination of any such investment in a single bank, financial institution or insurance company shall not in aggregate exceed 25% of the Assets under Management;</p> <p>(vii) the market value of a collective investment scheme's holding of securities relating to any single issuer shall not exceed twenty-five per cent of the collective investment scheme's properties Assets under Management;</p> <p>(viii) investment in a related company shall be limited to 10% of the Assets under Management; and</p> <p>(ix) no assets under management in any of the funds provided in paragraphs (a) (b) (c) or (d) may be leveraged.</p>		
	<p>e) Special Funds- these shall be based on the fund managers' investment strategy in the investment policy statement which shall be clearly described in the information memorandum to be approved by the Authority on a case-by-case basis subject to continuous disclosures to investors:</p> <p>Provided that—</p> <p>(i) the market value of an investment in an interest-bearing account, financial product or instrument of any single bank or financial institution or insurance company or a combination of any such investment in a single bank, financial institution or insurance</p>		



	<p>company shall not in aggregate exceed 25% of the Assets under Management;</p> <p>(ii) investment in alternative investments be at a maximum of 80%;</p> <p>(iii) the portfolio may be leveraged to a ratio to be determined by the fund manager and such ratio and stop loss measures shall be disclosed in the information memorandum and the investment policy statement;</p> <p>(iv) investment in a related company shall be limited to 25% of the Assets under Management; and</p> <p>(v) minimum investment of Kenya Shillings one hundred thousand for each investor and maintenance of the same throughout the duration of the investment save for where the value may decline due to market fluctuations.</p> <p>(2) Notwithstanding subregulation (1), the assets under management may consist of cash and cash equivalents, where this may reasonably be regarded as necessary in order to enable—</p> <p>(a) redemption of participatory interests;</p> <p>(b) efficient management of the scheme in accordance with its objectives; or</p> <p>(c) other purposes which may reasonably be regarded as ancillary to the objectives of the scheme.</p> <p>(3) A scheme may only participate in an underwriting or accept placings if the same is—</p> <p>(a) disclosed in the formation documents; and</p> <p>a) (b) approved by the trustee.</p>		
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<sup>i</sup> The checklists issued by the Capital Markets Authority Kenya(CMA) are intended to provide clarity and assistance in navigating regulatory requirements. However, it is important to note that these checklists are not intended to serve as a substitute for reading and comprehending the regulations themselves. Individuals and

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entities subject to regulatory oversight should familiarize themselves with the applicable laws, rules, and regulations, and seek appropriate legal or professional advice as needed. The checklists provided by the Capital Markets Authority are meant to supplement, not replace, a thorough understanding of regulatory obligations