

(Legislative Supplement No. 77)

LEGAL NOTICE NO. 173

THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (COLLECTIVE INVESTMENT
SCHEMES) REGULATIONS, 2023

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THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12 (1) (f) of the Capital Markets Act, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE CAPITAL MARKETS (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 2023

1. These Regulations may be cited as the Capital Markets (Collective Investments Schemes) Regulations, 2023. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“accounting reference date” means the date stated in the most recently published information memorandum as the date on which the scheme’s annual accounting period is to end in each year;

“accrual interval” in relation to the fund manager periodic charge, means the interval specified in the incorporation documents over which the charge accrues;

“authorized corporate director” in relation to a collective investment scheme constituted as a corporate body means the director, being a corporate body, of the company responsible on a day-to-day basis for carrying out such functions as may be required by the Act or the incorporation documents to be carried out by such a director;

“authorized scheme” means a scheme approved by the Authority;

“business day”, in relation to anything done or to be done in Kenya means any day other than a Saturday, a Sunday or a public holiday in Kenya and in relation to anything done or to be done by reference to a market outside Kenya, means any day on which that market is normally open for business;

“cancellation price” means the price for each participatory interest payable by the fund manager on the cancellation of participatory interests;

“cash equivalent” means money, deposits or investments which fall within any of the following—

(a) money deposited with an eligible institution which is in—

(i) a current account; or

(ii) a deposit account, if the money can be withdrawn immediately and without payment of a penalty exceeding

(seven) days' interest calculated at ordinary commercial rates;

- (b) certificates of deposit issued by an eligible institution if immediately redeemable at the option of the participant;
- (c) Government and other public securities, if redeemable at the option of the holder; or
- (d) a bill of exchange issued by any Government or body.

“change in control” in relation to a fund manager means change in the controlling interest or change in legal form;

“class” in relation to participatory interests, means, according to the context, all of the participatory interests related to a single fund or a particular class of participatory interests in a single sub-fund;

“class meeting” means a separate meeting of holders of a class of participatory interests;

“collateral” means any form of security, guarantee or indemnity provided by way of security for the discharge of any liability arising from a transaction;

“closed-ended fund” means a scheme approved by the Authority which is—

- (a) constituted in a legal form;
- (b) with a fixed capital;
- (c) which pools funds from subscribers by private placement and invest them in a portfolio as approved by the Authority.

“constituent part” in relation to an umbrella fund, means one of the separate parts into which the assets under management of the umbrella fund is divided;

“controller”, in relation to a body corporate, means a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of fifteen per cent or more of the voting power at any general meeting of the body corporate or another body corporate of which it is a subsidiary and, for this purpose, associate means any subsidiary of that body corporate and any employee of that subsidiary;

“creation price” means the price for each participatory interest payable by the fund manager to the trustee on the creation of participatory interests;

“custodian” means an entity licensed by the Authority to hold in custody funds, securities, financial instruments, or documents of title to assets registered in the name of participants of assets under management;

“dealing day” means the period in each business day or in each other day when the fund manager is open for business during which the fund manager keeps his or her premises or any of them open to the public or otherwise publicly available for business of any kind;

“dealing period” means the period between one valuation point and the next;

“dilution” means the amount of dealing costs incurred, or expected to be incurred, by the scheme to the extent that they may reasonably be expected to result, or have resulted, from the acquisition or disposal of investments by the scheme as a consequence of the increase or decrease in the scheme’s cash resources resulting from the issue or cancellation of participatory interests over a period

“eligible institution” means an institution approved by the Authority for the purposes stated in these Regulations;

“extraordinary resolution” has the meaning in regulation 139;

“final account” has the meaning in regulation 161;

“formation documents” means—

- (a) in relation to a collective investment scheme constituted as a corporate body, including an investment company, the memorandum and articles of incorporation;
- (b) in relation to a collective investment scheme constituted as a trust the trust deed and any supplemental deed thereto; and
- (c) in relation to any other collective investment scheme, such documents as may be directed by the Authority.

“intermediary services platform” means any electronic application or otherwise which facilitates the marketing and distribution of approved collective investment schemes other than a platform that is deployed by an existing licensed institution for the purpose of improving efficiency;

“intermediary service platform provider” means any person who operates an intermediary services platform and acts as an intermediary between the fund manager and the investors;

“investment certificate” means a physical or digital evidence of ownership of participatory interests of any type—

- (a) which contains a statement that the holder of the certificate is entitled to the number of participatory interests of that type represented by the certificate; or
- (b) delivery of which is otherwise sufficient to transfer title to the participatory interests concerned;

“investment policy statement” means the document which provides the general investment goals and objectives and describes the strategies that the fund manager should employ to meet the objectives”

“investor” means a holder or prospective holder of participatory interests in a collective investment scheme;

“issue” in relation to participatory interests, means the sale of participatory interests by the fund manager;

“issue price” means the fund manager’s price for issue under regulation 90;

“leverage” means any method by which a fund manager increases the exposure of the scheme it manages whether through borrowing of cash or securities or leverage embedded in a derivative position or by any other means;

“listed security” means a security that is traded through a securities exchange;

“marketing” in relation to participatory interests in a registered collective investment scheme, means—

- (a) issuing or causing to be issued any advertisement inviting persons to become or offer to become participants in that scheme, or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in that scheme, or
- (b) advising or procuring any person to become a participant in that scheme and “to market” shall be construed accordingly;

“mortgage” includes a charge or other similar security created on or over an immovable property;

“net asset value” means the value of a fund’s assets less the value of its liabilities (including such provisions and allowance for contingencies);

“participant” means the holder of a participatory interest;

“participatory interest” means any interest or share, undivided or otherwise, whether called a participatory interest, share, unit or by any other name, and whether the value of such interest, unit or share remains constant or varies from time to time, which may be acquired by an investor in a portfolio;

“price” in relation to a participatory interest, means the price of a participatory interest calculated in accordance with Part VI of these Regulations before any adjustment for the effect of dilution;

“public” in respect of an invitation to purchase participatory interests in a collective investment scheme refers to members of the public at large, provided that any restriction as to type of investor shall not affect the public nature of the offer;

“reconstruction” has the meaning in regulation 156;

“recognised scheme” means a scheme managed in and licensed or authorized under the law of a country or territory outside Kenya and approved by the Authority to solicit investments in such scheme from members of the public of Kenya;

“redemption”, in relation to participatory interests in a scheme, means the purchase of participatory interests from a participant by the fund manager or otherwise;

“redemption charge” has the meaning in paragraph 19 of the Third Schedule;

“sale” in relation to participatory interests means the sale of participatory interests by the fund manager or otherwise;

“shareholder” means a participant;

“scheme” means a collective investment scheme;

“scheme advertisement” means an advertisement inviting persons to participate or to offer to participate in a collective investment scheme or to exercise any right conferred by a scheme to acquire, dispose of, underwrite or convert participatory interests in a scheme or containing information calculated to lead directly or indirectly to persons doing so;

“scheme documents” means the incorporation documents and information memorandum;

“short sale” has the meaning in the Capital Markets (Securities Lending, Borrowing and Short Selling) Regulations, 2017, and “short-selling” shall be interpreted accordingly;

L.N 295/2017

“sub-fund” means a part of the assets under management of an umbrella fund that is pooled separately;

“trustee” means the person holding title to the assets of a collective investment scheme on trust for the participants and oversees the operations of the scheme and includes the board of directors for an investment company or the manager for a Limited Liability Partnership;

“umbrella fund” means a scheme which provides for the contributions of participants to be pooled in separate sub funds, whether or not participants in separate sub funds are entitled to exchange rights in one sub fund for rights in another;

“unit” means a participatory interest;

“unlisted security” means a security that is not traded through a securities exchange; and

“valuation point” means the valuation point fixed by the fund manager under regulation 99(1)(f).

3. (1) These Regulations apply to collective investment schemes constituted in Kenya which pools funds either from the public or by private arrangement. Application

(2) A closed end fund, including an investment company with fixed capital whose participating interests are offered to members of the public shall be listed on a securities exchange.

(3) Where any arrangement provides for pooling of funds in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

4. (1) A person shall not—

- (a) establish or operate a collective investment scheme or purport to establish or operate such a scheme, unless the scheme is approved and that person is licensed by the Authority as a fund manager or an investment bank;
- (b) establish or operate an intermediary service platform without a license from the Authority;
- (c) advertise or cause to be advertised in Kenya, a scheme advertisement unless that person is a licensed person, and the contents of the advertisement have been approved by the trustee of the scheme and complies with Part XIV of these Regulations; or

Restriction on establishment and operation

- (d) advise or procure any person to become a participant in a collective investment scheme unless the scheme is an approved scheme.

(2) A person who contravenes this regulation commits an offence and shall be liable upon conviction to the penalty specified under section 34A of the Act and general damages where applicable, for any loss occasioned to the other party.

PART II—ESTABLISHMENT OF SCHEMES

5. A collective investment scheme that is an investment company shall be established by Articles of Association that shall provide for the matters specified in part I of the Second Schedule.

Investment
companies

6. A collective investment scheme that is a unit trust shall be established by a Trust Deed that shall provide for the matters specified in part II of the Second Schedule.

Unit trusts

7. (1) A collective investment scheme that is a partnership shall be established by a Partnership agreement that shall provide for the matters specified in part III of the Second Schedule.

Partnerships

(2) A collective investment scheme that is a partnership shall only be established as a limited liability partnership.

8. A fund manager shall make the formation documents available for inspection free of charge to any participant at all times during ordinary office hours at the registered office of the fund manager.

Inspection of
formation documents

9. (1) The formation documents shall not include any provision which is unfairly prejudicial to the interests of participants generally or to the holders of any class of participants.

Additional
provisions applicable
to the formation
documents

(2) The formation documents may provide that, where the holding of any participatory interests by a participant is or is reasonably considered by the fund manager an infringement of any law or governmental regulation, the participatory interests so held shall be redeemed or cancelled and, if the incorporation documents contain such a provision, it shall also provide the procedure for that redemption or cancellation.

PART III—APPROVAL OF SCHEMES

10. (1) An application for approval of a collective investment scheme shall be made to the Authority in the manner set out in Form I as set out in the First Schedule and by a licensed person who shall be a fund manager or investment bank accompanied by the following—

Application for
approval

- (a) the scheme's formation documents prescribed in the Second Schedule;

- (b) the information memorandum;
- (c) the name of the fund manager, particulars of the directors of the fund manager or investment company as specified in subregulation (2);
- (d) the corporate name and registered principal office of the fund manager, trustee, where applicable, and custodian of the scheme;
- (e) a risk management policy as set out in the Fifth Schedule; and
- (f) such additional information as may be required by the Authority.

(2) The particulars of the directors are—

- (a) in the case of an individual, their present name, any former name, usual residential address, nationality, business occupation if any, particulars of any other directorships held by the individual or which have been held by that individual and date of birth; and
- (b) in the case of a company, its corporate name and the address of its registered or principal office and the directors of such companies.

(3) At any time after receiving an application and before determining it, the Authority may require the applicant to furnish additional information.

(4) Any information to be furnished to the Authority under this regulation shall, if it is so required, be in such form or verified in such manner as the Authority may specify.

11. Every application shall be accompanied by such fee as may be prescribed in the Seventh Schedule. Application fees.

12. (1) A collective investment scheme shall be eligible for approval where— Criteria for approval

- (a) the scheme has—
 - (i) a fund manager who shall be independent of the trustee and custodian;

- (ii) a trustee, in the case of a trust; and
 - (iii) a custodian;
 - (b) in the case of an investment company reference to the fund manager shall be construed as a reference to its authorized corporate director;
 - (c) the fund manager, trustee and custodian are each—
 - (i) a body corporate incorporated in and with its registered office in Kenya; and
 - (ii) a licensed person;
 - (d) the directors of the—
 - (i) fund manager;
 - (ii) trustee;
 - (iii) custodian; and
 - (iv) the key personnel of the parties referred to in subparagraphs (i) and (ii) are fit and proper;
 - (e) the aims of the scheme are reasonably capable of being achieved as demonstrated in the investment policy statement;
 - (f) an investment company with fixed capital or a closed ended fund listed on a securities exchange, the participants are either entitled to have their participating interests redeemed or repurchased in the manner provided for in these Regulations; and
 - (g) the price at which participatory interests are sold or redeemed is calculated on the basis of net asset value.
- (2) In the case of a collective investment scheme constituted as a company—
- (a) the company has at least three directors one of whom shall be a licensed fund manager;
 - (b) the directors are fit and proper persons to act as directors of such a company;
 - (c) the combination of the experience and expertise of the directors is such as is appropriate for the purposes of carrying on the business of the company; and

- (d) a fund manager, namely the authorized corporate director, has been appointed by the directors of the company from amongst such of their number as are bodies corporate and not prohibited by scheme regulations from acting in that capacity; and the custodian is independent of the persons appointed as directors of the company.

(3) A trustee and a custodian may be one entity subject to the entity demonstrating to the Authority that conflicts of interest are well mitigated.

13. (1) The fund manager shall ensure that the name of the collective investment scheme is not undesirable or misleading. Naming of funds

(2) The scheme shall ensure that the name of the scheme includes the specific generic name relevant to the fund.

(3) A special fund shall include the word “special” in the name of the fund and describe the characteristics of the constituent assets of the fund.

14. A collective investment scheme does not qualify to be approved as an umbrella fund unless each constituent part of the scheme would, if that constituent part was the subject of a separate application for approval, qualify for separate approval. Qualification to be approved as an umbrella fund

15. (1) The Authority may, on being satisfied that an application duly made in accordance with regulation 10 meets the criteria for approval and any other relevant requirements as may be required by the Authority, approve the applicant to operate as a collective investment scheme. Approval

(2) The Authority shall process the application for approval within sixty days after the applicant submits a complete application to the satisfaction of the Authority.

(3) The Authority may, in approving a scheme under subregulation (1), impose such conditions as it may consider necessary.

16. (1) Where the Authority intends to reject an application under regulation 10, it shall give the applicant written notice of its intention to do so, stating the reasons for the intended rejection. Refusal of approval

(2) A person on whom a notice is served under subregulation (1) may, within twenty-one days after service, make written or oral representations to the Authority regarding the intended rejection of the application.

(3) In making its decision, the Authority shall have regard to any representations made in accordance with subregulation (2) in determining whether to reject the application.

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| 17. An approved collective investment scheme shall pay an annual fee as set out in the Seventh Schedule. | Annual fees |
| 18. Once a collective investment scheme has been approved, no amendments may be made to the formation documents without the Authority's approval. | Amendment of incorporation documents |
| 19. All fund managers, trustees, and custodians shall, in addition to these Regulations, observe the requirements of the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011. | Conduct of Business Regulations
L.N 145/2011 |
- PART IV—OFFER DOCUMENTS
- | | |
|---|---|
| 20. A collective investment scheme shall not pool funds from the public or a section of the public unless it has been approved by the Authority. | Prohibition of pooling of funds from the public |
| 21. The information memorandum shall, in addition to any other applicable provision of these Regulations, comply with the requirements of the Third Schedule. | Information memorandum |
| 22. (1) A fund manager shall, for each scheme that it manages, draw up a key information document for investors that shall contain the information set out in the Fourth Schedule. | Key Investor Information Document. |
| (2) The key information document shall be approved by the trustee and filed with the Authority. | |
| (3) The words “key investor information” shall be clearly stated in that document. | |
| (4) An up-to-date version of the key investor information shall be made available in an accessible medium and on the website of the fund manager. | |
| (5) The fund manager shall send key investor information and any amendments thereto to the Authority. | |
| (6) The essential elements of key investor information shall be kept up to date. | |
| 23. (1) The fund manager and the trustee, where applicable, shall each make accessible the information memorandum for inspection by any member of the public during ordinary office hours at the principal place of business of the fund manager and trustee. | Public availability of scheme documents. |
| (2) The information memorandum to be made available under this regulation shall be in the English language. | |

24. (1) The fund manager shall submit any proposed material alteration to the scheme or scheme documents to the Authority for prior approval. Alterations

(2) The Authority shall determine whether holders shall be notified of the alterations to the scheme documents and the period of notice, if any, to be applied before the changes are to take place.

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

(4) Subject to regulation 24, the scheme documents may be altered by the fund manager without consulting the holders:

Provided that the trustee and the board of directors, as the case may be, shall certify in writing that, in their opinion, the proposed alteration—

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

(5) A power conferred on a fund manager or any investment company by these Regulations is subject to any express restriction contained in the scheme's incorporation documents.

25. (1) An information memorandum shall be reviewed at least once in every two years and such review shall take account of any change or new matter other than a matter which reasonably appears to the fund manager to be insignificant. Revision of information memorandum

(2) Notwithstanding subregulation (1), the information memorandum shall be reviewed upon the occurrence of any material change in the matters stated in the memorandum or upon the occurrence of any new material information which ought to be disclosed in the memorandum.

26. (1) The Authority may prohibit an approved collective investment scheme from— Restriction of business

- (a) entering into transactions of any specified kind, or entering into those transactions except in specified circumstances or to a specified extent;
- (b) soliciting business from persons of a specified kind or otherwise; or
- (c) carrying on business in a specified manner or otherwise than in a specified manner.

(2) A prohibition under this regulation may relate to transactions entered in connection with or for the purposes of a collective investment scheme or to other business carried on in connection with or for the purposes of such a scheme.

27. (1) The Authority may prohibit an approved scheme from disposing of or otherwise dealing with any assets, or any specified assets, of the scheme or, as the case may be, the scheme's appointed representative, in any specified manner or otherwise than in a specified manner.

Restriction on dealing with assets

(2) A prohibition under this regulation may relate to assets outside Kenya.

28. Any provision of the scheme documents of a collective investment scheme shall be void insofar as it would have the effect of exempting the fund manager, trustee or custodian from liability for any failure to exercise due care and diligence in the discharge of its functions in respect of the scheme.

Avoidance of exclusion clauses

29. The interests of the participants in a collective investment scheme shall consist of participatory interests.

Participatory interests

PART V—MANAGEMENT OF COLLECTIVE INVESTMENT SCHEMES

Division A—Trustees

30. (1) A collective investment scheme that is constituted as a Trust shall appoint a trustee who shall be responsible for oversight of the scheme.

Obligation to appoint a trustee

(2) The appointment of a trustee shall be evidenced by a written contract.

31. A person shall not be appointed as a trustee of a collective investment scheme unless such person holds a valid license issued by the Authority.

Trustee to be licensed by the Authority

32. A person is eligible for a licence to act as a trustee of a collective investment fund if that person—

Eligibility to be a trustee

- (a) is a company or such body corporate incorporated, formed or established in Kenya;
- (b) has an initial and continuous issued and paid-up capital of at least ten million shillings;
- (c) has a minimum liquid capital of five million shillings or eight per cent of its liabilities which must be maintained throughout the duration of the license;
- (d) has as its directors and shareholders, persons who are fit and proper as provided under section 24A of the Act;
- (e) has sufficient financial, technical operational, and technological resources and experience necessary to enable it effectively conduct its business and carry out its obligations as a trustee of a collective investment scheme;
- (f) has staff capable of providing professional services as trustees; and
- (g) has in place adequate systems, policies, processes, procedures and the necessary control environment to conduct its business.

33. An application for a licence shall be made in the manner prescribed in Form II as set out in the First Schedule and shall be accompanied by the following—

Requirements for
licensing

- (a) certified copy of incorporation documents;
- (b) evidence in the constitutive documents authorizing the entity to carry on trustee business;
- (c) audited accounts for the preceding two years, where applicable;
- (d) business plan;
- (e) letter of no-objection from the primary regulator, if any;
- (f) details of the proposed external auditor; and
- (g) the prescribed application fees set out in the Seventh Schedule.

34. (1) The Authority shall, if satisfied that the applicant has met all the requirements for grant of a licence and upon payment of the fees set out in the Seventh Schedule, grant a licence to operate as a trustee.

Grant of a licence

(2) The trustee shall be required to pay an annual regulatory fee as set out in the Seventh schedule.

(3) A licence granted shall remain valid unless suspended or revoked by the Authority in accordance with section 26 and 26A of the Act.

35. Where a trustee obtains professional indemnity insurance, the trustee shall disclose the nature and extent of the insurance to the Authority at the point of licensing, to the fund manager and to the investors.

Professional indemnity

36. The trustee shall have the duty of taking reasonable care to ensure—

Duties of the trustee

- (a) that the scheme is managed by the fund manager in accordance with the scheme documents and these Regulations;
- (b) in relation to investment powers, that decisions about the constituents of the assets under management of the scheme do not exceed the powers conferred on the fund manager;
- (c) that any irregularity or undesirable practice that it is aware of is notified to the fund manager and where no action is taken by the fund manager, the trustee to report the same to the Authority; and
- (d) that there are no conflicts of interest and the interests of all participants are treated as paramount in all matters.

37. (1) The trustee shall ensure that the fund manager maintains accurate and sufficient records and adopts such procedures and methods for the calculation of prices at which participatory interests are issued and redeemed to ensure that those prices are within the limits for the time being prescribed under these Regulations.

Trustee to ensure fund manager maintains sufficient records

(2) Where the trustee is at any time not satisfied in respect of any matter specified in subregulation (1), the trustee shall inform the Authority.

38. In the case of a unit trust, the trustee shall hold the title to the scheme's assets under management.

Assets under management

39. (1) The trustee shall ensure that assets of a collective investment scheme are—

Control by the trustee of the assets of the scheme

- (a) identifiable; and
- (b) segregated from—

- (i) the trustee's own assets;
- (ii) the assets of the fund manager and the fund manager's related entities; and
- (iii) the assets of other collective investment schemes and other clients of the trustee.

(2) The relationship between the fund manager and trustee shall be formally documented in a contract which shall include provisions about the scope of the trustee's responsibility and liability.

(3) The trustee shall ensure that the custodian takes into custody all the scheme assets and holds them in trust for the holders and that custody arrangements for the assets of the collective investment scheme are monitored on an ongoing basis.

(4) The trustee shall take all steps and execute all documents which are necessary to ensure that the acquisitions, disposals and loans properly made by the fund manager are completed.

(5) The trustee shall cause the collection of any income due to be paid to the scheme and hold any income received in trust for the participants in accordance with these Regulations and the trust deed.

(6) The trustee shall keep such records as are necessary—

- (a) to enable the trustee to comply with these Regulations; and
- (b) to demonstrate that such compliance by the trustee has been achieved.

40. (1) The trustee shall take all steps and execute all documents as are necessary to ensure that recommendations properly given to the trustee by the fund manager as to the exercise of rights including voting rights attaching to the ownership of assets are carried out.

Exercise of rights in respect of the assets of the scheme

(2) The trustee may exercise any voting rights conferred on it by any of the assets of the scheme which is in participatory interests or shares in another collective investment scheme managed or otherwise operated by the fund manager but only after consultation with the fund manager.

(3) The trustee shall, upon the written request of the fund manager, execute and deliver or cause to be executed and delivered to the fund manager or the fund manager's nominees, such powers of attorney or proxies as the fund manager may reasonably require, in

such name or names as the fund manager may request, authorizing such holders of the powers of attorney and proxies to vote, consent or otherwise act in respect of all or any part of the assets of the scheme not included in subregulation (2).

(4) The trustee shall, without undue delay, forward to the fund manager all notices of meetings, reports, circulars, proxy solicitations and other such documents received by the trustee as a registered participant of any security.

41. (1) The assets entrusted to or held in custody by a trustee or custodian shall not be reused by the trustee or custodian, or by any third party to which the custody function has been delegated, for their own account.

Reuse of assets

(2) Without prejudice to the generality of subregulation (1), the assets may be reused where—

(a) the reuse of the assets is executed for the account of the collective investment scheme;

(b) the trustee is carrying out the recommendations of the fund manager;

(c) the reuse is for the benefit of the collective investment scheme and in the interest of the participants; and

(d) the transaction is covered by high-quality and liquid collateral received by the collective investment scheme under a title transfer arrangement.

(3) The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

(4) For purposes of this regulation, “reuse” shall comprise any transaction of assets held in custody including transferring, pledging, selling and lending.

42. (1) A trustee shall maintain, administer, record, account and render reports on custodial assets separately and apart from the trustee’s own accounts and those of each and every other customer’s account.

Reporting obligations

(2) A trustee shall submit to the Authority within twenty-one days after the end of each period of three months, the compliance status of the scheme in accordance with these Regulations.

43. A trustee shall efficiently perform the functions and duties conferred upon the trustee by these Regulations.

Timely performance of duties.

44. A trustee shall not delegate to the fund manager any function of oversight in respect of the fund manager.

Delegation

45. (1) The fund manager shall, in managing the affairs of the collective investment scheme, avoid conflicts of interest and take all reasonable steps to ensure that there is no conflict of interest between—

Conflict of interest

- (a) any affected persons; and
- (b) the fund manager's interest and those of the fund manager's investors.

(2) The fund manager shall, in managing the affairs of the collective investment scheme, treat the interests of all participants as paramount in all matters.

(3) For the purposes of this regulation, "affected person" includes—

- (a) the fund manager;
- (b) the trustee;
- (c) custodian;
- (d) any investment adviser; and
- (e) any associate of the fund manager, trustee, custodian or investment advisor, as the case may be.

46. The trustee shall be removed upon the happening of any of the following events—

Removal of a trustee

- (a) voluntary retirement of the trustee;
- (b) the trustee ceases to be a licensee of the Authority;
- (c) the trustee goes into liquidation;
- (d) where a manager or a receiver is appointed over any of the trustee's assets;
- (e) the trustee fails to perform the trustee's duties and the fund manager, for good and sufficient reason, recommends the removal of the trustee and gives a three months' notice of the removal to the trustee, the unit holders and Authority; or
- (f) upon the occurrence of any other event warranting the trustee's removal, subject to approval by the Authority.

47. (1) A trustee may not retire voluntarily, unless the trustee has—

Procedure for removal

- (a) given at least six months' notice in writing of the intention to resign to the Authority, fund manager and

unit holders and sets out in such notice the reasons for for the intended resignation; and

- (b) recommended and appointed a new trustee in the trustee's place within the notice period.

(2) Where the trustee is unable to find a replacement within the notice period, the trustee shall make a recommendation to unit holders at an extraordinary general meeting to—

- (a) dissolve the collective investment scheme; or
(b) transfer the unit holders to another fund.

- (3) If the trustee ceases to be a licensed person or fails to perform the trustee's duties, the fund manager shall, as provided in the scheme documents, appoint another eligible person to be the trustee subject to the approval by the unit holders at an extraordinary general meeting.

48. (1) The agreement between the fund manager, the trustee and the board of directors, as the case may be, shall make provision on the trustee fees.

Trustee fees

(2) The fees shall be disclosed to the holders in each annual report.

(3) The trustee shall have the right to charge fees to the scheme and be reimbursed for expenses in accordance with the terms and conditions of the agreement with the fund manager within the parameters set out in the scheme documents.

Division B—Fund Managers and Directors of Investment Companies

49. (1) A collective investment scheme shall have a fund manager.

Fund manager.

(2) The fund manager shall be responsible for the management and administration of the collective investment scheme.

(3) The fund manager shall not be related to the trustee or the custodian of a collective investment scheme.

50. A person shall not perform the functions of a fund manager of a collective investment scheme unless such a person holds a licence to operate as a fund manager issued by the Authority.

Licence to operate as a fund manager

51. A fund manager shall administer a collective investment scheme—

Principles of administration of a collective investment scheme.

- (a) honestly and fairly;

(b) by acting in the best interests of participants and, if there is a conflict between participant's interests and the fund manager's own interests, give priority to participants' interests;

(c) with skill, care and due diligence; and

(d) be guided by the Stewardship Code for Institutional Investors, 2017, issued by the Authority.

52. (1) A fund manager shall—

Functions of fund manager

(a) carry out the administration of the fund, including the management and control of the collective investment scheme, in accordance with the provisions of the scheme documents and these Regulations; and

(b) ensure that payments due on behalf of the scheme are made as required.

(2) The principal duties of a fund manager shall include —

(a) advising the trustee, on the asset classes which are available for investment;

(b) formulating a prudent investment policy;

(c) investing the scheme's assets in accordance with the scheme's investment policy including reinvestment of any income of the fund—

(i) subject to consent by the trustee, transferring, exchanging or delivering in the required form and manner the scheme assets held by the custodian;

(ii) ensuring that the shares in the investment company or units in the collective investment scheme are priced in accordance with the scheme documents and these Regulations; and

(iii) not selling any shares or units otherwise than on the terms and at a price calculated in accordance with the provisions of the scheme documents, rules of the collective investment scheme or these Regulations;

(d) rectifying any breach of matters arising under subparagraph (a) or (g) provided that where the breach relates to incorrect pricing of shares or to the late payment in respect of the issue or redemption of shares, rectification shall, unless the trustee otherwise directs, extend to the reimbursement or payment or arranging the reimbursement or payment of money—

- (i) by the fund manager to the holders or former holders;
 - (ii) by the fund manager to the scheme; or
 - (iii) by the scheme to the fund manager;
- (e) to at the request of a holder, purchasing any shares held by the holder on the terms and at a price calculated in accordance with the provisions in these Regulation;
- (f) publishing daily or in such periodic intervals as may be set out in an Information Memorandum, the price of shares or units in a widely accessible medium or as the Authority may guide, where necessary;
- (g) preparing and timeously dispatching all warrants, notices, accounts, summaries, declarations, offers and statements required under the provisions of the information memorandum, rules of the collective investment scheme or these Regulations, to be issued, served or sent and signing and executing all certificates and all transfers of securities;
- (h) making accessible for inspection to the trustee, or any approved auditor appointed by the fund manager with the approval of the trustee, the records and the books of account of the fund manager;
- (i) giving to the trustee or custodian or to any such auditor referred to in subparagraph (h) such oral or written information as the trustee, custodian or auditor requires with respect to all matters relating to the fund manager, its properties and its affairs;
- (j) making available or ensuring that there is made available to the trustee or custodian such details as the trustee or custodian may require with respect to all matters relating to the collective investment scheme;
- (k) being fair and equitable in the event of any conflict of interest that may arise in the course of its duties; and
- (l) maintaining a website disclosing, in detail, information relating to the collective investment scheme and any of its funds.

(3) The fund manager shall credit the monetary benefits arising out of managing scheme funds to a bank account opened in the name of the scheme under the control of the trustee.

(4) The fund manager shall issue to each participant for each purchase, a document evidencing the purchase of participatory interest in the collective investment scheme.

(5) The fund manager shall issue a statement to the participants at least once in each month, specifying any participatory interests held by any participant and showing the transactions in the participant's account during the preceding month and which shall be evidence of the title of the participant to the participatory interests.

(6) The fund manager's proprietary investment or non-investment in the scheme shall be disclosed in the quarterly performance report.

53. (1) The fund manager shall not be liable for any loss, damage or depreciation in the value of the scheme fund or of any investment comprised in or the income from which may arise by reason of depreciation of the market value of the shares and other assets in which scheme funds are invested unless such loss, damage or depreciation in the value of the scheme fund arises from negligence, wilful default or fraud by the fund manager or any of the fund manager's agents, employees or associates.

Liability of a fund manager

(2) In the absence of fraud or negligence by the fund manager, the fund manager shall not incur any liability by reason of any matter or thing done or suffered or omitted to be done by it in good faith under the provisions of the information memorandum, rules of the collective investment scheme or these Regulations.

(3) The fund manager shall not be under any liability except such liability as may be expressly assumed by it under the information memorandum, the rules of the collective investment scheme and these Regulations.

(4) A fund manager shall not be liable for any act or omission of the trustee save as expressly provided in these Regulations.

54. (1) The only payment which may be made to the fund manager out of the assets of the scheme by way of remuneration for the fund manager's services is a periodic charge arrived at and accruing under this regulation.

Remuneration of fund manager

(2) A periodic charge is payable only where the payment is authorised by and is calculable in an objective, fair and transparent manner which shall be set out in the scheme documents.

(3) The fund manager may, at any time, and at the fund manager's discretion, waive or rebate in full or any part of the

amounts mentioned in subregulation (1) and shall report to the trustee any such changes and give the reasons thereof.

(4) The fund manager shall disclose any other fees to be paid out of the assets of the schemes in the information memorandum.

(5) Any increase in the fees disclosed in the information memorandum as fees to be paid to the fund manager shall require prior approval by the participants and the same shall be notified to the Authority.

55. (1) A fund manager may, with prior written approval of the trustee and with the approval of the Authority, delegate any of the fund manager's administrative functions to any person other than the trustee or custodian.

Delegation by fund manager

(2) A delegation under subregulation (1) shall be in writing.

(3) Any misfeasance done by a person described under subregulation (1) in the performance of a function so delegated shall be regarded as having been done or omitted by the fund manager:

Provided that—

- (a) the fund manager shall remain liable for any act or omission of any sub-contracted fund manager;
- (b) the fees and expenses of any such persons shall be payable by the fund manager and shall not be payable out of the collective investment scheme portfolio;
- (c) any expenses incurred by any such persons which, if incurred by the fund manager would have been payable out of the collective investment scheme portfolio, may be paid out of the collective investment scheme portfolio to the fund manager by way of reimbursement; and
- (d) any such appointment or termination of appointment shall be notified in writing to all participants.

56. In the case of directors of an investment company—

Directors of investment company

- (a) at least one director shall be the authorised corporate director which is a person licenced to operate as a fund manager;
- (b) where there is only one director eligible to be an authorized corporate director, such director shall be the fund manager, but if there is more than one eligible authorized corporate director the directors shall appoint one of the body corporates to be the fund manager;

- (c) where—
- (i) any person becomes or ceases to be a director;
 - (ii) the appointment of a fund manager is terminated;
 - (iii) a new fund manager is appointed;
 - (iv) any change of a controller of a corporate director including the fund manager,

the Authority shall be notified in writing—

- (A) in case of subparagraph (c) (i) immediately by the fund manager;
 - (B) in the case of subparagraph (c) (ii) immediately by the fund manager whose appointment is being terminated;
 - (C) in the case of subparagraph (c) (iii) immediately by the new fund manager; and
 - (D) in the case of paragraph (c) (iv) immediately by the corporate director concerned, upon becoming aware of the change of the controller; and
- (d) a director shall not appoint an alternate director in the director's place.

57. (1) The fund manager may, without the specific authority of the trustee, give instructions to agents on the acquisition or disposal of assets of the scheme.

Dealing in assets of the scheme

(2) Where the trustee is of the opinion that a particular acquisition or disposal of property by the fund manager exceeds the power conferred on the fund manager, it is the duty of the fund manager at the fund manager's expense, to cancel the transaction or make a corresponding acquisition or disposal to secure restoration of the status quo that prevailed before the acquisition or disposal.

(3) The trustee may require a fund manager to cancel a transaction or to make a corresponding disposal where the trustee is of the opinion that—

- (a) the acquisition of assets by the fund manager involves documents of title or documents evidencing title being kept in the custody of a person other than the custodian; and
- (b) the trustee cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it as a delegator.

(4) Where an investment company ceases to have any directors including the Authorized Corporate Director, the custodian shall have power—

- (a) to retain the services of a licensed person to carry out the functions set out in regulation 43; or
- (b) provided it is not prohibited from doing so by any rule or prohibition under these regulations to manage the assets under management itself or on behalf of the investment company until in either case—
 - (i) a director is appointed; or
 - (ii) a winding up of the company is commenced.

58. The fund manager shall, on the request of the trustee and within twenty-four hours, supply the trustee with such information concerning the management and administration of the scheme as the trustee may reasonably require.

Fund Manager to supply information

59. (1) The fund manager shall keep such accounting and other records as may be necessary—

Maintenance of records

- (a) to enable it to comply with these Regulations; and
- (b) to demonstrate at any time that such compliance by the fund manager has been achieved.

(2) After each valuation, to keep an up-to-date record of the participatory interests held by it, including the type of participatory interests, which have been acquired or disposed of, and of the balance of any acquisitions and disposals.

(3) The fund manager shall make the record available for inspection by the trustee or custodian at all times during ordinary office hours and shall supply the trustee or custodian with a copy of the record or any part of it on request.

60. (1) The fund manager shall, with the approval of the trustee, participants and Authority, appoint an auditor for the scheme who shall be a member of the Institute of Certified Public Accountants in Kenya in good standing.

External auditor

(2) The fund manager shall not change the fund manager's auditor without prior approval of the Authority.

(3) A person appointed as an auditor shall serve for a maximum period of four (4) consecutive years subject to satisfactory performance.

(4) The audit fees of the auditor shall be determined by the fund manager with the approval of the trustee.

(5) The fund manager shall ensure that the accounts required to be included in the annual report of the scheme are audited by the auditors and that, the report is accompanied by a report of the auditor to the participants that those accounts have been audited in accordance with International Standards on Auditing.

(6) The auditor shall assess the compliance status of the scheme and report any non-compliance to the trustee and the Authority.

(7) The fund manager may at any time, with the approval of the trustee and participants, at any time remove an auditor and this power exists notwithstanding anything in any agreement between the persons concerned.

(8) The fund manager shall notify the Authority of the removal of an auditor and that notice shall include the grounds for such removal.

61. (1) A trustee may remove a fund manager immediately or by three months' notice in writing to the fund manager, the unit holders and the Authority, as the case may be, if any of the following occurs—

Removal and replacement of fund manager

- (a) the fund manager goes into liquidation;
- (b) the fund manager is placed under administration;
- (c) the fund manager ceases to be a licensee of the Authority;
- (d) for good and sufficient reasons, the trustee is of the opinion, and so states in writing, that a change of fund manager is desirable in the interest of the participants; or
- (e) an extraordinary resolution of removing the fund manager is passed by three quarters majority in value of the participatory interests in existence (excluding participatory interests held or deemed to be held by the fund manager or by any associate of the fund manager) and the total number of participants.

(2) The fund manager shall on receipt of a notice under subregulation (1) cease to be the fund manager of the scheme and the trustee shall, by deed, appoint another person eligible under these Regulations to be the fund manager of the scheme upon and subject to that other person's entering into a deed or deeds as the trustee may require.

(3) A trustee shall ensure that upon service of the notice under subregulation (1), it shall immediately appoint a new fund manager for the scheme, subject to the approval by the unit holders and the Authority.

(4) If the name of the scheme contains a reference to the name of the former fund manager, the former fund manager shall be entitled to require the new fund manager and the trustee immediately to propose a change in the name of the scheme.

62. (1) A fund manager may resign by giving three months' notice to the trustee and shall give the reasons for the resignation.

Resignation of fund manager

(2) The trustee shall upon receipt of the notice of resignation by the fund manager in subregulation (1) and within the notice period find a replacement subject to the approval by the unit holders and the Authority.

(3) The trustee shall enter into agreements with the new fund manager in order to secure the due performance of its duties as fund manager.

63. (1) Upon the removal or retirement of the fund manager, the removed or retiring fund manager—

Rights of a removed or retired fund manager

- (a) remains entitled to all participatory interests held or deemed to be held by it;
- (b) may require the trustee to issue to it a certificate, where applicable, in respect of the participatory interests if not previously issued;
- (c) is to be registered in the register in respect of those participatory interests; and
- (d) thereafter has and may exercise all rights of a participant.

(2) Paragraphs (1)(b), (1)(c) and (1)(d) are subject to any restriction in the trust deed relating to the limited categories of participants.

Division C—Custodians

64. A collective investment scheme shall appoint a custodian licensed by the Authority for safekeeping of the scheme property.

Obligation to appoint a custodian

65. (1) A person shall not be eligible to be licensed and appointed as a custodian unless it is a bank licenced under the Banking Act or any other financial institution that demonstrates capacity and expertise in conducting custodial business and with—

Eligibility for licensing as custodian
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- (a) an initial and continuous paid-up capital of at least fifty million shillings; and
- (b) a minimum liquid capital of twenty-five million or 8% of its liabilities which must be maintained throughout the duration of the license.

(2) The appointment of a custodian shall be in writing.

(3) The custodian shall perform its duties and obligations as contemplated in these regulations.

66. An application for a license shall be made in the manner set out in Form II of the First Schedule and shall be accompanied by the following—

Application to be a custodian

- (a) certified copy of a valid license (if any) or certificate of incorporation;
- (b) articles of Association with objects that authorize the company to carry out custodial business;
- (c) audited financial statements for the preceding two years and six months unaudited, financial statements where relevant;
- (d) business plan;
- (e) details of the management structure;
- (f) shareholding structure detailing the number of shares, the percentage holding and including the ultimate beneficial shareholding of all corporate shareholders and any existing Trusts if applicable;
- (g) financial projections for three years;
- (h) description of the operating and Information Technology system in place or the system to be put in place once licensed;
- (i) details of the external Auditor;
- (j) details of the Company Secretary;
- (k) two letters of business reference and one letter of bank reference;
- (l) a risk management framework;
- (m) duly filled and executed Fit and Proper Form for directors and Head of Custodial Services; and

- (n) application fees as set out in the Seventh Schedule.

67. (1) The Authority shall, if satisfied that an applicant has met all the requirements for licensing and upon payment of the fees set out in the Seventh Schedule, grant the applicant a licence to operate as a custodian.

Grant of a license

(2) The custodian shall be required to pay an annual regulatory fee as set out in the Seventh schedule.

(3) A licence granted shall remain valid unless suspended or revoked by the Authority in accordance with section 26 of the Act.

68. (1) A custodian shall render custodial services in accordance with a written agreement between the custodian and the fund manager or trustee as the case may be.

Duties of a custodian

(2) The agreement shall include the following—

- (a) to maintain the custody of all the assets of the scheme;
- (b) to receive and keep in safe custody title documents and the assets of the scheme;
- (c) to open an account in the name of the collective investment scheme for the exclusive benefit of such scheme;
- (d) to transfer, exchange or deliver in the required form and manner securities held by it upon receipt of proper instructions from the fund manager or trustee as the case may be;
- (e) to require from the fund manager or trustee, such information as it deems necessary for the performance of its functions;
- (f) to promptly deliver to the trustee or fund manager or to such other persons as the fund manager or trustee may authorise, copies of all information the custodian may receive;
- (g) to exercise subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the fund manager;
- (h) to exercise the same standard of care that it exercises over its own assets in holding, maintaining, servicing and disposing of the collective investment scheme portfolio and in fulfilling obligations in the agreement;
- (i) where title to investments are recorded electronically, to ensure that entitlements are separately identified from

those of the fund manager or the trustee, as the case may be, of the collective investment scheme in the records of the person maintaining records of entitlement;

- (j) to attend general meetings of the participants and be heard at any general meeting on matters which concern it as custodian;
- (k) conflicts of interests and how such conflict shall be managed;
- (l) extent of the liability of the custodian; and
- (m) fees payable to the custodian for the custodial services which shall be disclosed to the participants in the annual report each year.

69. (1) A custodian must keep such books, records and statements as may be necessary to give a complete record of—

Records to be maintained by the custodian

- (a) the assets under management held by the custodian; and
- (b) each transaction carried out by the custodian on behalf of the collective investment scheme.

(2) The custodian shall permit the trustee, the fund manager or a duly authorised agent of the Authority to inspect such books, records and statements within the premises of the custodian at any time during business hours.

70. A custodian must provide to the fund manager or the trustee and to the Authority—

Reports by the custodian

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

rules of the collective investment scheme and its service agreement has been achieved.

71. (1) A custodian shall not delegate to third parties any functions under these regulations except as provided in subregulation (2).

Delegation by
custodian

(2) The custodian may delegate its functions to third parties only where—

- (a) the tasks are not delegated with the intention of avoiding the requirements prescribed in these regulations;
- (b) the custodian can demonstrate that there is an objective reason for delegation; and
- (c) the custodian has exercised due skill, care and diligence in the selection and appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

(3) A custodian may only delegate to a third party where that third party at all times during the performance of the tasks delegated to it—

- (a) has structures and expertise and approvals necessary for it to operate as a custodian;
- (b) segregates the assets of the sub-custodian's client from its own assets and from the assets of the principal custodian in such a way that they can, at all time, be clearly identified as belonging to the clients of a particular custodian;
- (c) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a collective investment scheme held by the third party in custody are unavailable for distribution among, or realisation for the benefit of creditors of the third party.

(4) The delegation of custodial authority to a sub-custodian does not relieve the custodian from any of its obligations to the collective investment scheme, the fund manager or to the Authority.

72. The custodian shall observe the provisions of Regulation 39 with respect to control of the assets of the scheme in the same manner as a trustee.

Control by the
custodian of the
property of the
scheme

73. The custodian must observe the provisions of Regulation 40 regarding the exercise of rights in respect of the assets of the scheme.	Exercise of rights in respect of the property of the scheme by custodian
74. The custodian must observe the provisions of Regulation 45 regarding conflict of interest in the same manner as the fund manager and trustee.	Conflict of interest
75. (1) A custodian shall be removed immediately in writing upon the happening of any of the following events—	Removal and replacement of a custodian
<ul style="list-style-type: none"> (a) liquidation of the custodian; (b) if a statutory manager or a receiver is appointed over any of its assets; or (c) the custodian ceases to carry on business as a bank or financial institution. 	
(2) A custodian shall be removed by three months' notice in writing given by the fund manager to the custodian if—	
<ul style="list-style-type: none"> (a) the custodian fails or neglects after reasonable notice from the fund manager, trustee or board of directors to carry out or satisfy any duty imposed on the custodian in accordance with their agreement; or (b) the participants, by extra ordinary resolution resolve that such notice be given, and the fund manager appoint as custodian some other qualified institution with the approval of the Authority. 	
(3) The fund manager shall notify the trustee and the Authority in writing of the termination of the services of the custodian giving reasons for such termination.	
(4) A custodian may resign by giving a three months' notice in writing to that effect to the board of directors or the fund manager, as the case may be and the Authority giving reasons for the resignation.	
(5) The fund manager shall appoint within two months after the date of a notice under subregulation (4) some other qualified person as the new custodian upon approval by the Authority and enter into an agreement with the new custodian.	
(6) If a fund manager is unable to appoint a new custodian within the period of two months following the notice of resignation—	
<ul style="list-style-type: none"> (a) the custodian shall be entitled to appoint an eligible person to be the new custodian subject to approval by the 	

fund manager, trustee or the board of directors as the case maybe and the Authority; or

- (b) the trustee shall hold the assets for three months with the approval of the Authority and within that timeframe cause an extra-ordinary general meeting of participants to be held to either to dissolve or transfer the unit holders to another fund.

(7) Within twenty days from the termination of the agreement, the custodian shall submit to the trustee, fund manager and Authority an audit report indicating the assets, liabilities and an inventory of the assets under management which have been handed over, transferred and delivered to the new custodian.

Division D—Intermediary Service Platform Providers

76. (1) Subject to subregulation (2), a person shall not operate an intermediary service platform unless that person has obtained a license from the Authority as an intermediary service platform provider.

Requirement for
licensing or approval

(2) An existing licensee seeking to operate an intermediary service platform for any other purpose other than improving the efficiency of existing processes shall be required to seek approval from the Authority and the Authority may require compliance with certain requirements under this part prior to granting the approval.

(3) A licensed intermediary service platform provider shall be required to seek approval from the Authority before engaging in marketing and distribution of collective investment schemes from multiple fund managers.

77. (1) An application for licensing as an intermediary service platform provider shall be accompanied by the following—

Eligibility
requirements and
Grant of a license

- (a) evidence of the entity's incorporation or establishment;
- (b) a written agreement with a licensed fund manager which shall at the minimum set out the following—
 - (i) roles to be played by the parties including their rights and duties;
 - (ii) extent of liabilities of the parties to the agreement;
 - (iii) dispute resolution mechanisms;
 - (iv) complaints handling procedures; and
 - (v) investor protection mechanisms;

- (c) a business plan detailing the nature of the service platform, how the platform will help delivery value to the capital markets and financial projections among others;
- (d) evidence of adequate capital, office and human resources necessary for the efficient conduct of its business and operations;
- (e) details of the organization structure and profiles of the directors, shareholders, management and other key personnel who are fit and proper as provided under section 24A of the Act;
- (f) detailed information of the platform to be used including system capacity and security measures, its user terms and condition and evidence of its functionality;
- (g) business continuity and disaster recovery plan;
- (h) record keeping procedures including audit trail for daily operations to meet emergencies;
- (i) adequate risk management framework that includes details of its fraud detection and prevention measures and a risk matrix and mitigation measures;
- (j) data protection policy in compliance with the relevant laws;
- (k) policy on prevention of anti-money laundering and terrorism financing;
- (l) cyber security policies and procedures;
- (m) complaint management policies and procedures that includes details on complaint lodging, acknowledgment and resolution;
- (n) risk management policies and procedures;
- (o) the licensing fees set out in the Seventh Schedule; and
- (p) any other additional documents or information as the Authority may require.

(2) The Authority shall, if satisfied that an applicant has met all the requirements for licensing and upon payment of the fees set out in the Seventh Schedule, grant a licence to operate as such.

(3) The intermediary service platform provider shall be required to pay an annual regulatory fee as set out in the Seventh schedule.

(4) A licence granted shall remain valid unless suspended or revoked by the Authority in accordance with section 26 of the Act.

78. An intermediary service platform provider shall make the following disclosures to its users— Disclosure obligations

- (a) features and characteristics of the intermediary service platform;
- (b) the nature of the partnerships with the licensed fund manager(s);
- (c) accurate description of its services;
- (d) fees charged for using the platform and any other fees including transaction charges;
- (e) data protection and privacy policy;
- (f) risk disclaimers;
- (g) alternative methods for transacting;
- (h) procedures for withdrawals;
- (i) processing of online applications, suspension and cancellation of transactions;
- (j) account opening procedures;
- (k) redemption and conversion of units; and
- (l) any other disclosure as may be necessary and as may be required by the Authority.

79. An intermediary service platform provider shall— Due diligence, data security, confidentiality and integrity

- (a) establish appropriate safeguards for ensuring the integrity of the information received and processed through their platform;
- (b) maintain reliable and secure operating systems;
- (c) keep copies of all relevant documents for a reasonable period after the date on which the document comes into the possession of their portal;
- (d) ensure confidentiality and privacy of information;
- (e) have a call center or establish electronic channels for addressing customer enquiries and complaints;

- (f) maintain a robust cyber security framework; and
- (g) exercise due skill, care and diligence in monitoring any function outsourced from external service providers to ensure proper performance of the intermediary service platform.

80. (1) An intermediary service platform provider shall keep and maintain the necessary records to enable it to comply with these Regulations and to demonstrate at any time that such compliance by it has been achieved including—

Maintenance of records

- (a) comprehensive documentation on the design of digital platform, operational processes, and risk management controls;
- (b) proper audit trails of activities and transactions conducted on the platform, including the processes and outcomes of any client profiling, investment product selection, risk profiling, suitability assessment, product information, disclosure of warning statement, advice provided (if any), and incident reports for all material delays or failures of the platform; and
- (c) any other records as may be prescribed by the Authority.

(2) An intermediary service platform provider shall permit the fund manager or a duly authorised agent of the Authority to inspect its platform and such books, records, or and any other document at any time during business hours.

81. An intermediary service platform provider shall submit quarterly reports to the Authority on such information as the Authority may advise depending on the nature of the partnerships with a licensed fund manager.

Reporting requirements

82. An intermediary service platform provider shall seek approval from the Authority of any advertisement or invitation or other promotional material to the public or a section of the public at least forty-eight hours before the date of publication.

Marketing materials

83. An intermediary service platform provider is prohibited from—

Prohibitions

- (a) holding clients' funds;
- (b) offering investment advice in whichever form;
- (c) sharing clients' data with non-affiliated third parties; and
- (d) engaging in any other activity not allowed under the license category.

84. An intermediary service platform provider may cease to operate as such upon giving a three months' notice to the Fund Manager and to the Authority stating reasons for the cessation and setting out the procedure and timelines for transition of its users.

Cessation to operate

PART VI—PRICING AND DEALING

85. (1) Where a fund manager is required to issue new participatory interests, the fund manager shall create the participatory interests subject to approval by the trustee.

Allocation of participatory interests

(2) The participatory interests shall be created within twenty-four (24) hours from the time the obligation arose.

86. (1) Where a fund manager wishes participatory interests to be cancelled, it may at any time instruct the trustee to cancel them and any instructions given by the fund manager shall state, in relation to each type of participatory interest to be cancelled, the number to be cancelled, expressed either as a number of participatory interests or as an amount in value, or as a combination of the two.

Cancellation of participatory interests

(2) Where, at any moment of instruction, the fund manager has any outstanding obligation to issue participatory interests, it may not instruct the trustee to cancel any participatory interests if or to the extent that in so doing would prevent it immediately from fulfilling any such obligation which had been assumed before the valuation point.

(3) A trustee must cancel participatory interests on receipt of instructions given by the fund manager, and the trustee may not cancel participatory interests in any other way.

(4) On the cancellation of participatory interests and on delivery to the trustee of such evidence of title to those participatory interests as he or she may reasonably require, the trustee shall instruct the custodian to pay the cancellation price of the participatory interests to the person who was the owner of those participatory interests within three days.

87. (1) Where, on receipt of instructions to create or cancel participatory interests, the trustee is of the opinion that it is not in the interests of participants that—

Refusal to create or cancel participatory interests

- (a) participatory interests should be created;
- (b) participatory interests should be cancelled; or
- (c) participatory interests should be created or cancelled in the number requested by the fund manager,

the trustee must give notice to the fund manager stating that the trustee refuses to create or as the case may be cancel all or a specified number of the participatory interests so requested.

(2) On the giving of notice under subregulation (1), the trustee is relieved of the obligation to create or cancel the number of participatory interests to which the notice relates.

88. (1) The number of participatory interests issued or cancelled may be modified by the fund manager making a record for the scheme of the modification provided that—

Modification to
participatory
interests issued or
cancelled

- (a) the fund manager ensures that any appropriate consequential payment as between the fund manager and the scheme is made; and
- (b) the requirements of subregulation (2) are satisfied.

(2) A fund manager may only make a modification under subregulation (1) with the agreement of the trustee if the trustee is reasonably satisfied—

- (a) that the purpose of the modification is to rectify the consequences of an error which relates to the number of participatory interests held by the fund manager, or issued or cancelled in connection with the sale or redemption of participatory interests by the fund manager; and
- (b) that in view of the quality of the fund manager's controls systems, the circumstance that resulted in the error in question is an isolated one and is unlikely to recur.

(3) A modification under subregulation (1) shall be of no effect unless the corrected number of shares is calculated by the end of the next business day following the relevant valuation point, or, if the trustee agrees, within the payment period applicable to the original issue or cancellation under regulation 86.

89. (1) A fund manager must at all times during a dealing day, be willing to issue participatory interests in the scheme and it must at the request, in writing, of any person, agree to issue participatory interests to that person at a price arrived at under these Regulations.

Fund manager's
obligation to issue

(2) Subregulation (1) does not apply—

- (a) if the fund manager has reasonable grounds, relating to the circumstances of the person concerned, for refusing to issue participatory interests to him or her;
- (b) if the number or value of the participatory interests sought to be issued is less than any number or value stated in the information memorandum as the minimum number or value to be purchased or held;
- (c) if the fund manager has not received payment with or prior to the order; or

- (d) if the fund manager has reason to believe that the potential purchaser has not seen or been offered a copy of the latest information memorandum and the last annual report, performance report and the current fees schedule in addition to any other document as requested by the potential purchaser.

90. (1) A fund manager's price for issue of participatory interests shall not exceed the price to be notified to the trustee at the next valuation point.

Issue price

(2) In the event that a fund manager imposes a preliminary charge, this may be added to the cost when issuing the contract note to a participant.

91. (1) A fund manager must at all times during a dealing day be able to redeem participatory interests in the scheme and accordingly, must at the request in writing of any participant agree to redeem participatory interests owned by that participant at a price arrived at under these Regulations.

Fund manager's
obligation to redeem

(2) Subregulation (1) does not apply—

- (a) where the number or value of the participatory interests sought to be redeemed is less than any number or value stated in the information memorandum as the minimum number to be redeemed;
- (b) where the number or value of the participatory interests sought to be redeemed would result in the participant holding less than any number or value stated in the information memorandum as the minimum number to be held; or
- (c) where the fund manager ensures that the participant is able to sell his or her participatory interests on a securities exchange at a price not significantly different from the price at which they would have been redeemed;

(3) Participatory interests must be redeemed in the base currency in which it was issued.

(4) This regulation is subject to Part XIII on suspension and termination.

92. (1) On agreeing to redeem participatory interests, the fund manager shall, within three days, pay the proceeds of redemption less, where applicable—

Payment on
redemption

- (a) any redemption charge to the participant; and
- (b) any applicable levy or tax imposed by law.

(2) Nothing in this regulation shall require a fund manager to part with money in respect of a redemption of participatory interests where it has not yet received the money due on the earlier issue of those participatory interests, or where it considers it necessary or appropriate to carry out or complete identification procedures in relation to the participant or another person pursuant to a statutory obligation.

93. (1) A fund manager's price for redemption of participatory interests shall not be less than the price notified to the trustee at the previous valuation point.

Redemption price parameters

(2) Where a fund manager levies an exit charge, this may be deducted from the proceeds when issuing the confirmation note to the participant.

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

94. (1) Where the incorporation documents so permits, the amount payable as proceeds of redemption may be arrived at after deduction of a charge for the benefit of the fund manager.

Charges on redemption

(2) Where the fund manager is permitted to make a deduction, the amount shall not exceed the amount that would be derived by applying the rate or method prescribed in the information memorandum at the date on which the relevant participatory interests were issued.

(3) Where the incorporation documents of a scheme, whenever executed, are modified so as to include the provision enabled by paragraph 13 of Second Schedule of the Regulations, to deduct a charge on redemption, the modification must be expressed so as to apply only to participatory interests issued after the date on which the modification takes effect.

(4) A modification of the rate or method which is adverse to redeeming participatory interest, holders must be limited so as to apply only to participatory interests which have been issued, whether at the request of the current participatory interest holder or otherwise, after the date on which the modification takes effect.

(5) Subject to regulation 95, the fund manager may not rely on any increase in the rate or method of the charge, unless—

- (a) it has given notice in writing of that increase and of the date of its commencement to the trustee and to all the persons who ought reasonably to be known to him or her to have made an arrangement for the purchase of participatory interests at regular intervals;
- (b) he or she has revised the information memorandum to reflect the new rate or method and the date of its commencement; and
- (c) approved by the holders of the participatory interest.

(6) In deciding whether and to what extent a charge is deductible for the purposes of this regulation, participatory interests held by a participant are to be taken to be redeemed in the order in which they were issued (whether at the request of the current holder or otherwise), unless—

- (a) the fund manager has the participant's instructions to the contrary;
- (b) the fund manager selects as the participatory interests first to be redeemed, participatory interests which are not subject to the deduction; or
- (c) the fund manager and the trustee have agreed on another way of deciding the order in which participatory interests are redeemed, which appears to them unlikely materially to prejudice the holder concerned.

(7) For purposes of subregulations (3) and (6), where a scheme has absorbed the whole or part of the property of an earlier scheme, the term "issued", for the purposes of calculating the applicable charge refers to the date on which participatory interests in the earlier scheme were issued in so far as it is practicable for the fund manager to ascertain the timing of that issue in relation to the issue of other participatory interests held by that participant.

(8) Nothing in this regulation shall enable the fund manager to reduce the amount payable to the client on redemption to an extent which might reasonably be regarded as fettering the right of redemption.

95. (1) No introduction of, or change to, either of the charges permitted by regulation 90 shall take effect unless the trust deed is modified under regulation 150 or, as the case may be, the information memorandum is amended following approval of the introduction or change by an extraordinary resolution at a meeting of the holders called for the purpose where in respect of any individual participatory interest notionally issued and redeemed on the same day the maximum amount or percentage of any preliminary charge and of any charge on redemption would, in aggregate, exceed the

Control over
maximum charges on
issue and redemption

maximum amount or percentage for the preliminary charge alone which is stated in the incorporation documents.

96. In the case of an umbrella fund, the fund manager may not make any charge on an exchange of participatory interests—

Exchange of participatory interests in umbrella funds

- (a) where the exchange is the first to be made by the participant during any annual accounting period; or
- (b) in the case of a second or subsequent exchange, unless such a charge is authorised by the incorporation documents and the amount of charge is within the maximum for charging on such an exchange stated in the most recently published information memorandum.

97. (1) By the close of business of the trustee on the dealing day, the fund manager shall notify the trustee of—

Notification of prices to the trustee

- (a) the creation price;
- (b) the cancellation price;
- (c) the issue price;
- (d) the redemption price;
- (e) in the case of an umbrella fund, the issue price for participatory interests in any part on an exchange of participatory interests.

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

(3) Any notification under subregulation (1) shall include a statement of the number of participatory interests owned by the fund manager at that valuation point.

98. (1) Any instruction, notification given or report supplied under this Part by the fund manager to the trustee and custodian—

Instructions by fund manager to the trustee and custodian

- (a) must be recorded by the fund manager, at the time when it is given or supplied;
- (b) must be sent in a form which enables the trustee or custodian to know or record the time of receipt; and
- (c) may be communicated in writing.

(2) Instructions are given within any period under this Part if they are received by the trustee and or custodian within the period,

and instructions received by the trustee or custodian after the expiry of any period are treated as given after that expiry.

(3) This regulation also applies, with the necessary modifications, to any notice or notification given by either party.

PART VII—VALUATION

99. Collective investment scheme investments shall be valued in accordance with the following overarching principles so as to ensure fair treatment of all existing participants and prospective investors—

Valuation of the
assets of the scheme

- (a) the valuation shall be reflective of the realisable value of the securities and/or assets
- (b) the valuation shall be done in good faith and in a true and fair manner through appropriate valuation policies and procedures;
- (c) the policies and procedures developed by the fund manager and agreed to by the trustee on behalf of the collective investment scheme shall identify the methodologies that will be used for valuing each type of securities or assets held by the collective investment scheme;
- (d) the valuation policies and procedures approved by the fund manager and the trustee on behalf of the collective investment scheme should seek to address conflicts of interest;
- (e) the fund manager should conduct initial and periodic due diligence on third parties that are appointed to perform valuation services;
- (f) the valuation policies, methodologies and procedures, including the nature and frequency of valuation points, developed by the fund manager and approved by the trustee shall be made available to the participants;
- (g) the responsibility for true and fair valuation and correct net asset value shall be with the fund manager and the trustee.
- (h) the policies and procedures agreed to by the fund manager and the trustee shall make provision for the detection, prevention and correction of pricing and valuation errors; and

- (i) documentation for the rationale of valuation including into scheme transfers shall be maintained and preserved by the fund manager to enable audit trail.

100. (1) A fund manager must ensure that the price of a participatory interest is calculated by reference to—

Valuation methodology

- (a) the net value of the assets under management; and
- (b) in accordance with the provisions of the incorporation documents.

(2) For all participatory interests in the same class, a single price must be calculated at which participatory interests are to be issued and cancelled.

(3) Assets under management of a scheme shall be valued daily or in such periodic intervals as may be set out in the Information Memorandum in accordance with the definition of fair value as set out in the relevant International Financial Reporting Standards on valuation.

(4) Where the fund manager has historical price or preliminary estimated value as fair value, the firm shall—

- (a) consider it to be the best approximation of the current fair value; and
- (b) assess the difference between the approximation and final value and the effect on assets under management, performance and also make any adjustments when the final value is received.

(5) External valuations for real estate investments shall be performed by an independent registered property valuer and shall be done at least once annually and the valuation report shall be submitted to the Authority.

101. (1) Where during a dealing period, a scheme experiences inflows or outflows as a result of sales or redemptions of participatory interests in excess of a predetermined level as set out in the formation documents, the fund manager shall be entitled to raise an anti-dilution levy, calculated on the basis of subregulation (2), on the investors buying or selling participatory interests in the scheme.

Resolution of the dilutive effect

(2) The fund manager shall determine the scheme's average expenses such as commission, fiscal and other fees for buying or selling underlying securities during the dealing period and levy the buyers or sellers accordingly.

(3) The levy raised under subregulation (2) shall be paid into the scheme for the benefit of the participants who neither purchased nor redeemed participatory interests during the dealing period.

(4) A fund manager shall make a daily record of the participatory interests in the scheme held, acquired or disposed of by the fund manager, including the types or classes of such participatory interests and of the balance of any acquisitions and disposal and retain such record for a period of seven years from the date each record is made.

) A fund manager shall make a daily record of how the anti-dilution is calculated and retain such record for a period of seven years from the date each record is made.

PART VIII—INVESTMENT POWERS

102. (1) In establishing the different funds, a scheme shall be guided by the following criteria on composition of the funds—

Composition of 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 sixty per cent 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 sixty per cent 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 sixty per cent of the market value of assets under management; and

Provided that—

- (i) investments in unlisted securities in East African Community partner states shall be up to a maximum of ten per cent of Assets Under Management;
 - (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 twenty per cent;
 - (iii) investments in off-shore listed securities shall be a maximum of ten per cent of Assets under Management;
 - (iv) investments in off-shore unlisted securities shall be a maximum of five per cent of Assets under Management;
 - (v) other alternative investments to a maximum of ten per cent where applicable;
 - (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 twenty-five per cent of the Assets under Management;
 - (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;
 - (viii) investment in a related company shall be limited to ten per cent of the Assets under Management; and
 - (ix) no assets under management in any of the funds provided in paragraphs (a), (b), (c) or (d) may be leveraged.
- (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:

Provided that—

- (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 company shall not in aggregate exceed twenty-five per cent of the assets under management;
- (ii) investment in alternative investments be at a maximum of eighty per cent;
- (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;
- (iv) investment in a related company shall be limited to twenty-five per cent of the Assets under Management; and
- (v) minimum investment of one hundred thousand shillings 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.

(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—

- (a) redemption of participatory interests;
- (b) efficient management of the scheme in accordance with its objectives; or
- (c) other purposes which may reasonably be regarded as ancillary to the objectives of the scheme.

(3) A scheme may only participate in an underwriting or accept placings if the same is—

- (a) disclosed in the formation documents; and
- (b) approved by the trustee.

103. (1) Subject to this Part, the property of a scheme may comprise of any assets, the holding of which is consistent with the relevant category of scheme.

Investment powers

(2) The offer documents may restrict—

- (a) the descriptions of assets in which the property of the scheme may be invested;

- (b) the proportion of the capital property of the scheme to be invested in assets of any description; or
- (c) the descriptions of transactions permitted,

and any such restrictions shall be observed as if they were included in this Part.

104. (1) Subject to subregulation (2), each of the separate parts of an umbrella fund shall be invested as if it were a single scheme. Umbrella funds

(2) A sub fund of an umbrella fund may invest in participatory interests of another sub-fund of the same umbrella fund.

105. (1) Except as provided under the Capital Markets (Securities Lending and Borrowing and Short Selling) Regulations, 2017, the assets of the scheme may not be lent or used as collateral to cover any transaction. Securities lending and derivatives
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(2) The assets of the scheme may include derivative instruments to the extent that they are required for hedging purposes only.

(3) For a collective investment scheme to be able to engage in securities lending and to enable prospective holders of participatory interests to make informed decisions, its incorporation documents shall disclose—

- (a) its intention to lend the securities belonging to the collective investment scheme;
- (b) its investment policy with regard to securities lending; and
- (c) the market risks associated with securities lending transactions such as loss, insolvency etc.

(4) The fund manager of a collective investment scheme may engage in a securities lending transaction as a lender on behalf of the collective investment scheme, if the securities lending transaction is in compliance with the key investor information document statement of the collective investment scheme and the liquidity requirements of the collective investment scheme.

(5) The securities lending transaction must be undertaken in a safe and prudent manner and in accordance with the lending policies and procedures that are approved by the fund manager, trustee or board of directors of the collective investment scheme to provide additional income or fees for the benefit of the collective investment scheme.

(6) The fund manager of the collective investment scheme must ensure that controls and procedures relating to such securities lending transactions are comprehensive and sound.

106. (1) A collective investment scheme shall not lend any of the money in the property of the scheme.

Restriction on lending of money and property

(2) Purchasing a debenture is not lending for the purposes of subregulation (1), nor is the placing of money on deposit or in a current account.

107. None of the assets of a scheme may be used to discharge any obligation arising under a guarantee or indemnity given by the fund manager or trustee with respect to the obligations of a third party.

Guarantees and indemnities

108. No agreement on behalf of a scheme to dispose of property may be made by the fund manager or trustee unless—

Requirement to cover sales

(a) that obligation, and any other similar obligation, could immediately be honored by the scheme by delivery of property or the assignment of rights; and

(b) the property and rights are owned by the scheme at the time of the agreement.

109. A fund manager shall on behalf of a scheme not enter into short selling transactions on a securities exchange except as provided in the Capital Markets (Securities Lending and Borrowing and Short Selling) Regulations, 2017, and the fund manager complies with the requirements thereof.

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PART IX—REGISTER, TITLE AND TRANSFER

110. (1) A fund manager shall be responsible for establishing and maintaining a register of participants in accordance with these Regulations.

The register

(2) The register shall be maintained in a legible form.

(3) There shall be entered in the register—

- (a) the name and address of each participant;
- (b) the number of participatory interests of each type held by each such participant;
- (c) the date on which the holder was registered in the register in respect of the participatory interests standing in his or her name;

- (d) the number of participatory interests of each type for the time being in issue and represented by investment certificates and the numbers of those certificates; and
- (e) any other information as the fund manager may deem important.

(4) The fund manager must take all reasonable steps and exercise all due diligence to ensure that the information contained in the register is at all times complete and up to date.

(5) Pursuant to subregulation (4), the fund manager shall, in particular, take such steps as are necessary to obtain and supply information from or concerning any new holder of participatory interests to enable the entry in the register to be made.

(6) Nothing in this Part requires the fund manager to make or alter any entry in the register or to issue any certificate or other document or to accept any transfer or conversion in any case where it considers it necessary or appropriate to carry out or complete identification procedures in relation to the participant or another person pursuant to a statutory obligation.

111. (1) The register shall be conclusive evidence as to the persons respectively entitled to the participatory interests entered in it.

The register as evidence of title

(2) No notice of any trust, express, implied or constructive, which may be entered in the register in respect of any participatory interest shall be binding on the fund manager or the trustee.

112. (1) The register shall be available for inspection by or on behalf of the participants in Kenya at all times during ordinary office hours except that the register may be closed at such times and for such periods, not exceeding 30 days in any one year, as the fund manager may, from time to time, determine.

Inspection of the register and copies of entries

(2) The fund manager shall supply to a participant or its authorized representative at his or her request, a copy of the entries in whatever form on the register, relating to that participant.

(3) The fund manager shall state in scheme documents, the place and times where the register may be inspected, or authorized copies obtained.

113. On or following the issue of participatory interests and subject to regulation 111, at any other time, a document recording title to the participatory interests may be issued to the participant if, and in such form, as the fund manager decides, having regard to any requirement of these Regulations.

Fund Certificates.

114. (1) Subject to subregulation (2), every participant shall be entitled to transfer participatory interests held by him or her in respect of which he or she is entered in the register by an instrument of transfer in any usual or common form or in such other lawful form as the fund manager may from time to time approve.

Transfer of
participatory
interests by act of
parties

(2) The fund manager is not under any duty to accept a transfer—

- (a) if the number or value of the participatory interests sought to be transferred would result in the participant, or the transferee, holding less than any number or value stated in the scheme documents as the minimum number to be held; or
- (b) if the scheme documents contain a limitation upon the categories of persons who may be a participant and the transferee is not within one of those categories.

(3) Every instrument of transfer of participatory interests shall be signed by or on behalf of the participant transferring the participatory interests or, in the case of a body corporate, duly executed pursuant to its incorporation documents and, unless the transferee is the fund manager, the transferor shall be deemed to remain the participant until the name of the transferee has been entered in the register.

(4) Every instrument of transfer, duly stamped if it is required to be stamped, must be left for registration accompanied by—

- (a) any necessary declarations or other documents that may be required in consequence of any legislation now or from time to time in force; and
- (b) such other evidence as the fund manager may require to prove the right of the transferor to transfer the participatory interests or, in the case of a body corporate, the authority of the signatory on its behalf.

(5) All instruments of transfer which shall be registered shall be retained by the fund manager in original copy or digital form for a minimum period of seven years.

(6) Upon registration of an instrument of transfer, a reference shall be made on the register enabling the name of the transferor and the transferee and the date of transfer to be identified.

115. (1) Upon the death of any one of the joint holders of any participatory interests, the survivor or survivors shall be the only persons recognised by the fund manager as having any title to or any interest in the participatory interests held by such joint holders.

Transfer of
participatory
interests by operation
of law

(2) The executors or administrators of a deceased holder of participatory interests, not being one of two or more joint holders, shall be the only persons recognised by the fund manager as having title to the participatory interests held by the deceased holder.

(3) Where any person becomes entitled to a participatory interest in consequence of the death or bankruptcy of any sole holder of participatory interests, or of the survivor of joint holders—

- (a) he or she may, subject to paragraph (b), upon producing such evidence as to his or her title as the fund manager may properly require, either be registered himself or herself as holder of the participatory interest upon giving to the fund manager notice in writing that he or she so desires or transfer the participatory interest to some other person;
- (b) the provisions concerning transfer of participatory interests shall be applicable to any such notice or transfer of the participatory interest, but such person shall not, until registered as holder, be entitled to receive notices or attend or vote at any meeting of holders;
- (c) subject to paragraph (d), the new participant may give a discharge for all monies payable in respect of the participatory interest, but shall not, until registered as a participant, be entitled to receive notices or attend or vote at any meeting of participants; and
- (d) the fund manager may retain any monies payable in respect of the participatory interest until the new participant is registered as the holder of the participatory interest or duly transfers the participatory interest.

116. (1) The fund manager shall—

Change of name and
address of participant

- (a) upon receipt of notice in writing of a change of name and the related legal documentation or change of address of any participant;
- (b) upon being satisfied of the change of name or address referred to in paragraph (a); and
- (c) on compliance with such formalities as the fund manager may require, alter the register accordingly.

(2) Where a certificate has been issued and remains valid and the name of the participant is altered in the register, the fund manager

shall either issue a new certificate to the participant or make an appropriate endorsement on the participant's existing certificate.

117. (1) The fund manager may, unless expressly forbidden to do so by the incorporation documents, at any time, with the approval of the trustee, determine—

Subdivision and consolidation of participatory interests

- (a) that each participatory interest shall be subdivided into two or more participatory interests whereupon each participatory interest shall stand subdivided accordingly; or
- (b) that two or more participatory interests shall be consolidated whereupon those participatory interests shall stand consolidated.

(2) Upon a subdivision or consolidation of participatory interests, the fund manager shall immediately notify each participant entered in the register, of the subdivision or consolidation.

118. Where—

Default by participant

- (a) the participant of any participatory interests defaults in making any payment in money or a transfer of property due to the fund manager, or trustee under these Regulations, or the incorporation documents, in respect of the creation and issue or the re-issue of participatory interests to that participant; and
- (b) the fund manager is satisfied that there has been such a default by such evidence furnished to the fund manager as the fund manager shall require,

the fund manager may make any necessary deletion or alteration in the register.

PART X—CHARGES, EXPENSES, PAYMENTS AND BENEFITS TO FUND MANAGER AND TRUSTEE OR CUSTODIAN

119. (1) A fund manager shall develop policies and procedures which govern the levying of fees, charges and expenses in accordance with the methodology set out in the incorporation documents.

Charges

(2) The policies and procedures in subregulation (1) shall be approved by the trustee or the board of directors prior to implementation.

(3) The fund manager of a collective investment scheme shall disclose its historical fees at least for the last twenty-four months where applicable.

(4) The fund manager shall disclose the current fee schedule and the calculation methodology in the incorporation documents to current and prospective participants including all performance-based fees and expenses.

120. (1) No payment may be made to the trustee or custodian out of the property of the scheme, whether by way of reimbursement of expenses or otherwise, except—

Remuneration of the trustee or custodian and reimbursement of expenses

- (a) remuneration for the trustee and custodian in respect of its services and in respect of which the following have been stated in the incorporation documents and information memorandum—
 - (i) the actual amount or rate of the remuneration;
 - (ii) the periods in respect of which the remuneration is to be paid;
 - (iii) how the remuneration is to accrue; and
 - (iv) when the remuneration is to be paid;
- (b) reimbursement of expenses properly incurred by the trustee or custodian in performing or arranging for the performance of the functions conferred on the trustee or custodian by these Regulations.

(2) Subregulation (1)(a)(i) may be taken to be complied with if the information memorandum contains—

- (a) the maximum amount or rate of the remuneration which may become payable to the trustee or custodian; and
- (b) an explanation as to how the actual amount or rate is to be determined, including the mathematical basis and the relevant factors involved.

(3) Payment regarding services may be made under subregulation (1)(a), only if authorized by the trust deed.

121. (1) No payments may be made out of the property of the scheme other than payments under Part XI and sums due by virtue of any other provision in these Regulations and the following—

Other payments out of the property of the scheme

- (a) broker's commission, fiscal charges and other disbursements which are—
 - (i) necessary to be incurred in effecting transactions for the scheme; and

- (ii) normally shown in contract notes and confirmation notes as appropriate;
- (b) interest on borrowings permitted under the scheme and charges incurred in effecting or terminating such borrowings or in negotiating or varying the terms of such borrowings;
- (c) taxation and duties payable in respect of the property of the scheme, the incorporation documents or the issue of participatory interests; and
- (d) any costs incurred in modifying the incorporation documents, including costs incurred in respect of meetings of participants convened for purposes which include the purpose of modifying the trust deed, where the modification is—
 - (i) necessary to implement, or necessary as a direct consequence of any change in the law, including changes in these Regulations;
 - (ii) expedient having regard to any change in the law made by or under any fiscal enactment and which the fund manager and the trustee or custodian agree is in the interest of participants; or
- (iii) to remove from the deed, obsolete provisions;
- (e) any costs incurred in respect of meetings of participants convened on a requisition by participants not including the fund manager or an associate of the fund manager; and
- (f) liabilities arising on unitization, amalgamation or reconstruction;
- (g) the audit fee properly payable to the auditor and any value added tax on it and any proper expenses of the auditor; and
- (h) the scheme fees of the Authority.

(2) In a case where the property of a scheme (transferor) is transferred to another scheme (transferee) in consideration of the issue of participatory interests in the transferee to participants of the transferor, the trustee or custodian may pay out of the property of the transferee, any liability arising after the transfer which had it arisen before the transfer, could properly have been paid out of the transferred property.

(3) The trustee may only make the payments in subregulation (2) if—

- (i) there is nothing in the incorporation documents of the transferor expressly forbidding the payment; and
- (j) the trustee is of the opinion that proper provision was made by the transferor for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

(4) Other payments may be made from the property of the transferor provided that they are authorized, reflected and disclosed in transferee's incorporation documents.

PART XI—PERFORMANCE AND MEASUREMENT REPORTING

122. (1) A fund manager shall prepare and submit to the Authority a performance measurement report on a quarterly basis.

Performance Reporting

(2) The performance measurement report shall be submitted within twenty-one (21) days after the end of each quarter and shall be made available to all existing and prospective investors.

(3) The performance measurement report shall include updated performance and performance related information on general areas of investment for the selected fund, including correction of material errors if any. At the minimum, the disclosure shall include the specific errors identified, the impact of the errors, the values before and after correction of the error and the measures to prevent recurrence. In this context an error is considered material if it results in an impact equal to or greater than ten per cent of the net asset value of the assets under management.

(4) The fund manager shall calculate and present time-weighted returns for each fund.

(5) The fund manager shall not link actual performance to historical, theoretical performance or prospective performance.

(6) The fund manager shall not present performance or performance-related information that is false or misleading.

(7) In addition to the actual return for a given quarter, the fund manager shall also present total returns according to at least one year, three year and five-year annualized returns through the most recent period.

(8) The fund manager shall present in each collective investment scheme fund performance report—

- (a) the collective investment scheme returns for each quarterly period;
- (b) when the initial period is less than one quarter, the return from the collective investment scheme from the inception date through the end of that quarter;
- (c) the inception date for each fund;
- (d) the return from the end of the last quarterly period through the termination date, if the fund is terminated;
- (e) the total return for the benchmark for each quarterly period where applicable;
- (f) for all other periods for which fund returns are presented, where applicable;
- (g) total Assets under Management under the collective investment scheme as at the end of the reporting quarter; and
- (h) the fund expense ratio appropriate to prospective investors where the fund expense ratio shall be computed as all fund expenses for the period including performance fees divided by the closing assets under management for the period.

(9) All information in the collective investment scheme performance report shall be presented in the same currency.

(10) The fund manager shall present proprietary assets as a percentage of the collective investment scheme fund assets as at the end of each quarter.

(11) For funds which invest predominantly in real estate, the fund manager shall present collective investment scheme fund and benchmark component selected by the fund manager returns for all periods presented.

(12) The fund manager shall disclose all material events that would help a prospective investor interpret the collective investment scheme performance report.

(13). The disclosure shall be included for a minimum of one year and for as long as it is relevant to interpreting the track record. In this context, a material event is any occurrence or information that has the potential to affect the perceived performance of the funds, whose details should be well elaborated for full disclosure of the potential impact.

(14) In presenting the collective investment scheme returns, total assets under management and the fund expense ratio, the fund manager shall include comparable figures from the immediate previous period.

123. (1) In the determination of total assets under management, the total assets of a collective investment scheme shall— Performance calculation.

- (a) be the aggregate fair value of all assets and the assets shall not be double counted; or
- (b) be actual assets managed by the fund manager of the collective investment scheme including both fee-paying and non-fee-paying portfolios; and include assets where the fund manager has outsourced the management of the assets to another fund manager.

(2) Collective investment scheme performance shall be calculated using only actual assets managed by the fund manager.

(3) Returns for periods of less than one year shall not be annualized.

(4) The fund manager shall report returns that are net of all fees charged against the fund including transaction costs (cost of buying and selling, investment-brokerage fees, taxes, and exchange fees), and fund management fees and administrative costs (including audit, legal, custodial, trustee, annual general meeting fees, and performance-based fees).

(5) If the fund manager of a collective investment scheme chooses to use a benchmark for risk and return analysis, the fund manager shall disclose in the performance report—

- (a) the benchmark description which shall include the key features of the benchmark or the name of the benchmark for a readily recognized index or other point of reference; and
- (b) the periodicity of the benchmark if benchmark returns are calculated less frequently than monthly.

(6) The benchmark used shall be relevant to the fund strategy of the same return type, in the same currency and for the same periods for which the returns are presented.

(7) The fund manager of a collective investment scheme fund shall present the maximum drawdown and the sharpe ratio as risk measure in addition to any other measure that current and prospective investors are likely to understand.

(8) When calculating risk measures—

- (a) the periodicity of the fund returns, and the benchmark returns shall be the same; and
- (b) the risk measure calculation methodology of the fund and the benchmark shall be the same.

124. (1) Every collective investment scheme shall have an annual accounting period ending the last day of December in each year, but the fund manager shall publish and submit to the Authority an un-audited interim report for the half-year period ending on the last day of June in each year within two months from the end of that month and audited financial statements within three months from the end of the accounting period.

Accounting periods and allocation of income.

(2) A collective investment scheme constituted as a body corporate must have an annual income allocation date, which is the date in any year stated in the most recently published information or placement memorandum as the date on or before which an allocation of income is to be made in respect of each annual accounting period.

(3) The annual income allocation date must be a date within two months after the relevant accounting reference date.

125. In preparation of financial statements of the fund—

Preparation of fund accounts.

- (a) total returns shall be used, including dividend income, interest income and capital gains;
- (b) assets and liabilities shall be recognized on the trade date and not the settlement date;
- (c) accrual accounting shall be used for fixed-income securities and all other investments that earn interest income;
- (d) any accrued income shall be included in the opening and closing portfolio values when performance is calculated;
- (e) management, performance-based and other fees shall be accrued and
- (f) dividend income shall be recognized as of the ex-dividend date.

126. (1) The fund manager shall cause the scheme's annual report to be audited, and such report shall contain the information provided for in the Sixth Schedule.

Audit of the annual account.

(2) A person shall not be qualified for appointment as an auditor of a scheme unless he or she is a good standing member of

and holds a valid practicing certificate issued by the Institute of Certified Public Accountants of Kenya.

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

127. (1) A report which relates to an annual accounting period shall contain—

Contents of annual accounts

- (a) accounts which shall include a balance sheet and an income and expenditure account;
- (b) a statement of commissions paid on dealing as required by the Sixth Schedule;
- (c) a comparative table relating to that period stating the matters set out in the Sixth Schedule;
- (d) a copy of a report of the auditor to the holders of participatory interests on the accounts contained in the report stating the matters set out in the Sixth Schedule;
- (e) a copy of a report of the trustee and custodian to the holders of participatory interests stating the matters set out in the Sixth Schedule and supplied to the fund manager by the trustee or custodian; and
- (f) figures for the total expense ratio of the scheme referred to in the Sixth Schedule.

(2) A report which relates to any accounting period shall contain the accounts of the scheme for the period to which the report relates which shall include the matters required to be stated therein by the Authority.

(3) A report which relates to any accounting period shall be signed by at least two directors of the fund manager.

128. (1) When calculating returns for a collective investment scheme funds using time-weighted method, all assets shall be valued daily and returns calculated at least monthly.

Calculating returns

(2) The fund manager shall calculate sub-period returns at the time of all cash flows exceeding 10% of the Assets under Management.

(3) When calculating returns, the fund manager shall geometrically link periodic and sub-period returns.

(4) When calculating returns the fund manager shall consistently apply the calculation methodology used for an individual portfolio.

129. (1) The fund manager shall within three months after the end of each annual accounting period and two months after the end of the half-yearly accounting period, submit to the Authority and publish the fund manager's annual and half-yearly reports respectively.

Publication of fund manager's reports

(2) The fund manager shall send a copy of the report to each holder (or to the first named of joint holders) entered in or entitled to be entered in the register at the close of business on the last day of the relevant accounting period (or, if the report relates to a half-yearly accounting period for which no interim allocation of income is made, as at the last day of that period) and shall supply a copy of the report to each holder of the participatory interests on request by the holder.

(3) The fund manager and the trustee shall make the most recent annual report and the most recent half-yearly report (unless it has been superseded by an annual report) available, in English, for inspection by the public at each place specified for the purpose in the most recently published information memorandum during ordinary office hours.

(4) The fund manager shall send a signed copy of the annual report when it is published, to the Authority and to the trustee.

130. The fund manager shall not effect any sale of participatory interests in the scheme to any person until it has made available to the person at all times during ordinary office hours at its principal place of business in Kenya, or sent to the person, on request, a copy of the most recent annual report of the fund manager and the scheme and the most recent half-yearly report of the fund manager and the scheme, unless it has been superseded by the most recent annual report.

Fund manager's reports to be availed to purchasers of participatory interests

131. The fund manager shall, with every publication of prices under regulation 97, publish a statement that the most recent report of the fund and the information or placement memorandum are available to any person who applies to the fund manager for them.

Fund manager to publish daily statement

132. It is the duty of the trustee to enquire into the conduct of the fund manager in the management of the scheme in each annual accounting period and to report on the conduct to the holders of participatory interests.

Annual report by the trustee

133. The trustee's report shall contain the matters set out in paragraph 5 of the Sixth Schedule and shall be delivered to the fund manager in good time to enable the fund manager include a copy of the report in the fund manager's report to the holders of participatory interests made on or before the annual income allocation date.

Trustee's report to be delivered to fund manager in good time

PART XII—MEETINGS AND MODIFICATIONS

134. (1) The trustee shall convene—

General and extra ordinary meetings

- (a) a general meeting within four months after the relevant accounting reference date; or
- (b) an extra ordinary general meeting on receipt of a requisition that complies with subregulation (3), for a date not later than two months after receipt of the requisition.

(2) A meeting can either be virtual or physical.

(3) A requisition shall—

- (a) state the objects of the meeting;
- (b) be dated;
- (c) be signed by participants who, at that date, are registered as the holders of participatory interests representing not less than one-tenth in value and number of all of the participatory interests in the fund or sub fund then in issue; and
- (d) be deposited at the head office of the scheme.

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

(5) In the case of a collective investment scheme constituted as a corporate body, other than duly requisitioned meetings of holders of participatory interests, the fund manager shall not be obliged to convene general meetings of holders of participatory interests in the manner contemplated in the Companies Act, 2015.

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(6) In the case of an investment company, the Alternate Corporate Director or the directors may convene a meeting of participants at any time.

135. (1) A fourteen days' notice or any longer period of notice specified for the purpose in the trust deed or instrument of incorporation, inclusive of the day on which the notice is deemed to be served and of the day specified under subregulation (2), of every meeting shall be given to the participants in the manner provided for in regulation 137.

Notice of meetings
of participants

(2) The notice shall specify the place day and hour of meeting and the terms of the resolutions to be proposed.

(3) A copy of the notice shall be sent to the trustee by post unless it is the trustee that has convened the meeting.

(4) The accidental omission to give notice to or the non-receipt of notice by any of the holders shall not invalidate the proceedings at any meeting.

136. (1) The fund manager shall be entitled to receive notice of and attend any general meeting but shall not be entitled to vote or be counted in the quorum for the meeting and accordingly, for the purposes of this part, the participatory interests held or deemed to be held by the fund manager shall not be regarded as being in issue.

Attendance and
voting at meetings

(2) Subregulation (1) does not apply in respect of any participatory interests which the fund manager holds on behalf of or jointly with a person who, if himself or herself the sole registered participant, would be entitled to vote, and from whom the fund manager has received voting instructions.

(3) Any associate of the fund manager shall not be entitled to vote at any such meeting except in respect of participatory interests which he or she holds on behalf or jointly with a person who, if that person is the registered holder, would be entitled to vote, and from whom the associate has received voting instructions.

(4) The trustee shall be entitled to attend every such meeting.

137. (1) Any notice or document required to be served upon a participant shall be deemed to have been duly served—

Service of notices
and other documents

- (a) in the case of participatory interests held by a registered participant, if it is sent by post to or left at his or her address as appearing in the register or sent by electronic mail to the email address appearing on the register; or
- (b) in the case of participatory interests for the time being represented by investment certificates, if it is given in the manner provided for in the updated trust deed or most recently published prospectus.

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

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

(4) A notice or document served by electronic mail to a participant's registered email address shall be deemed to have been served upon production of the transmission report.

(5) Service of a notice or document on any one of joint holders shall be deemed effective service on the other joint holders.

138. A meeting of participants duly convened and held in accordance with this Part shall be competent, by extraordinary resolution, to require, authorise or approve any act, matter or document in respect of which any such resolution is required or expressly contemplated by these Regulations, but shall not have any other powers.

Powers of meeting of participants

139. In these Regulations, "extraordinary resolution" means a resolution—

Meaning of "extraordinary resolution"

- (a) proposed and passed at a meeting of participants duly convened and held in accordance with this Part of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given; and
- (b) carried, whether on a show of hands or on a poll, by a majority consisting of two thirds or any larger proportion specified for this purpose in the trust deed or prospectus of the total number of votes cast for and against such resolution.

140. (1) The quorum at a meeting of participants shall be the participants present in person or by proxy of—

Quorum

- (a) one-tenth in value or any proportion more than one-tenth in value specified for this purpose in the trust deed of all the participatory interests in issue on the date specified in regulation 134 (3) (c), excluding from that total any participatory interests known to have been redeemed before the time of the meeting; and
- (b) one-tenth of the total number of participants.

(2) The Authority may, on application by the trustee of a collective investment scheme, approve the modification of the quorum requirements in subregulation (1) where the requirements may be prejudicial to participants due to the size of a fund, provided that such modification is envisaged under the incorporation documents.

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

(4) If, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned

to such day and time not being less than fourteen days thereafter and to such place as may be appointed by the chairperson and at such adjourned meeting, the participants present in person or by proxy shall be a quorum.

(5) Notice of any adjourned meeting of participants shall be given in the same manner as for an original meeting and such notice shall state that the holders present at the adjourned meeting, whatever their number and the number of participatory interests held by them, will form a quorum.

141. (1) A trustee shall preside at every meeting of participants. The chairperson

(2) Where the trustee is not present, a person, other than the fund manager, who need not be a participant, nominated in writing by the trustee, shall preside at every meeting of holders and, if no such person is nominated or if at any meeting the person nominated is not present within fifteen minutes after the time appointed for holding the meeting, the participants present shall choose one of their number to be chairperson.

142. The Chairperson may, with the consent of any meeting of participants at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which may lawfully have been transacted at the meeting from which the adjournment took place. Adjournment

143. (1) At any meeting of participants, an extraordinary resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded by the chairperson, the trustee or by one or more participants present in person or by proxy and holding at least five percent for this purpose in the incorporation documents in value of all the participatory interests in issue on the date specified in regulation 134 (3) (c). Votes at meetings

(2) Unless a poll is so demanded, a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

(3) If a poll is duly demanded, it shall be taken in such a manner as the chairperson may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(4) A poll demanded on the election of a chairperson or on a question of adjournment shall be taken immediately and a poll demanded on any other question shall be taken at such time and place as the chairperson directs.

(5) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

(6) On a show of hands, every participant who being an individual is present in person, or being a corporation is present by its representative properly authorised in that regard, shall have one vote.

(7) On a poll, every participant who is present in person or by proxy shall have one vote for every share in the property of the scheme.

(8) A corporation, being a participant, may authorise such person as it thinks fit to act as its representative at any meeting of participants and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he or she represents as the corporation could exercise if it were an individual participant.

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

(10) On a poll, votes may be given either personally or by proxy.

(11) In the case of an equality of votes cast whether on a show of hands or on a poll in respect of a resolution put to a general meeting, the chairperson appointed in terms of the formation documents or as provided in these Regulations shall be entitled to a casting vote in addition to any other vote he or she may have.

144. (1) Modifications to the formation documents and departures from policies or a set of investment objectives stated in offer documents of the descriptions set out in subregulation (2) shall be taken to have been authorised by an extraordinary resolution at a meeting of participants if such modification or departure has been the subject of a separate motion for its approval which has been separately approved by an extraordinary resolution at that meeting.

Restrictions on the putting of composite resolutions to meetings of participants

(2) The following are the descriptions of modifications to the formation documents and departures from policy referred to in subregulation (1)—

- (a) an increase in the charges payable to the fund manager, trustee or custodian;

- (b) a modification to any provision in the trust deed restricting—
 - (i) the descriptions of assets in which the property of the scheme may be invested;
 - (ii) the proportion of property to be invested in assets of any description;
 - (iii) the description of transactions permitted; or
 - (iv) the borrowing powers of the scheme;
- (c) any statement made in the information memorandum that the manager will or may in relation to any matter within paragraph (b) adopt, in the management of the scheme, a policy or set of investment objectives more restrictive than the restrictions imposed in relation to that matter by Part VIII or by the trust deed and any changes thereof.

145. (1) The instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or, if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorised. Proxies

(2) No instrument for appointing a proxy shall be valid after the expiration of twelve months from the date named in it as the date of its execution.

(3) A person appointed to act as a proxy need not be a participant.

(4) An instrument of proxy may be a form approved by the trustee.

(5) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding—

- (a) the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed; or
- (b) the transfer of the participatory interests in respect of which the proxy is given,

except that no intimation in writing of such death, insanity, revocation or transfer shall have been received at the place appointed for the deposit of proxies, or if no such place is appointed, at the registered office of the fund manager before the commencement of the meeting or adjourned meeting at which the proxy is used.

(6) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a

naturally certified copy of such power or authority shall be deposited at such place as the trustee or the fund manager with the approval of the trustee may, in the notice convening the meeting, direct or if no such place is appointed then at the registered office of the fund manager.

(7) The direction by the trustee under subregulation (6) shall be not less than forty-eight hours before the time appointed for holding the meeting or adjourned meeting or in the case of a poll before the time appointed for the taking of the poll at which the person named in the instrument proposes to vote, and in default, the instrument of proxy shall not be treated as valid.

146. In this Part, “participants” means—

Special meaning of participant

- (a) the persons who were participants on the date forty-eight hours before the notice of the relevant meeting was deemed to have been served in accordance with regulation 137, but excluding any persons who are known to the fund manager not to be participants at the time of the meeting; or
- (b) in the case of investment participatory interests, participants which were in issue on the date seven days before the notice of the relevant meeting was deemed to have been served in accordance with regulation 137.

147. (1) Minutes of all proceedings and resolutions at every meeting of the participants shall be made and duly entered in books to be, from time to time, provided for the purpose at the expense of the fund manager.

Minutes

(2) Any such minute purporting to be signed by the chairperson of the meeting shall be conclusive evidence of the matters stated in them and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened, and all resolutions passed at that meeting, to have been duly passed.

148. (1) Where the trustee or custodian is of the opinion that any extraordinary resolution to be proposed is one in relation to an umbrella fund, between the participants in one constituent fund and the participants in another, that resolution shall be deemed to have been duly passed only, if instead of being passed at a single meeting of all participants, it shall be duly passed at separate meetings respectively of the participants in the one constituent fund and participants in the other, as the case may be.

Class meetings

(2) This Part applies to each separate meeting held under subregulation (1) as it applies to other meetings.

149. The rights attaching to a class of participatory interests shall not be varied except with the sanction of an extraordinary resolution passed at a class meeting of the participants of the class.

Variation of class rights

150. (1) A modification may be made to the trust deed only by a deed approved by the Authority, expressed to be supplemental to the trust deed, entered into by the fund manager and the trustee or custodian following—

Modification of the trust deed: with meeting

- (a) the calling of a meeting of participants by notice if required under subregulation (2); and
- (b) the approval of the holders if required under subregulation (3).

(2) The calling of a meeting is necessary unless the fund manager and the trustee or custodian have agreed that the modification is one which may, in accordance with regulation 151, be made without the approval of a resolution.

(3) The approval of the participants signified by the passing at the meeting of an extraordinary resolution authorising the modification is required in any case where a meeting of participants has to be called.

(4) If a meeting is required under subregulation (2), the notice of the meeting shall state that the trustee or custodian has reviewed the circumstances leading to the proposed resolution and considers that the information accompanying the notice contains sufficient information to enable participants make an informed decision.

151. (1) Subject to subregulation (2) and any restriction on the powers to modify which may be contained in the trust deed, a modification to the trust deed may be made without the approval of a resolution of the participants if it is required solely—

Modification of the trust deed: without meeting

- (a) to implement any change in the law, including a change brought about by an amendment to these Regulations;
- (b) as a direct consequence of any such change in the law;
- (c) to change the name of the scheme;
- (d) to include a provision to enable the fund manager to deduct a charge on redemption, where the circumstance envisaged by regulation 94 does not apply;
- (e) to remove from the trust deed obsolete provisions;
- (f) to replace the fund manager or the trustee when he or she has been removed or wishes to retire or has retired;

- (g) to remove references to a constituent part of an umbrella fund; or
 - (h) to make any other modification which the trustee or custodian and the fund manager have agreed in writing does not involve any participants or potential participants in any material prejudice.
- (2) A modification is not within subregulation (1) if it—
- (a) would affect any express restriction imposed by the trust deed on the powers which the fund manager and trustee or custodian or either of them would otherwise be able to exercise within these Regulations;
 - (b) would increase the maximum of any charge authorised by the trust deed to be made by the fund manager; or
 - (c) would relate to the authority for payments to be made out of the property of the scheme to the trustee or custodian by way of remuneration for the trustee or custodian's services.

152. (1) A statement of policy or set of investment objectives in the incorporation documents of the kind referred to in regulation 144 may not be changed without the approval of the Authority and an extraordinary resolution, and no significant departure may be made in the management of the scheme from that stated policy or set of investment objectives unless and until the departure has been approved by the Authority and an extraordinary resolution at a meeting of participants called for the purpose, and incorporation documents amended accordingly have been published.

Resolution to change
incorporation
documents (trust)

(2) Except where approved by an extraordinary resolution at a meeting of participants called for the purpose, a change to the incorporation documents relating to a proposal to treat all or any part of the fund manager's periodic charge as a capital charge, may not be made; but this prohibition does not apply where—

- (a) the scheme concerned already has clear investment objectives indicating—
 - (i) a greater preference for the generation of income than for capital growth; or
 - (ii) equal emphasis on the generation of income and on capital growth; and
- (b) ninety days have elapsed since the participants were notified in writing by the fund manager of the change to the incorporation documents and of the date when it is to come into effect.

(3) Any amendment to the incorporation documents to introduce a list, or to add an eligible market to the list, shall require approval of an extraordinary resolution at a meeting of participants unless—

- (a) the amendment is, in the context of the investment strategy of the scheme, of minimal significance only, and the trustee and the fund manager have so agreed in writing; or
- (b) the fund manager has—
 - (i) given notice in writing of the intended amendment to the trustee and the participants;
 - (ii) included in the incorporation documents the proposed date of commencement of the amendment; and
 - (iii) before the amendment is relied upon, waited for ninety days to lapse since the amended incorporation documents became available.

153. (1) The incorporation documents of a company may be amended by an extraordinary resolution and, in the case of a provision required to comply with paragraphs 3(1) or 4(1)(b) or 4(1)(d) of Second Schedule to these Regulations, may only be amended by an extraordinary resolution unless the amendment is to a provision required to comply with paragraph 4(1)(d) of Second schedule to these Regulations and is made solely to reflect the introduction of a new sub-fund.

Resolution to amend
incorporation
documents
(company)

(2) Notwithstanding subregulation (1), an amendment to the incorporation documents of a company that relates to a particular class of shares or particular classes and does not relate to a provision required to comply with paragraph 3(1) of Second Schedule and does not prejudice the shareholders of any other class may be made by an extraordinary resolution passed at a class meeting or class meetings.

(3) Except where in accordance with subregulation (1), an amendment to the incorporation documents may be made by an extraordinary resolution of the directors where—

- (a) the incorporation documents provide for amendment to be made in such manner; and
- (b) the amendment is required solely—
 - (i) to implement any change in the law, including a change brought about by an amendment of the Act or these Regulations;

- (ii) as a direct consequence of any such change;
- (iii) to change the name of the investment company;
- (iv) to remove from the incorporation documents obsolete provisions;
- (v) to make any other change to the incorporation documents which the directors consider does not involve any shareholder or potential shareholder in any material prejudice; or
- (vi) it would not introduce or affect any provision relating to the descriptions of the transferable securities in which the assets under management may be invested unless it is required solely to reflect the introduction of a new sub-fund.

154. (1) Neither a collective investment scheme nor a sub-fund of a collective investment scheme shall be subject to an amalgamation or reconstruction, which would result in the participants becoming participants in any other entity other than a licensed scheme or a recognised scheme.

Amalgamation and
reconstruction

(2) Where, for the purpose of an amalgamation or reconstruction, it is proposed that the assets under management of a collective investment scheme, or assets under management attributable to a sub-fund of collective investment scheme, should become the property of another licensed scheme or sub-fund or equivalent separately pooled part of a licensed scheme, the proposal shall not be implemented without the sanction of an extraordinary resolution of the participants of the collective investment scheme or, as the case may be, of the class or classes of participatory interests related to the sub-fund.

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

(4) This subregulation applies where the fund manager is reasonably satisfied that the inclusion of the property concerned—

- (a) is not likely to result in any material prejudice to the interests of the participants of the collective investment scheme;
- (b) is consistent with the objectives of the collective investment scheme or sub-fund; and
- (c) could be effected without any breach of management of collective investment schemes under Part V.

(5) The fund manager may at any time carry out a valuation of the assets under management for the purpose of effecting a scheme of amalgamation or reconstruction, and such a valuation does not create a valuation point for the purposes of dealings.

(6) The fund manager may carry out a valuation of the assets under managements on the day on which the annual or half yearly accounting period ends and—

- (a) if that day is not a dealing day; or
- (b) if the accounting period ends on a day before or after the period of that day which is the dealing day,

that valuation does not create a valuation point for the purposes of dealings.

155. (1) Amalgamation is an arrangement authorised by the Authority whereby—

Arrangement of
amalgamation

- (a) the whole of the assets under management of a collective investment scheme becomes the property of another collective investment scheme, and
- (b) participants in the collective investment scheme receive participatory interests in the amalgamated scheme,

and references in this definition to a collective investment scheme include a sub-fund of such a scheme.

(2) Where it is proposed that two or more collective investment schemes should be amalgamated, the proposals will require—

- (a) the approval of the participants of the scheme or any scheme which would cease to exist; ('the discontinuing scheme'); and
- (b) the approval of the participants of the scheme or a scheme which would not so cease to exist. ('the continuing scheme').

(3) Subregulation (2) (b) does not apply if the trustee or custodian of the continuing or absorbing scheme is reasonably satisfied that the inclusion of the assets concerned—

- (a) is not likely to result in any material prejudice to the interests of the participants in the scheme; and
- (b) is consistent and is regarded by the fund manager as consistent with the objectives of the scheme.

156. (1) A reconstruction of a collective investment scheme is a scheme of arrangement authorized by the Authority whereby— Reconstruction

- (a) part of the property of a collective investment scheme becomes the property of another collective investment scheme or schemes; or
- (b) the whole of that property becomes the property of two or more collective investment schemes,

whereby participants in the collective investment scheme being reconstructed receive participatory interests in the reconstructed collective investment scheme or schemes in exchange for the property received into that collective investment scheme or schemes.

(2) A proposal for reconstruction requires, in respect of the collective investment scheme being reconstructed, the approval of the participants in the scheme.

(3) Where it is proposed that assets under management of the collective investment scheme being reconstructed should become property of another collective investment scheme, the proposals will require the approval of the participants in the collective investment scheme being reconstructed, unless that approval would not have been required on an amalgamation by virtue of regulation 151 on the assumption that the assets to be included were treated as a discontinuing scheme.

PART XIII—SUSPENSION AND TERMINATION OF COLLECTIVE INVESTMENT SCHEMES

157. (1) The fund manager may, with the prior agreement of the trustee, or shall, if the trustee so requires, at any time for a period not exceeding twenty-eight days, suspend the issue and the redemption of participatory interests if the fund manager or the trustee is of the opinion that there is good and sufficient reason to do so, having regard to the interests of participants or potential participants.

Suspension and
resumption of issue
and redemption of
participatory
interests

(2) At the time of suspension under subregulation (1), the fund manager, or the trustee, if trustee required the fund manager to suspend the issue and redemption, shall—

- (a) obtain approval from the Authority of the suspension, stating the reasons for its action;

(b) immediately give written confirmation of the suspension and the reasons for it to the Authority, participants in the affected collective investment scheme and the authorities who are responsible for the authorisation of collective investment schemes in each country in which the fund manager holds itself out as willing to sell or redeem participatory interests in the collective investment schemes concerned; and

(c) publish a notice of the suspension in a newspaper of nationwide circulation and on its website.

(3) The Authority may order a suspension of a collective investment scheme where it is in the interest of the participants.

(4) Where issue and redemption are suspended—

(a) the trustee shall not create or cancel participatory interests; and

(b) the fund manager shall not buy or sell participatory interests as an agent of the trustee or on its own account.

(5) Before the resumption of issue and redemption of participatory interests, the fund manager shall inform the Authority of the proposed resumption and immediately after the resumption, it shall—

(a) confirm the resumption by giving notice in writing to the Authority, holders of participatory interests in the affected collective investment scheme and the bodies and authorities specified in subregulation (2)(b); and

(b) notify the participants and publish a notice of the resumption in a newspaper of nationwide circulation and on its website.

(6) During the suspension period—

(a) the fund manager shall keep the Authority and participants in the collective investment scheme informed and updated regarding the status and or any developments concerning the suspension; and

(b) none of the obligations in Part VI relating to the creation, cancellation, issue or redemption of participatory interests or to the valuation of participatory interests shall apply.

Provided that the circumstances are fully disclosed in the scheme documents, the fund manager in consultation with the trustee

may as an alternative to suspension of dealings in participatory interests implement other methods for dealing with exceptional circumstances including gating, side pockets and or discounts on redemption as defined in subregulation (7)

(7) For the purposes of subregulation 6—

“gating” means the partial restriction to an investor’s ability to redeem his or her participatory interests;

“side pockets” means segregation of the illiquid portion of a fund’s portfolio and their transfer into a separate, illiquid investment vehicle; and

“discount” is the percentage or amount by which the redemption price of a participatory interest, calculated on the basis of net asset value, is reduced.

158. (1) A scheme may be wound up—

Winding up of a scheme

- (a) where the Authority revokes the approval of the collective investment scheme;
- (b) where the fund manager or the trustee or custodian requests for the revocation of the Authority’s approval of the scheme;
- (c) upon the expiration of any period specified in the trust deed as the period at the end of which the scheme is to terminate;
- (d) on the effective date of a duly approved scheme of amalgamation; or
- (e) on the effective date of a duly approved collective investment scheme reconstruction which results in all the property of the reconstructed scheme becoming the property of two or more schemes.

(2) Upon the occurrence of any of the events specified in subregulation (1)—

- (a) Part VI on pricing and dealing shall cease to apply to the scheme;
- (b) the trustee shall cease to create and cancel participatory interests in the scheme;
- (c) the fund manager shall cease to issue and redeem participatory interests in the scheme;

- (d) the fund manager shall cease to buy and sell participatory interests as an agent of the trustee or custodian or on his or her own account; and
- (e) the trustee or custodian shall proceed to wind up the scheme in accordance with regulation 159.

159. (1) In a case falling within regulation 158(2)(d) or 158(2)(e), the trustee shall wind up the scheme in accordance with the approved scheme of amalgamation or reconstruction.

Manner of winding
up

(2) In any other case falling within regulation 158—

- (a) the trustee or custodian shall, as soon as practicable after the scheme falls to be wound up, realise the property of the scheme and, after paying out or retaining adequate provision for all liabilities properly so payable and retaining provision for the costs of the winding up, distribute the proceeds of that realisation to the participants and the fund manager proportionately to their respective interests in the scheme as at the date of the relevant event referred to in regulation 158(2); and
- (b) any unclaimed net proceeds or other case (including unclaimed distribution payments) held by the trustee shall be dealt with as provided under the law on unclaimed financial assets subject to the trustee or custodian having a right to retain any expenses incurred by it in making and relating to that payment.

(3) Where the trustee and one or more participants agree, the requirement in subregulation (2) to realise the property of the scheme shall not apply to that part of the property proportionate to the entitlement of that or those participants, and the trustee may distribute that part in the form of property, after making such adjustments or retaining such provision as appears to the trustee or depositary appropriate for ensuring that those participants bear a proportional share of the liabilities and costs.

(4) This regulation is subject to the terms of any scheme of amalgamation or reconstruction sanctioned by participants by way of a special resolution passed on or before the date of winding up or amalgamation.

(5) The fund manager may agree with one or more participants to distribute assets under management in actual form to that or those participants in proportion to their respective rights to participate on condition that such participants bear the proportion of the liabilities of the scheme and the expenses of the distribution attributable to them.

(6) Subregulation (5) shall not apply to proprietary assets of the fund manager.

(7) Nothing in this Part requires the trustee to distribute proceeds of a realisation to any participant in any case where the fund manager or the trustee considers it necessary or appropriate to carry out or complete identification procedures in relation to the participant or another person pursuant to a statutory obligation.

(8) On completion of the winding up in respect of the events referred to in paragraphs (b), (c), (d) or (e) of regulation 158(2), the trustee shall notify the Authority in writing of that fact and at the same time, the trustee or board of directors shall request the Authority to revoke the approval and the trustee or board of directors shall publish a notice of the winding up on their website and in a newspaper of nationwide circulation.

(9) Where any sum of money including unclaimed distributions, stands to the account of the scheme at the date of its dissolution, the fund manager shall pay as is provided under the law relating to unclaimed financial assets.

160. (1) The fund manager shall make all reasonable efforts to ensure that all the liabilities of the scheme are discharged before the completion of the winding up.

Duty to ascertain liabilities

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

- (a) the fund manager is, or becomes aware before the completion of the winding up; or
- (b) the fund manager would have become aware before the completion of the winding up had made all reasonable efforts to ascertain the liabilities of the scheme.

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

161. (1) As soon as the scheme's affairs are fully wound up (including distribution or provision for distribution in accordance with regulation 161(2), the fund manager shall prepare an account of the winding up showing how it has been conducted and how the assets under management have been disposed of.

Final account

(2) The account shall, following its approval by the board of directors in the case of an investment company or trustee in all other cases be signed on their behalf by the fund manager and the account shall, once signed, be the "final account" for the purposes of these Regulations.

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

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

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

162. (1) Subject to any order of the High Court, and to subregulation (2) while a scheme is being wound up, whether under regulation 159 or otherwise—

Accounting and reports during winding up

- (a) the annual and half-yearly accounting periods shall continue to run;
- (b) the quarterly report of assets under management shall continue to be submitted to the Authority;
- (c) the provisions about annual and interim allocation of income shall continue to apply; and
- (d) annual and half-yearly reports shall continue to be required.

(2) At the conclusion of the winding up, the accounting period then running shall be regarded as the final annual accounting period, and the annual reports of the fund manager and trustee or custodian in respect of that final period, shall be published and sent to each person who was a participant immediately before the end of the final accounting period within two months after the end of the period.

PART XIV—ADVERTISEMENTS AND PUBLIC ANNOUNCEMENTS

163. (1) A person shall not advertise to the public or section of the public in any media to invest in a collective investment scheme unless the advertisement has been approved by the trustee in writing and notified to the Authority.

Restriction on advertising

(2) For purposes of this Regulation, an advertisement includes any materials that are distributed to or designed for use in newspapers, magazines, firm brochures, fund fact sheets, fund offering documents, letters, media, websites or any other written or electronic material distributed to more than one party.

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

Content of advertisement

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

(3) Advertisements shall include a warning statement that—

- (a) the price of shares and the income therefrom if the collective investment scheme pays dividends may go down as well as up;
- (b) past performance is not reflective of future performance; and
- (c) a warning to investors that in certain specified circumstances the investors' right to redeem their participatory interests may be suspended.

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

165. For all publications, the fund manager must present information that is calculated and presented in line with these Regulations.

Publication

166. (1) For all publications, the fund manager must include at a minimum Net Asset Value, Yield (Year-to-date, Month-to-date and Quarter-to-date) where applicable.

Highest and lowest price

(2) The highest and lowest price and yield for the last one year shall also be included for the applicable funds.

167. The fund manager shall adhere to the principles of fair presentation and full disclosure when advertising and shall not present performance or performance-related information that is false or misleading.

Disclosure

168. (1) The fund manager shall maintain all data and information necessary to support all items included in the advertisement.

Advertisement data

(2) Where a fund manager has summarized aspects of the performance reports in the advertisement, it shall indicate where to obtain the full performance report.

169. (1) In an advertisement, the fund manager shall clearly label or identify— Advertisement

- (a) the name and description of the fund;
- (b) the name of the benchmark used, where applicable, which shall include the key features of the benchmark or the name of the benchmark for a readily recognized index or other point of reference; and
- (c) the periods that are presented.

(2) All information in an advertisement shall be presented in the same currency and that currency disclosed.

(3) The fund manager shall present total returns according to at least one-year, three-year, and five-year annualized returns through the most recent period.

(4) The fund manager shall disclose the current expense ratio and which fees, including performance-based fees and expenses are included in the expense ratio.

(5) The fund manager shall disclose the risk measures or qualitative disclosure in a manner that a prospective investor will understand.

(6) The fund manager shall disclose the fund's sales charges and how they are reflected in the fund's returns, if applicable.

PART XV—MISCELLANEOUS

170. (1) Any notice required to be served upon a participant shall be deemed to have been duly given— Service of notices
and documents

- (a) in the case of participatory interests for the time being represented by investment certificates, if it is given in the manner provided for in the most recently published incorporation documents; or
- (b) in the case of participatory interests held by a registered participant, if it is sent by e-mail, post to or left at his or her address as appearing in the register.

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

(3) Any notice served by—

- (a) email shall be deemed to have been served at the time recorded in the transmission report;
- (b) post shall be deemed to have been served on the second day following that on which the letter containing the notice is posted, and in proving such service, it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

(4) Service of a notice or document on any one of several joint holders shall be deemed effective service on the other joint holders.

171. (1) Any person operating a collective investment scheme prior to the commencement of these Regulations shall obtain approval within twelve months after the commencement of these Regulations.

Transition clause

(2) All registered collective investment scheme shall transition within twelve months from the commencement date.

172. The Capital Markets (Collective Investment Scheme) Regulations, 2001, are revoked.

Revocation
L.N. 181/2001.

FIRST SCHEDULE

[rr. 10(1), 33, 66]

Form I: Application Form for Approval of a Collective Investment Scheme

PROMOTER	
Name:	
Contact address:	
CONSTITUTION	
Legal form of the collective investment scheme: (i) mutual fund; (ii) unit trust; (iii) investment company	
Country or jurisdiction where the collective investment scheme is constituted.	
Title of the law under which the collective investment scheme is or is to be constituted.	
State certificate of incorporation	
KEY OFFICERS	
State name, address, place of birth and citizenship of: (i) directors; (ii) chief executive	
State educational and professional qualifications of the key officers.	
Give details of business, occupation or employment history of the key officers.	
REFERENCES	
Give two personal references and a bank reference of the key officers.	
FUNCTIONARIES:	
State names, addresses and business activities of each of the collective investment scheme's	
Fund manager,	Name:
	Address:
	Business activities:
Custodians	Name:

	Address:
	Business activities:
Administrators;	Name:
	Address:
	Business activities:
Investment Advisers	Name:
	Address:
	Business activities:
Trustees.	Name:
	Address:
	Business activities:
PRIOR REGISTRATION:	
State if the collective investment scheme is now or has been registered, licensed, recognized or authorized under any law or regulations relating to mutual funds, collective investment schemes/funds or securities in any country or jurisdiction.	
State if the collective investment scheme is now or has been registered, licensed, recognized or authorized under any law or regulations relating to mutual funds, collective investment schemes/funds or securities in any country or jurisdiction.	
REFUSAL OR DISCIPLINARY MEASURES	
Has the collective investment scheme, any of its officers, managers, administrators, investment advisers or custodians been the subject of –	
Refusal of an application for registration, licence, recognition or authorization; Give details and reasons if yes	
Suspension, cancellation or revocation of registration, licence, recognition or authorization by any authority in any country or jurisdiction? Give details and reasons if yes	
CIVIL PROCEEDINGS	
Has a judgment been rendered or any suit, action or proceedings pending against any officer of the collective investment scheme or of any of its functionaries stated above in civil	

proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation or similar conduct? Give details if yes.	
OFFENCES	
Has any key officer of the collective investment scheme or any of its functionaries stated above been or is being charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings relating to fraud or theft arising out of dealing in mutual funds, collective investment schemes/funds or securities?	
BANKRUPTCY	
Has any key officer or the collective investment scheme or of any of its functionaries stated above been -	
(a) declared bankrupt or been party to bankruptcy or insolvency proceedings? or	
(b) subject to proceedings relating to winding – up, dissolution or creditors’ arrangements; or	
(c) subject to proceedings relating to receivership or creditors’ compromise; in any country or jurisdiction?	
<p>Secretary Note:</p> <p>The following shall be submitted with the application for approval:</p> <ol style="list-style-type: none"> 1. Particulars of the Promoters 2. Information Memorandum 3. Trust Deed 4. Management Agreement 5. Custody Agreement 6. Rules of the Scheme 7. Affidavit 8. Audited reports for the preceding 3 years of the proposed fund manager 9. Audited reports for the preceding 3 years of the proposed trustee 10. Audited reports for the preceding 3 years of the proposed custodian 11. Any other document(s) referred to under these Regulations 12. An application fee of Ksh. 10,000. 	

Form II

APPLICATION FORM FOR A LICENCE TO BE A
TRUSTEE/CUSTODIAN

Application is made for a trustee/custodian (tick as appropriate) license under these regulations and the following statements are made in respect thereof:

Note:

- i. If space is insufficient to provide details, please attach annexure(s).
- ii. Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

INFORMATION ON THE APPLICANT	
1. Name of company.....
2.	Registered Office
3.	Date of Incorporation
4.	Address.....
5.	E-mail
6.	Location of Principal Office..... Telephone number of principal office..... Branch offices (if any)
	Details of Branch Offices.....
INFORMATION ON THE APPLICANT'S BUSINESS	
7.	State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority
8.	Information on the business model (please attach a business plan if necessary)
9.	Description of the internal controls to secure the integrity of the business (e.g. <u>risk management</u> , data protection, information technology security, control mechanisms for compliance with investor protection requirements)
10.	Evidence and details of the platform (e.g. ownership, readiness for use)
OWNERSHIP STRUCTURE, DIRECTORS AND OTHER KEY PERSONNEL	
Fit and proper: Your directors and senior managers must be fit and proper persons to hold their respective positions.	
Capability: Your organisation must have the right mix of people with the right skills and experience, in the right roles, to monitor your licensed business properly and effectively.	

Financial resources: Your organisation must have adequate financial resources to effectively and efficiently run the business.						
11. Details of capital structure:						
(a) Nominal capital (Ksh.).....						
(b) Number of shares						
(c) Paid up capital (Ksh.)... ..						
(d) Liquid capital (Ksh.)... ..						
12. Shareholders (please attach a list showing the following details)						
<i>Name</i>		<i>Address and telephone number</i>			<i>Number of shares held</i>	
13. Directors (please attach a list with the following details)						
<i>Name</i>	<i>Identity Card/ Passport number</i>	<i>Date of Appointment</i>	<i>Date of birth</i>	<i>Permanent address and telephone number</i>	<i>Academic or Professional qualification</i>	<i>Number of shares held in the company</i>
14. Company Secretary (details)						
i. Name.....						
ii. Address.....						
iii. Institute of Certified Secretaries of Kenya Registration No.						
15. Details of the Chief Executive Officer and other Key personnel (please attach a list with the following details)						
<i>Name</i>	<i>Identity Card/ Passport number</i>	<i>Date of Appointment</i>	<i>Date of birth</i>	<i>Permanent address & telephone number</i>	<i>Academic or Professional qualification</i>	<i>Number of shares held in the company</i>
16. Profile of the persons stated in note 12						
<i>Name</i>		<i>Post</i>	<i>Qualifications</i>	<i>Experience</i>		
OTHER PARTICULARS ON THE KEY PERSONEL OF THE APPLICANT						
17. Particulars of other directorship(s) of the directors and secretary.						
.....						
.....						
18. Particulars of shares held by directors or secretary in other companies						
.....						
.....						

<p>19. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details</p> <p>.....</p> <p>.....</p>
<p>20. Has any director, secretary or senior management of the applicant been a director of a company that has been:</p> <p>a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.</p> <p>If Yes, give details.</p> <p>.....</p> <p>.....</p> <p>b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the relevant authority? Yes/No.</p> <p>If Yes, give details.</p> <p>.....</p> <p>.....</p> <p>c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No.</p> <p>If yes, give details.</p> <p>.....</p> <p>.....</p>
<p>21. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No.</p> <p>If 'yes', give details.</p> <p>.....</p> <p>.....</p>
<p>22. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (21)? Yes/No.</p> <p>If 'yes,' give details.</p> <p>.....</p> <p>.....</p>
<p>23. (1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a</p>

member company of any securities or derivatives exchange or any over the counter platform? Yes/ No.
 If 'yes', give details.

(2) Have any of the above persons been -

a) refused membership of any securities or derivatives organization? Yes / No.
 If 'yes', give details

b) expelled from or suspended from trading on or membership of any securities orderivatives organization or any over the counter platform? Yes/No.
 If 'yes' give details

c) subjected to any other form of disciplinary action by any stock/securities or derivatives exchange? Yes/No.
 If 'yes', give details.

REFERENCE

24. Business references:

<i>Name</i>	<i>Address</i>	<i>Telephone number (s)</i>	<i>Occupation</i>

25. One bank reference, (where the applicant is a bank the reference shall be given by another bank independent of the applicant

ADDITIONAL INFORMATION

26. Any other additional information considered relevant to this application:

We..... (Director)
 (Director) and
 (Secretary)

declare that all the information given in this application and in the attached documents is true and correct

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

SECOND SCHEDULE

[rr. 5, 6, 7(1), 10(1)(a), 94(3), 153(1), (2)]

REQUIREMENTS FOR FORMATION DOCUMENTS

PART I—COMPANY

1. The incorporation documents shall —
 - (a) contain the statements required by paragraph 2;
 - (b) contain provisions made in accordance with paragraphs 3 and 4; and
 - (c) be accompanied by a prospectus complying with the provisions of regulations issued in terms of Part IV on offer documents in these Regulations.
2. The statements referred to in paragraph 1(a) are—
 - (a) the head office of the company is situated in Kenya;
 - (b) the company is an investment company;
 - (c) the shareholders are not liable for the debts of the company;
 - (d) the assets under management is entrusted to a custodian for safekeeping, subject to any exceptions permitted by scheme regulations; and
 - (e) charges or expenses of the company that may be taken out of the assets under management.
3. (1) The incorporation documents shall provide for the following matters—
 - (a) the objects of the company;
 - (b) any matter relating to the procedure for the appointment, retirement and removal of a director of the company which is not provided for in these regulations; and
 - (c) the currency in which the accounts of the company are to be prepared.(2) Subject to subparagraph (3), the provisions referred to in subparagraph (1)(a) as to the object of an investment company shall be a statement that the object of the company is to invest the assets under management in property of a kind described in the statement, the holding of which is consistent with any requirements of these regulations, with the aim of spreading investment risk and giving its shareholders the benefit of the results of the management of that property.
 - (3) The object of the company may differ from that set out in subparagraph (2) only to the extent that it provides for restriction of the range of property in which investment may be made.
4. (1) The incorporation documents shall also contain the following matters—
 - (a) the name of the company;
 - (b) the category, if any is specified in these regulations, to which the company belongs;

- (c) the maximum and minimum sizes of the company's paid-capital which comprises the assets thereof less the liabilities;
- (d) the investment objectives of the company;
- (e) the classes of shares that the company may issue indicating, in the case of an umbrella company, which class or classes of shares may be issued in respect of each part of the assets under management that is pooled separately;
- (f) the rights attaching to shares of each class, including any provision for the expression in two denominations of such rights;
- (g) if the company is to be able to issue investment shares, a statement to that effect together with details of any limitations on the classes of the company's shares which are to include investment shares;

PART II—TRUST

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 under Regulation 13.
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. A declaration that, subject to the provisions of the registration documents and all scheme regulations for the time being in force—
 - (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 ; and

- (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 with this Schedule.
- 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. A statement—
 - (a) authorising the fund manager to make a preliminary charge to be included in the issue price of a unit; and
 - (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.
- 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—
 - (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;
 - (b) specify the accrual intervals and how the charge is to be paid; and
 - (c) specify a maximum to that charge expressed as an annual percentage to the value of the assets under management.
- 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. 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—
 - (a) specifying the basis on which that remuneration is to be determined;
 - (b) how it should accrue and be paid; and
 - (c) the maximum remuneration payable.
- 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. The trust deed shall contain—
 - (a) a provision authorising the issue of a document evidencing ownership accompanied by a statement of how the participants are to identify themselves; and
 - (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.
18. Any provision—
 - (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
 - (b) which is expressly contemplated in these regulations.
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.

PART III – PARTNERSHIPS

1. The incorporation documents shall —
 - (a) contain the statements required by paragraph 2;
 - (b) contain provisions made in accordance with paragraphs 3 and 4; and
 - (c) be accompanied by a prospectus complying with the provisions of regulations issued in terms of Part IV on offer documents in these Regulations.
2. The statements referred to in paragraph 1(a) are—
 - (a) the head office of the company is situated in Kenya;
 - (b) the limited liability partnership;
 - (c) the limited partners are not liable for the debts of the limited liability partnership;
 - (d) the assets under management is entrusted to a custodian for safekeeping, subject to any exceptions permitted by scheme regulations; and
 - (e) charges or expenses of the company that may be taken out of the assets under management.

3. (1) The incorporation documents shall provide for the following matters—
 - (a) the objects of the limited liability partnership;
 - (b) any matter relating to the procedure for the appointment, retirement and removal of a partner of the limited liability partnership which is not provided for in these regulations; and
 - (c) the currency in which the accounts of the company are to be prepared.
- (4) Subject to subparagraph (3), the provisions referred to in subparagraph (1)(a) as to the object of a limited liability partnership shall be a statement that the object of the limited liability partnership is to invest the assets under management in property of a kind described in the statement, the holding of which is consistent with any requirements of these regulations, with the aim of spreading investment risk and giving its shareholders the benefit of the results of the management of that property.
- (5) The object of the limited liability partnership may differ from that set out in subparagraph (2) only to the extent that it provides for restriction of the range of property in which investment may be made.
4. (1) The incorporation documents shall also contain the following matters—
 - (a) the name of the limited liability partnership;
 - (b) the partners contributions;
 - (c) the investment objectives of the limited liability partnership

THIRD SCHEDULE

(rr. 2, 21)

CONTENTS OF THE OFFER DOCUMENTS/PARTICULARS OF INFORMATION
MEMORANDUM

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

1. Prominent statement

Prominent statement on the period for which the information memorandum is valid.

2. Disclaimer

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

“Permission has been granted by the Capital Markets Authority to offer to the public the securities which are the subject of this issue. As a matter of policy, the Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this information memorandum”.

3. The Collective Investment Scheme

State -

- (a) name of the collective investment scheme;
- (b) legal form the collective investment scheme;
- (c) duration of the collective investment scheme i.e. unlimited or limited and when it may terminate;
- (d) that the participants are not liable for the debts of the collective investment scheme;
- (e) particulars of registration of the collective investment scheme;
- (f) official address of its head office and its branch office;
- (g) the address for service of documents, if different from (f);
- (h) the date of the approval granted by the Authority to operate as a collective investment scheme;
- (i) the base currency for the collective investment scheme; and
- (j) the circumstances in which the collective investment scheme may be wound up under the regulations and a summary of the procedure for, and the rights of the holders under, such a winding up;

4. Investment Objectives and Policy

- 1) Give sufficient information to enable a participant to ascertain-
 - (a) the investment objectives (e.g. capital growth or income) of the collective investment scheme or of each sub-fund of an umbrella scheme;
 - (b) the collective investment scheme’s investment policy for achieving investment objectives referred to under (a) including the general nature of

the portfolio and any intended specialisation (e.g. economic sector, geographical area or type of investment),

(c) the extent (if any) to which the policy under (b) does not envisage remaining fully invested at all times; and

(d) any restrictions in the range of transferable securities in which investment may be made, including restrictions in the extent to which the collective investment scheme may invest in any category of investment, indicating (where appropriate) where the restrictions are tighter than those imposed by the Regulations.

- 2) Where all or part of the remuneration of the fund manager is to be treated as a capital charge, it must be made clear that the investment objectives of the collective investment scheme are to treat the generation of income as a higher priority than capital growth or as the case may be, to place equal emphasis on the generation of income and on capital growth and that (in either case) this may accordingly constrain capital growth;
- 3) List any individual eligible securities markets through which the collective investment scheme may invest or deal;
- 4) State the extent (as a percentage of the total) to which the collective investment scheme intends to invest its assets in any one security or sector and whether or not it has done so;
- 5) State the policy in relation to the exercise of borrowing powers by the collective investment scheme;
- 6) In the case of a collective investment scheme which may invest in other collective investment schemes, state the extent to which the collective investment scheme portfolio may be invested in the shares of collective investment schemes, which are managed by the fund manager or by an associate of the fund manager.

5. Distributions

State-

- (a) that 1 January to 31 December each year shall be the collective investment scheme's annual accounting period;
- (b) if there are interim accounting periods, what they are and the policy in relation to interim distributions (whether interim distribution will be made and if so, the policy on smoothing of income distributions within an annual accounting period);
- (c) the date or dates in each year on or before which payment or accumulation of income is to be made or take place;
- (d) if applicable, the policy on payment of income equalisation;
- (e) how distributable income is determined, and
- (f) if applicable, that unclaimed distributions may be forfeited and summarise the relevant provisions of the instrument of incorporation;

6. The characteristics of participatory interests in the collective investment scheme

State-

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

7. The Fund Manager

State the following particulars of the fund manager:

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

8. Directors of an investment company

State-

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

9. The Trustee or Custodian

State the following particulars on the trustee or custodian-

- (a) Name and address;

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

10. The Auditor

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

11. The Register of Participants

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

12. Payments to the Fund Manager

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

For each category of remuneration, specify -

- (a) the current amounts of such remuneration;
- (b) how will it be calculated and accrue and when it will be paid;
- (c) notice to be given to participants of the fund manager's intention to introduce a new category of remuneration for its services or to increase any amount currently charged, particulars of that increase and when it will take place;
- (d) whether all or part of the remuneration is to be treated as a capital charge and that fact, and
 - (i) the actual or maximum amount of the charge which may be so treated and
 - (ii) if notice has been given to shareholders of an intention to propose an increase in the maximum amount of that charge at a meeting of participants, particulars of that proposal.

13. Other Payments out of the Collective Investment Scheme Portfolio

Provide details of –

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

14. Movable and immovable property

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

15. Sale and redemption of participatory interests

State -

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

16. Valuation of the collective investment scheme portfolio

State-

- (a) how frequently and at what time of the day the collective investment scheme portfolio will be valued for the purpose of determining the price at which shares in the collective investment scheme may be purchased from or redeemed by the fund manager and a description of any circumstances in which the collective investment scheme portfolio may be specially valued;
- (b) the basis on which the collective investment scheme portfolio will be valued; and
- (c) how the price of the shares of each class will be determined.

17. Dilution levy

State, where applicable-

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

18. Initial charge

Where the fund manager makes a preliminary charge state-

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

19. Redemption charge

Where the fund manager makes a redemption charge, state-

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

20. Disclosure of any other fees and charges

Disclose all the fees and charges that relates the Collective investment scheme

- (a) a description of the fees and charges
- (b) how the fees and charges are calculated
- (c) when the fees and charges are levied.
- (d) whether participants must approve the fees and charges proposed to be levied.

21. General information

State-

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

22. Umbrella collective investment scheme

- (a) State, in the case of an umbrella collective investment scheme-
 - (i) whether or not a participant is entitled to exchange participatory interests in one sub-fund for shares in any other sub-fund;

- (ii) whether or not an exchange of participatory interests in one sub fund for participatory interests in any other sub-fund is treated as a redemption and a sale and will be subject to taxation on capital gains or withholding tax as the case may be;
 - (iii) subject to (i) and (ii), that in no circumstances will a participant who exchanges participatory interests in one sub-fund for participatory interests in any other sub fund be given a right by law to withdraw from or cancel that transaction;
 - (iv) what charges, if any, may be made on exchanging participatory interests in one sub-fund for participatory interests in another sub-fund;
 - (v) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of the collective investment scheme portfolio, which are not attributable to any particular sub fund;
 - (vi) in respect of each sub fund, the currency in which the deposited collective investment scheme portfolio allocated to it will be valued and the price of participatory interests calculated and payments made, if this
 - (vii) currency is not the base currency of the umbrella collective investment scheme; and
 - (viii) if there are participatory interests in respect of less than two sub funds in issue the effect of Regulation 81.
- (b) In the application of this Schedule to an umbrella scheme, information required–
- (i) shall state in relation to each sub fund where the information for any sub fund differs from that for any other fund;
 - (ii) shall state for the scheme as a whole but only where the information is relevant to the collective investment scheme as a whole;
 - (iii) shall contain a statement to the effect that the sub funds of an umbrella scheme are not ‘ring fenced’ and the event of an umbrella scheme being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may have to be met out of the assets attributable to other sub-funds.

23. Marketing outside Kenya

(List other countries in which marketing and selling of collective investment participatory interests will occur)

An information memorandum which is prepared for the purpose of marketing participatory interests in states outside Kenya shall state the following –

- (a) that all formalities and requirements of such country have been fulfilled;
- (b) what special arrangements have been made-
- (c) for paying in that country amounts distributable to holders residing in that country;
- (d) for redeeming in that country, the participatory interests of holders resident in that country;
- (e) for inspecting and obtaining copies in that country of the incorporation

documents and the amendments thereto, of the information memorandum and of the annual and half yearly reports, and

- (f) for making public the prices of shares of each class.
- (g) how the fund manager will publish in that country the following information:
- (h) that annual and half yearly reports are available for inspection;
- (i) that a distribution has been declared;
- (j) that amendments have been made to the incorporation documents,
- (k) that the information memorandum has been revised or that changes have been made to the arrangements under paragraph (a).

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

24. Disclosure of risks

The information memorandum shall disclose all the risks associated in investing in the collective investment scheme and how the risks have been mitigated.

25. Additional information

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

- (a) which investors and their advisers would reasonably require and reasonably expect to find in an information memorandum to enable them make an informed judgement about the merits of investing in the collective investment scheme and the extent and characteristics of the risks accepted by so participating; and
- (b) in the case of an investment company information on whether there is a minimum subscription value which must be raised during the limited offer period.

FOURTH SCHEDULE

[r. 22(1)]

KEY INVESTOR INFORMATION DOCUMENT

General

1. Key investor information shall include appropriate information about the essential characteristics of the scheme concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.
2. (a) Key investor information shall provide information on the following essential elements in respect of the scheme concerned:
 - (i) identification of the scheme;
 - (ii) a short description of its investment objectives and investment policy;
 - (iii) past-performance presentation or, where relevant, performance scenarios;
 - (iv) costs and associated charges; and
 - (v) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant scheme.(b) Those essential elements shall be comprehensible to the investor without any reference to other documents.
3. Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly report can be obtained on request and free of charge at any time, and the language in which such information is available to investors.
4. Key investor information shall be written in a concise manner and in nontechnical language. It shall be drawn up in a format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.
5. Key investor information shall be used without alterations or supplements, except for translation.

Pre-contractual information.

1. Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the information memorandum.
2. A person shall not incur civil liability solely on the basis of the key investor information, unless it is misleading, inaccurate or inconsistent with the relevant parts of information memorandum. Key investor information shall contain a clear warning in this respect.

Timing of provision of key investor information

1. An investment company and, for each scheme it manages, a fund manager which sells participatory interests directly or through another person who acts on its

behalf and under its full and unconditional responsibility shall provide investors with key investor information on the relevant scheme in good time before their proposed subscription of participatory interests in the scheme.

2. An investment company and, for each scheme it manages, a fund manager which does not sell participatory interests directly or indirectly to investors shall provide key investor information to intermediaries selling or advising investors on potential investments in such scheme or in products offering exposure to such scheme upon their request. The intermediaries selling or advising investors or potential investors in the scheme shall provide key investor information to their clients or potential clients and comply with regulation 22.

Medium of provision of key investor information

1. Investment companies and, for each scheme that they manage, fund managers, may provide key investor information in a durable medium.
2. In addition, an up-to-date version of the key investor information shall be made available on the website of the investment company or fund manager.

Key investor information to the Authority

1. Investment companies and, for each scheme that they manage, fund managers shall send key investor information and any amendments thereto to the Authority.
2. The essential elements of key investor information shall be kept up to date.

FIFTH SCHEDULE

[r. 10(2)(e)]

RISK MANAGEMENT POLICY AND RISK MEASUREMENT (Reg. 10(e))

PART A: RISK MANAGEMENT POLICY

1. In addition to the requirements of the Corporate Governance Regulations, all fund managers shall establish, implement and maintain an adequate and documented risk management policy, which identifies the risks that the collective investment schemes are or might be exposed to and mitigation measures thereto.
2. The risk management policies shall comprise such procedures as are necessary to enable the fund manager to assess each collective investment scheme it manages, the exposure of that collective investment scheme to market, liquidity and counterparty risks, and the exposure of the collective investment scheme to all other risks, including operational risks, which may be material to each collective investment scheme it manages.
3. Fund managers shall address at least the following elements in risk management policy:
 - (a) the techniques, tools and arrangements that enable them to comply with the obligations as set out in this schedule; and
 - (b) the allocation of responsibilities within the fund manager pertaining to risk management.
4. Fund managers shall ensure that the risk management policy referred to in this schedule states the terms, content and frequency of reporting of the risk management function to its senior management, and where appropriate, to the supervisory function.
5. For the purposes of the risk management policy, fund managers are required to take into account the nature, scale and complexity of their business and of the collective investment schemes they manage.

PART B: MEASUREMENT AND MANAGEMENT OF RISK

6. Fund managers shall adopt adequate and effective arrangements, processes and techniques in order to measure and manage at any time the risks, which the collective investment schemes they manage are or might be exposed to.
7. The arrangements processes and techniques referred to in paragraph 8 shall be proportionate to the nature, scale and complexity of the business of the fund manager and of the collective investment schemes they manage and be consistent with the risk profile of the collective investment schemes.
8. For the purposes of this schedule, fund managers are required to take the following actions for each collective investment scheme they manage:
 - (a) put in place such risk management arrangements, processes and techniques as are necessary to ensure that the risks of positions taken and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk management arrangements, processes and techniques are adequately documented;

- (b) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in the market conditions that might adversely affect the collective investment schemes;
- (c) establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each collective investment scheme taking into account all risks which may be material to the collective investment scheme and ensuring consistency with the risk profile of the collective investment scheme;
- (d) ensure that the current level of risk complies with the risk limits system as set out in paragraph (e) for each collective investment scheme;
- (e) establish, implement and maintain adequate procedures to ensure that in the event of actual or anticipated breaches to the risk limits system of the collective investment scheme, timely remedial action in the best interests of participants will result.

9. Liquidity risk management

- (a) Fund managers are required to employ adequate liquidity risk management processes in order to ensure that each collective investment scheme that they manage is able to comply at any time with its redemption obligations amongst other things. Where appropriate, fund manager shall conduct stress tests, which enable assessment of the liquidity risk of the collective investment schemes under exceptional circumstances.
- (b) Fund managers shall ensure that for each collective investment scheme they manage, the liquidity profile of the investments of the collective investment scheme is appropriate to the redemption policy, obligations and liabilities laid down in the incorporation documents and information memorandum.

10. Fund managers are required to assess, monitor and periodically review:

- (a) the adequacy and effectiveness of the risk management policy and of the arrangements processes and techniques referred to in this schedule;
- (b) the level of compliance by the fund manager with the risk management policy and with arrangements processes and techniques referred to in this schedule; and
- (c) the adequacy and effectiveness of procedures taken to address any deficiencies in the performance of the risk management process.

11. Fund managers shall notify the Authority of any material changes to the risk management process.

PART C: AUDIT

- 12. The review of the maintenance and implementation of risk management policy shall be a part of internal audit.
- 13. The internal auditors shall check the adequacy on a continuing basis. Their reports shall be presented to the senior management and the board of the fund manager and the trustee or custodian who shall comment on the

adequacy of the systems in the annual and half-yearly reports filed with the Authority.

14. In the event of any conflict between a provision of this Schedule and a provision of the Corporate Governance Regulations, the Authority shall apply and implement the provision, which in its reasonable opinion best advance the objects of these regulations.

SIXTH SCHEDULE

[rr. 126(1), 127(1), 133]

ANNUAL AND HALF-YEARLY REPORTS

Report of the fund manager

The following matters shall be set out in every annual report-

1. The names and addresses of the following—
 - (a) the fund manager;
 - (b) the trustee and custodian;
 - (c) any investment adviser;
 - (d) the registrar;
 - (e) the auditor;
2. the objectives of the scheme;
3. the fund manager's policy for achieving the objectives of the scheme;
4. a statement that the scheme is a licensed collective investment scheme within the meaning of the Act;
5. a statement of which the categories of scheme in regulation 8(1) the scheme belongs to and, in the case of an umbrella fund, this statement is to be made separately in relation to each constituent part;
6. a review of the fund manager's investment activities during the period to which the report relates;
7. particulars of any significant change in the information memorandum made since the making of the last report by the fund manager;
8. a statement of any subdivision or consolidation of participatory interests which has been effected during the period to which the report relates; and
9. any other significant information which would enable holders to make an informed judgment 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.

Commissions paid on dealing

The statement of commissions paid shall specify the following information on dealings in the property of the scheme in relation to transactions effected through a broker or an agent of a broker—

- (a) the average rate of commission for such transactions;
- (b) the aggregate amount of the commissions paid to associates of the fund manager;
- (c) the aggregate amount of the commissions paid to associates of the trustee; and
- (d) the name of each broker who received more than 10% of the aggregate amount of the commissions paid.

Comparative table

The following matters shall be set out in the comparative table included in the report of the fund manager—

- (a) a performance record of the last five annual accounting periods, 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 price and the lowest price of the participatory interests during each of those years, the net income per participatory interest distributed or, in the case of accumulation participatory interests, allocated during each of those years taking account of any sub-division or consolidation of participatory interests that occurred during that period;
- (b) over the last three annual accounting periods (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) the total net asset value of the property of the scheme at the end of each of those years and the net asset value per participatory interest and the number of participatory interests in existence or deemed to be in existence at the end of each of those years;
- (c) if, in the period covered by the table—
 - (i) the scheme has been the subject of an amalgamation or reconstruction having, to a significant extent, an effect on the size of the scheme; or
 - (ii) there have been changes in the investment objectives of the scheme,an indication, related in the body of the table to the relevant year in the table, of the date of the amalgamation or reconstruction or change in investment objectives, and a brief description of its nature.

Report of the auditor

The report of the auditor to the participants for any annual accounting period shall state—

Report of the trustee or custodian

The report of the trustee or custodian to the participants for any annual accounting period shall state whether in the trustee's or custodian's opinion, the fund manager has managed the scheme in that period—

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the fund manager and trustee or custodian by the incorporation documents and these regulations;
- (b) otherwise, than in accordance with the provisions of the trust deed and those regulations; and
- (c) if he or she has not done so, the respects in which the fund manager has not done so, and the steps which the trustee or custodian has taken in that respect.

Total expense ratio

1. Definition

“total expense charged” shall include all annual operating costs of the scheme with the exception of brokerage on scheme transactions and currency gains/losses on the scheme portfolio.

2. For each annual set of audited accounts, the fund manager shall calculate and disclose the total expense ratio of the scheme both in cash terms and as a percentage of total annual average net asset value of the fund.
3. The total expense ratio is calculated as follows:

Total expenses charged divided by the actual amount of the management fee charged times the percentage management fee = TER

SEVENTH SCHEDULE

[rr. 11, 17, 33(g), 34(1), (2), 66(n), 67(1), (2), 77(1)(o), (2), (3)]

FEES

Application fees	Ksh. 10,000
Annual fees for the collective investment scheme	Ksh. 250,000
Licensing fees and annual approval fees for the Intermediary Service Platform Provider	Ksh. 50,000
Licensing fees and annual regulatory fees for the Custodian/Trustee	Ksh. 100,000

Dated the 3rd October, 2023.

NJUGUNA NDUNG’U,
*Cabinet Secretary for the
National Treasury and Planning.*