

CHAPTER 65

THE COLLECTIVE INVESTMENT SCHEMES ACT

Arrangement of Sections

Section

PART I—PRELIMINARY

1. Interpretation
2. Meaning of collective investment scheme

PART II—UNLICENSED PERSONS AND SCHEMES

3. Restrictions on unlicensed persons
4. Offences
5. Agreements made by or through unlicensed persons
6. Injunctions and restitution orders

PART III—LICENSED PERSONS

7. Types of licensed persons
8. Application for licence
9. Grant and refusal of licence
10. Notice of proposed refusal
11. Withdrawal of applications and licences by consent

PART IV—LICENSED SCHEMES

12. Types of licensed schemes
13. Application for scheme licence
14. Licences
15. Registrar of Companies to approve names
16. Criteria for licensing
17. Representation against refusal

PART V—ESTABLISHMENT OF INVESTMENT
COMPANIES WITH VARIABLE CAPITAL

18. Incorporation of investment company with variable capital
19. Registration
20. Notifications to Registrar of Companies
21. Safekeeping of scheme property by depositary

22. Corporate Code

PART VI—RECOGNITION OF FOREIGN SCHEMES

23. Schemes licensed or authorised in designated countries or territories
24. Other foreign schemes
25. Refusal of recognition
26. Facilities and information in Uganda

PART VII—FEES

27. Application fees
28. Annual fees

PART VIII—GENERAL CONTROLS

29. General regulations
30. Regulations as to prospectus or scheme particulars
31. Statements of principle
32. Modification or waiver of statements of principle
33. Codes of practice
34. Alterations
35. Restrictions on activities of manager and retirement of trustee
36. Avoidance of exclusion clauses
37. Actions for damages
38. Restriction on right of action

PART IX—POWERS OF INTERVENTION

39. Withdrawal or suspension of licence
40. Notice of proposed withdrawal or suspension
41. Employment of prohibited persons

42. Public statement
43. Injunctions and restitution orders
44. Restriction of business
45. Restriction on dealing with assets
46. Vesting of assets in trustee
47. Rescission and variation
48. Notices
49. Breach of prohibition or requirement
50. Revocation of licence
51. Representations against revocation
52. Directions
53. Notice of directions
54. Applications to High Court

PART X—WINDING UP

55. Winding up orders
56. Dissolution on winding up by High Court
57. Dissolution in other circumstances

PART XI—INVESTIGATIONS

58. Investigations
59. Disclosure of investigations
60. Supplementary investigations

PART XII—HIGH COURT

61. Reference of matters to High Court
62. Decisions on references by applicant or licensed person, *etc.*
63. Decisions on references by third parties
64. Withdrawal of references
65. Reports

PART XIII—INFORMATION

66. Register
67. Inspection of register
68. Power to call for information

PART XIV—RESTRICTIONS ON DISCLOSURE

- 69. Restrictions on disclosure of information
- 70. Exceptions from restrictions on disclosure
- 71. Directions restricting disclosure of information overseas
- 72. Offences under section 71

PART XV—COMPENSATION SCHEME

- 73. Establishment of compensation scheme

PART XVI—MISCELLANEOUS AND SUPPLEMENTARY

- 74. Exemption from liability for damages
- 75. Jurisdiction of High Court
- 76. Powers of entry
- 77. False and misleading statements
- 78. Punishments for offences under section 77
- 79. Offences by bodies corporate, partnerships and unincorporated associations
- 80. Jurisdiction and procedure in respect of certain offences
- 81. Service of notices
- 82. Regulations
- 83. Publication of information and advice
- 84. Power to amend Schedule 1

SCHEDULES

<i>Schedule 1</i>	Currency Point
<i>Schedule 2</i>	Formation Documents
<i>Schedule 3</i>	Criteria for Determining Fit and Proper Persons
<i>Schedule 4</i>	Application of Companies Act
<i>Schedule 5</i>	Depositaries
<i>Schedule 6</i>	Corporate Code

CHAPTER 65

THE COLLECTIVE INVESTMENT SCHEMES ACT

Commencement: 17 November, 2003

An Act to provide for the licensing and control of collective investment schemes and for related matters.

PART I PRELIMINARY

1. Interpretation

- (1) In this Act, unless the context otherwise requires—
- “authorised corporate director”, in relation to an investment company with variable capital means the director of the company responsible on a day-to-day basis for carrying out such functions as may be required by this Act or the scheme regulations to be carried out by such a director;
 - “Authority” means the Capital Markets Authority established by section 4 of the Capital Markets Authority Act;
 - “body corporate” includes a body corporate constituted under the law of a country or territory outside Uganda;
 - “collective investment scheme” has the meaning assigned to it in section 2;
 - “currency point” has the value assigned to it in Schedule 1 to this Act;
 - “depository” in relation to an investment company with variable capital, means the person with whom the property of the collective investment scheme is entrusted for safekeeping;
 - “director”, in relation to a body corporate, includes a person occupying the position of a director; by whatever name called, and any person in accordance with whose directions or instructions, not being advice given in a professional capacity, the directors of that body are accustomed to act;
 - “formation documents”, in relation to an open ended investment company, means the instrument of incorporation and the prospectus and, in relation to a unit trust scheme, means the trust deed and the scheme particulars;

“investment adviser” means a person who is retained by an open ended investment company, its directors or its authorised corporate director or, in relation to a unit trust deed scheme, by the manager, in each case under a commercial arrangement not being a mere contract of employment

- (a) to provide advice in relation to the company or scheme as to the merits of investment opportunities or information relevant to the making of judgments about the merits of investment opportunities; or
- (b) to exercise any function concerning the management of the property of the scheme;

“investment company with variable capital” has the meaning assigned to it in section 18(2);

“licensed person” has the meaning assigned to it in section 7;

“licensed scheme” means a collective investment scheme for the time being licensed by the Authority;

“licensed unit trust scheme” means a unit trust scheme for the time being licensed by the Authority;

“Minister” means the Minister responsible for finance;

“open-ended investment company” means a collective investment scheme under which—

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and
- (b) the rights of the participants are represented by shares in or securities of that body which—
 - (i) the participants are entitled to have redeemed or repurchased, or which, otherwise than under section 66 of the Companies Act, are redeemed or repurchased from them by, or out of funds provided by that body; or
 - (ii) the body ensures shares can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate;

“operator”, in relation to an open-ended investment company, means that company and, in relation to a unit trust scheme, means the manager;

- “participants” has the meaning assigned to it in section 2(2);
- “partnership” includes a partnership constituted under the law of a country or territory outside Uganda;
- “prospectus” means a document containing information about an open-ended investment company as specified in Part II of Schedule 2 to this Act;
- “recognised scheme” means a scheme recognised under Part VI;
- “Registrar of Companies” means the Registrar of Companies under the Companies Act;
- “scheme regulations” means regulations made under section 29 or section 30;
- “shadow director” in relation to an investment company with variable capital, means a person in accordance with whose directions or instructions, not being advice given in a professional capacity, the directors of that company are accustomed to act;
- “trustee” means a person holding title to the property of a unit trust scheme in trust for the participants and, in relation to a collective investment scheme constituted under the law of a country or territory outside Uganda, means any person who, whether or not under a trust, is entrusted with the custody of the property in question;
- “umbrella company” means an investment company with variable capital whose instrument of incorporation provides for such pooling as is mentioned in section 2(3)(a) in relation to separate parts of the scheme property and whose shareholders are entitled to exchange rights in one part for rights in another;
- “unit trust scheme” means a collective investment scheme under which the property is held in trust for the participants;
- “units” means the rights or interests, however described, of the participants in a unit trust scheme.

- (2) A reference to a participant in or shareholder of an investment company with variable capital is a reference to—
- (a) the person who holds the share certificate, or other documentary evidence of title, mentioned in paragraph 14 of Schedule 6 to this Act; and
 - (b) the person whose name is entered on the company’s register of shareholders in relation to any share or shares other than a bearer share.

(3) Unless the contrary intention appears, expressions used in this Act and which are also used in the Companies Act have the same meaning as in the Companies Act.

2. Meaning of collective investment scheme

(1) In this Act, a collective investment scheme means, subject to this section, any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate as mentioned in subsection (1), in this Act referred to as “participants”, do not have day-to-day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and the arrangements shall also have either or both of the characteristics mentioned in subsection (3).

- (3) The characteristics referred to in subsection (2) are—
- (a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and
 - (b) that the property in question is managed as a whole by or on behalf of the operator of the scheme.

(4) Where any arrangements provide for such pooling as is mentioned in subsection (3)(a) 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 the rights in another.

- (5) The following are not collective investment schemes—
- (a) an arrangement operated by a person other than by way of business;
 - (b) an arrangement where each of the participants carries on a business other than a business concerned with dealing in, arranging deals, managing or advising on securities or similar

- financial investments and enters into the arrangement for commercial purposes related to that business;
- (c) an arrangement where each of the participants is a body corporate in the same group as the operator;
 - (d) an arrangement where—
 - (i) each of the participants is a *bona fide* employee or former employee, or the wife, husband, widow, widower, child or stepchild under the age of eighteen years of such an employee or former employee, of a body corporate in the same group as the operator; and
 - (ii) the property to which the arrangement relates consists of shares or stock; debentures, loan stock or any other instrument creating or acknowledging indebtedness or warrants or certificates conferring rights in relation to any such investment, in each case being an investment in or in a member of that group;
 - (e) a franchise arrangement, that is to say, an arrangement under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;
 - (f) an arrangement the predominant purpose of which is to enable persons participating in it to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
 - (g) an arrangement under which the rights or interests of the participants consist of the benefits of certificates or other instruments conferring rights in relation to securities other than shares in an open-ended investment company;
 - (h) an arrangement the purpose of which is the provision of clearing services and which is operated by a person designated by an order of the Authority for the time being in force for the purposes of this section;
 - (i) a contract of insurance;
 - (j) an occupational pension scheme; and
 - (k) such other arrangement as may be determined by order of the Authority.
- (6) A body corporate other than an open-ended investment company shall not be regarded as constituting a collective investment scheme; except that the Minister may, on reasonable grounds, by statutory order, specify

the activities of anybody corporate other than an open-ended investment company, to be subject to regulations under this Act as collective investment scheme.

PART II—UNLICENSED PERSONS AND SCHEMES

3. Restrictions on unlicensed persons

- (1) A person other than a licensed person shall not—
 - (a) establish or operate a collective investment scheme in Uganda including acting as a depositary or trustee, or purport to establish or operate such scheme, unless that person is a licensed person and the scheme is a licensed scheme or recognised scheme;
 - (b) issue or cause to be issued in Uganda, a scheme advertisement unless that person is a licensed person, or the contents of the advertisement have been approved by a licensed person; or
 - (c) advise or procure any person to become a participant in a collective investment scheme unless the scheme is a licensed scheme or a recognised scheme.

(2) In subsection (1)(b), a “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 shares or units in a scheme or containing information calculated to lead directly or indirectly to the persons doing so.

(3) The Minister may, by statutory order, specify the activities which are to be treated as subject to or excluded from control under subsection (1).

4. Offences

(1) Any person who contravenes section 3 commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or to imprisonment for a term not exceeding five years, or both.

(2) In proceedings brought against any person for an offence under section 3(1)(a), it shall be a defence for that person to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) In proceedings brought against any person for an offence under section 3(1)(b), it shall be a defence for that person to prove that he or she acted on the order of another person and that he or she believed, on reasonable grounds, that—

- (a) the person under whose order the advertisement was issued was a licensed person;
- (b) the contents of the advertisement were approved by a licensed person; or
- (c) the advertisement was permitted by virtue of a statutory order under section 3(3).

(4) In proceedings brought against any person for an offence under section 3(1)(c), it shall be a defence for that person to prove that he or she acted on the order of another person, and that he or she believed, on reasonable grounds, that the scheme was a licensed scheme or recognised scheme.

5. Agreements made by or through unlicensed persons

(1) Subject to subsection (3), any agreement which is entered into by a person in the course of or in consequence of a contravention of section 3 by that person shall be unenforceable against the other party; and that party is entitled to recover any money or other property paid or transferred by him or her under the agreement, together with compensation for any loss sustained by him or her as a result of having parted with it.

(2) The compensation recoverable under subsection (1) shall be such as the parties may agree or as the High Court may, on the application of either party, determine.

(3) The High Court may allow an agreement to which subsection (1) applies to be enforced, or money and property paid or transferred under that agreement to be retained if the Court is satisfied that the person mentioned in that subsection reasonably believed that his or her entering into the agreement did not constitute a contravention of section 3.

(4) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or her, or by virtue of this section recovers money paid or other property transferred by him or her under an agreement, he or she shall repay any money and return any other property received by him or her under the agreement.

(5) Where any property transferred under an agreement to which this section applies has passed to a third party, the references to that property in subsections (1), (3) and (4) shall be construed as references to its value at the time of its transfer under the agreement.

(6) A contravention of section 3 shall not make an agreement illegal or invalid to any greater extent than is provided in this section.

6. Injunctions and restitution orders

(1) The High Court may, on the application of the Authority, grant an injunction where it is satisfied that—

- (a) there is a reasonable likelihood that a person will contravene section 3; or
- (b) any person has contravened section 3 and that there is a reasonable prospect that the contravention will continue or be repeated.

(2) If, on the application of the Authority, the High Court is satisfied that a person has entered into any transaction in contravention of section 3, the Court may order that person and any other person who appears to the Court to have been knowingly concerned in the contravention, to take such steps as the Court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) The High Court may, on the application of the Authority, make an order under subsection (4) if satisfied that a person has been carrying on business in contravention of section 3 and—

- (a) that profits have accrued to that person as a result of carrying on that business; or
- (b) that one or more investors have suffered loss or been otherwise adversely affected in consequence.

(4) The High Court may, under this subsection, order the person concerned to pay into court, or appoint a receiver to recover from him or her, such sum as appears to the Court to be just, having regard—

- (a) in a case within subsection (3)(a), to the profits appearing to the Court to have accrued;
- (b) in a case within subsection (3)(b), to the extent of the loss or other adverse effect; or

- (c) in a case within both subsection (3)(a) and (b), to the profits and to the extent of the loss or other adverse effect.

(5) The High Court may under this subsection order the person concerned to pay to the applicant such sum as appears to the Court to be just, having regard to the considerations mentioned in subsection (4)(a), (b) and (c).

(6) Any amount paid into the High Court by or recovered from a person in pursuance of an order under subsection (4) or (5) shall be paid out to that person or distributed among such persons as the Court may direct, being a person or persons appearing to the Court to have entered into transactions with that person as a result of which the profits mentioned in subsection (3) (a) have accrued to him or her, or the loss or other adverse effect mentioned in subsection (3)(b) has been suffered.

(7) On an application under subsection (3), the High Court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him or her as mentioned in subsection (3)(a), and for determining how any amounts are to be paid or distributed under subsection (6); and the Court may require any such accounts or other information to be verified in such manner as it may direct.

(8) Nothing in this section affects the right of any person, other than the Authority, to bring proceedings in respect of any of the matters to which this section applies.

PART III—LICENSED PERSONS

7. Types of licensed persons

The following are licensed persons—

- (a) a person holding a licence granted by the Authority under this Part in respect of the activities specified in the licence; and
- (b) an investment company with variable capital in respect of activities which consist of, or are carried out by the company in connection with or for the purposes of, operating the collective investment scheme constituted by the company.

8. Application for licence

(1) An application for a licence under this Part may only be made by a body corporate and, in the case of an application to be licensed as a trustee or depository, may only be made by a bank as defined in the Financial Institutions Act or an insurance company as defined in the Insurance Act or such other financial institution as the Authority may prescribe.

(2) An application under this section shall—

- (a) be made in such manner as the Authority may direct;
- (b) specify whether the applicant seeks to be licensed as an operator, authorised corporate director, depository or trustee;
- (c) contain or be accompanied by—
 - (i) information relating to the scheme or schemes with which the applicant proposes to be involved; and
 - (ii) such other information as the Authority may reasonably require for the purpose of determining the application; and
- (d) contain the address of a place in Uganda for the service on the applicant of any notice or other document required or authorised to be served on him or her under this Act.

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

(4) The directions and requirements given or imposed under subsections (2) and (3) may differ as between different applications.

(5) Information to be furnished to the Authority under this section shall, if it is so required, be in a form or be verified in such a manner as the Authority may specify.

9. Grant and refusal of licence

(1) The Authority may, on an application duly made in accordance with section 8 and after being furnished with the information required under that section, grant or refuse to grant the application.

(2) The Authority shall grant the application if it appears to it from the information furnished by the applicant, and having regard to any other

information in its possession, that the applicant is a fit and proper person to carry on the activities described in the application.

(3) The Authority may, in determining whether to grant or refuse to grant an application take into account any matter relating to—

- (a) any person who is or will be employed by or associated with the applicant for the purposes of the business in question;
- (b) any person who is or will be acting as an appointed representative in relation to that business; and
- (c) any director or controller of the body to any other body corporate in the same group or to any director or controller of any such other body corporate.

(4) The Authority may, in determining whether to grant or refuse to grant an application, also have regard to any business which the applicant proposes to carry on in connection with his or her activities as a licensed person.

(5) The Authority shall give an applicant for a licence written notice of the grant of the licence, specifying the date on which the licence takes effect.

10. Notice of proposed refusal

(1) Where the Authority proposes to refuse to grant an application under section 9, it shall give the applicant written notice of its intention to do so, stating the reasons for which it proposes to act.

(2) Where the reasons stated in the notice under this section relate specifically to matters which—

- (a) refer to a person identified in the notice other than the applicant; and
- (b) are, in the opinion of the Authority, prejudicial to that person in any office or employment,

the Authority shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(3) A notice under this section shall give particulars of the right to require the case to be referred to the High Court under Part XII of this Act.

(4) Where a case is not required to be referred to the High Court by a person on whom a notice is served under this section, the Authority shall, at the expiration of the period within which such a requirement may be made, give that person written notice of the refusal or, as the case may be, the grant of the application.

(5) The Authority shall give public notice of any decision notified by it under subsection (4) and the reasons for the decision but shall not do so in the case of a decision to grant the application unless the person concerned consents to it doing so.

11. Withdrawal of applications and licences by consent

(1) An application under section 8 may be withdrawn before it is granted or refused to be granted and, subject to subsections (2) and (3), a licence granted under section 9 may be withdrawn by the Authority at the request, or with the consent of the licensed person.

(2) The Authority may refuse to withdraw a licence if it considers that the public interest requires any matter affecting the licensed person to be investigated as a preliminary matter to a decision on the question whether the Authority should, in respect of that person, exercise its powers under section 58 or under any provision of this Part.

(3) The Authority may also refuse to withdraw a licence where, in its opinion, it is desirable that a prohibition or restriction should be imposed on the licensed person under Part IX of this Act, or that a prohibition or restriction imposed on that person under that part should continue in force.

(4) The Authority shall give public notice of any withdrawal of a licence under subsection (1).

PART IV—LICENSED SCHEMES

12. Types of licensed schemes

A licensed scheme may be a unit trust scheme or an investment company with variable capital.

13. Application for scheme licence

(1) An application for a licence in respect of a collective investment scheme shall—

- (a) be made in such manner as the Authority may direct;
- (b) be accompanied by the scheme's formation documents prescribed in Schedule 2 to this Act;
- (c) state—
 - (i) in the case of an investment company with variable capital, the particulars of the directors of the company specified in subsection (2) and the corporate name and registered or principal office of the depositary of the scheme; or
 - (ii) in the case of a unit trust scheme, the corporate name and registered or principal office of the manager and of the trustee of that scheme;
- (d) specify any activities other than in relation to the scheme in which the operator or depositary or, in the case of a unit trust scheme, the manager or trustee are or are proposed to be engaged; and
- (e) contain or be accompanied by such other information as the Authority may reasonably require for the purpose of determining the application.

(2) The particulars of the directors to be specified in the case of an investment company with variable capital are—

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

(3) At any time after receiving an application and before determining it, the Authority may require the applicant to furnish additional information in accordance with subsection (1)(e).

(4) The directions and requirements given or imposed under subsections (1) and (3) may differ as between different applications.

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

14. Licences

(1) The Authority may, on an application duly made in accordance with section 13 and after being furnished with all information it may require under that section, grant a licence in respect of a collective investment scheme if—

- (a) it appears to the Authority that the criteria mentioned in section 16 are satisfied in relation to the scheme and the scheme complies with the requirements of any regulations made by the Authority under section 29 or 30 as apply to the scheme; and
- (b) in the case of an investment company with variable capital, it has received a notification under section 15 from the Registrar of Companies.

(2) In determining whether the criterion of fitness and propriety mentioned in section 16(2)(b) is satisfied in respect of any proposed director of an investment company with variable capital, the Authority may take into account any matter relating—

- (a) to any person who is or will be employed by or associated with the proposed director, for the purposes of the business of the company;
- (b) where the proposed director is a body corporate, to any director, shadow director or controller of the body, to any other body corporate in the same group or to any director, shadow director or controller of any such other body corporate;
- (c) where the proposed director is a partnership, to any of the partners; and
- (d) where the proposed director is an unincorporated association, to any member of the governing body of the association or any officer or controller of the association.

(3) The Authority shall inform the applicant of its decision, not later than six months after the date on which the Authority received the application.

(4) A licence shall specify the date on which it is to come into effect.

15. Registrar of Companies to approve names

(1) Where, in respect of a proposed investment company with variable capital, it appears to the Authority that the requirements of section 14(1)(a) are or will be met, the Authority shall send the papers mentioned in subsection (2) to the Registrar of Companies.

- (2) The papers referred to in subsection (1) are—
- (a) a copy of the instrument of incorporation supplied for the purposes of section 13(1);
 - (b) a statement of the proposed company's head office;
 - (c) a statement with respect to each person named in the application as director of the company of the particulars set out in section 13(2); and
 - (d) a statement of the corporate name and registered or principal office of the person named in the application for a licence as the first depository.

(3) The Registrar of Companies shall retain the papers delivered to him or her under subsection (1) and, if it appears to him or her that subsection (4) has not been contravened in relation to the proposed company, the Registrar of Companies shall notify the Authority to that effect.

(4) An investment company with variable capital shall not have a name that—

- (a) includes the word “unlimited” or an abbreviation of that word; or
- (b) is the same as any other name appearing in the index of company names kept by the register of companies index of company names.

(5) In determining, for the purpose of subsection (4)(b), whether one name is the same as another, the following shall be disregarded—

- (a) the definite article, where it is the first word of the name;
- (b) “company”, “and company”, “company limited”, “limited”, “unlimited”, “investment company with variable capital”;
- (c) abbreviations of any of the words or expressions in paragraph (b) where they appear at the end of the name; and
- (d) type and case of letters, accents, spaces between letters and punctuation marks; and “and” and “&” are to be taken as the same.

16. Criteria for licensing

- (1) The criteria referred to in section 14(1)(a) are as follows—
 - (a) the scheme has an operator and a depositary or, in the case of a unit trust scheme, an operator and a trustee who are independent of each other;
 - (b) the operator and the depositary or trustee are each
 - (i) a body corporate incorporated in and with its registered or head office in Uganda; and
 - (ii) a licensed person;
 - (c) subject to any scheme regulations, the formation documents comply with the requirements of Schedule 2 to this Act;
 - (d) the scheme complies with any scheme regulations applicable to it;
 - (e) the name of the investment company with variable capital or, in the case of a unit trust scheme, of the scheme or the manager is neither undesirable nor misleading;
 - (f) the aims of the scheme are reasonably capable of being achieved;
 - (g) the shareholders or participants are either entitled to have their shares or units redeemed or repurchased in accordance with the formation documents and scheme regulations at a price related to the net value of the scheme property or are able to sell their shares or units on an investment exchange at a price not significantly different from that price; and
 - (h) in the case of an investment company with variable capital, subsection (2) is satisfied.
- (2) In the case of an investment company with variable capital—
 - (a) the company has at least one director;
 - (b) the directors of the company are fit and proper persons to act as directors of such a company;
 - (c) where the company has only one director, that director is the authorised corporate director;
 - (d) where the company has two or more directors, the combination of their experience and expertise is such as is appropriate for the purposes of carrying on business of the company;
 - (e) an authorised 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

- (f) the depositary is independent of the persons appointed as directors of the company.

(3) The criteria prescribed by subsection (1)(b), shall be treated as satisfied in the case of an investment company with variable capital if they will become so upon incorporation.

(4) In determining whether an applicant is a fit and proper person for the purpose of this Act, the Authority shall, in addition to the criteria prescribed by section 14(2), have particular regard to the criteria prescribed in Schedule 3 to this Act.

17. Representation against refusal

(1) Where the Authority proposes to refuse to grant an application under section 14, it shall give the applicant written notice of its intention to do so, stating the reasons for which it proposes to refuse to grant the application and giving particulars of the rights conferred by subsection (2).

(2) A person on whom a notice is served under subsection (1) may, within twenty-one days after service, make written representations to the Authority and, if desired, oral representations to a person appointed for that purpose by the Authority.

(3) The Authority shall have regard to any representations made in accordance with subsection (2) in determining whether to refuse to grant the application.

PART V—ESTABLISHMENT OF INVESTMENT COMPANIES WITH VARIABLE CAPITAL

18. Incorporation of investment company with variable capital

(1) Where the Authority grants a licence in respect of an open-ended investment company then, immediately upon the coming into effect of the licence, a body shall be deemed to have been incorporated, notwithstanding that at the time of its incorporation under this section, the body will not have any shareholders or property.

(2) A body incorporated under subsection (1) shall be known as an investment company with variable capital.

(3) The name of an investment company with variable capital shall be the name mentioned in the licence granted in respect of the company or, if it changes its name in accordance with this Act and scheme regulations, by its new name.

(4) Once a licence has been granted in respect of a company, no amendments may be made to the statements contained in the company's instrument of incorporation which are required by paragraph 2 of Part I of Schedule 2 to this Act.

(5) Subject to paragraph 3(3) of Part I of Schedule 2 to this Act and to any restriction imposed by scheme regulations, a company may amend any other provision which is contained in its instrument of incorporation.

(6) A provision which is contained in a company's instrument of incorporation by virtue of paragraph 3 of Part I of Schedule 2 to this Act shall not be amended unless the amendment has been approved by the shareholders of the company in a general meeting.

(7) The provisions of a company's instrument of incorporation shall be binding on the officers and depositary of the company and on each of its shareholders; and those persons shall be taken to have notice of the provisions of the instruments.

(8) A person is not barred from obtaining damages or any other compensation from a company by reason only of his or her holding or having held shares in the company.

19. Registration

(1) As soon as is reasonably practicable after the coming into effect of a licence in respect of an investment company with variable capital, the Authority shall send a copy of the licence to the Registrar of Companies.

(2) The Registrar of Companies shall, upon receipt of the copy of the licence, immediately register—

(a) the instrument of incorporation of the company; and

(b) the details in relation to the company, its directors and its depositary which are contained in the papers retained by him or her under section 15(3).

(3) A company shall not carry on any business unless its instrument of incorporation has been registered under subsection (2).

(4) Schedule 4 to this Act has effect in relation to the application of the Companies Act to a company registered under this section.

(5) In this section, any reference to the instrument of incorporation of a company is a reference to the instrument of incorporation which was supplied for the purposes of section 13(1)(b).

20. Notifications to Registrar of Companies

(1) An investment company with variable capital shall, as soon as is reasonably practicable, but in any case not more than seven days, after the coming into effect of a licence in respect of the company, send to the Registrar of Companies a copy of the company's prospectus.

(2) A company shall

(a) not later than fourteen days after the coming into effect of a licence in respect of the company, send to the Registrar of Companies notice of—

(i) the place where the copies and memoranda required to be kept by paragraph 3 of Schedule 6 to this Act are kept; and

(ii) the place where the register of shareholders is kept; and

(b) not later than fourteen days after the occurrence of any change in any such place, send to the Registrar of Companies notice of that change.

(3) A company shall, not later than fourteen days after the making of any alteration to the company's instrument of incorporation, send to the Registrar of Companies—

(a) any document making or evidencing the alteration; and

(b) a printed copy of the instrument of incorporation as altered.

(4) A company shall, not later than fourteen days after the occurrence of the change in question, notify the Registrar of Companies of—

- (a) any change in the address of the head office of the company;
- (b) any change in the directors of the company;
- (c) any change in the depositary of the company; and
- (d) in respect of any director or depositary, any change in the information mentioned in section 13(1)(c) or (d).

(5) A company shall before the end of the period allowed by scheme regulations for the publication of the company's annual report send to the Registrar of Companies—

- (a) a copy of that report; and
- (b) a copy of the most recent revision of the company's prospectus.

(6) A company shall, not later than fourteen days after the completion of a revised annual report under paragraph 53 of Schedule 6 to this Act, send to the Registrar of Companies a copy of that revised report.

(7) Where a resolution removing an auditor is passed at a general meeting of a company under paragraph 64 of Schedule 6 to this Act, a company shall, not later than fourteen days after the holding of the meeting, notify the Registrar of Companies of the passing of the resolution.

(8) Where an auditor of a company deposits a notice of his or her resignation from office under paragraph 67 of Schedule 6 to this Act, a company shall, not later than fourteen days after the deposit of the notice, send a copy of the notice to the Registrar of Companies.

(9) Where the affairs of a company are to be wound up otherwise than by the High Court, the company shall, as soon as reasonably practicable, but in any case not more than seven days after the commencement of the winding up, notify the Registrar of Companies of that fact.

21. Safe keeping of scheme property by depositary

(1) Subject to subsection (2), all the scheme property of an investment company with variable capital shall be entrusted for safe keeping to a depositary.

- (2) Nothing in subsection (1)—
 - (a) shall apply to any scheme property designated for the purposes of this section by scheme regulations;

- (b) shall prevent a depositary from—
 - (i) entrusting to a third party all, or some of the assets in its safe keeping; or
 - (ii) in a case falling within subparagraph (i), authorising the third party to entrust all or some of those assets to other specified persons.

(c) Schedule 5 to this Act has effect in relation to the safe keeping of scheme property of an investment company with variable capital by the depositary.

22. Corporate Code

Schedule 6 to this Act, which prescribes the Corporate Code, has effect in relation to companies with variable capital.

PART VI—RECOGNITION OF FOREIGN SCHEMES

23. Schemes licensed or authorised in designated countries or territories

(1) Subject to subsection (3), a collective investment scheme which is managed in and licensed or authorised under the law of a country or territory outside Uganda is a recognised scheme if—

- (a) that country or territory is designated for the purposes of this section by an order made by the Authority; and
- (b) the scheme is of a class specified by the order.

(2) The Authority shall not make an order designating any country or territory for the purposes of this section unless it is satisfied that the law under which collective investment schemes of the class to be specified by the order are licensed or authorised and supervised in that country or territory, affords to investors in Uganda protection at least equivalent to that provided for them by this Act.

(3) Nothing in subsection (2) shall require the comparison set out in that subsection to be made where—

- (a) the class of collective investment schemes to be specified in an order includes schemes having characteristics corresponding to those of an investment company with variable capital; and

- (b) having regard to the characteristics of such schemes, it appears more appropriate to consider whether investors in Uganda are afforded protection at least equivalent to that provided for them in respect of such schemes by this Act,

and, to that extent that the requirements of paragraph (b) are met, the relevant comparison shall be between the protection afforded to investors in Uganda by the law under which collective investment schemes of the class to be specified in the order are licensed or authorised and supervised in the country or territory concerned and the protection provided for such investors by this Act.

(4) A scheme shall not be recognised by virtue of this section unless the operator of the scheme gives written notice to the Authority that he or she wishes it to be recognised; and the scheme shall not be recognised if, within such period after receiving the notice as may be prescribed, the Authority notifies the operator that the scheme is not to be recognised.

- (5) The notice given by the operator under subsection (4)—
- (a) shall contain the address of a place in Uganda for the service on the operator of notices or other documents required or authorised to be served on the operator under this Act; and
- (b) shall contain or be accompanied by such information and documents as may be prescribed.

(6) Section 30 has effect in relation to a scheme recognised under this section as it has effect in relation to a licensed scheme, and regulations made by virtue of this subsection may make provision whereby compliance with any requirements imposed by or under the law of a country or territory designated under this section is treated as compliance with any requirement of the regulations.

(7) An order under subsection (1) may contain such transitional provisions as the Authority deems necessary or expedient.

24. Other foreign schemes

(1) The Authority may, on the application of the operator of a scheme which is managed in a country or territory outside Uganda, but in relation to which there is no relevant order under section 23(1), make an order declaring the scheme to be a recognised scheme if it appears to the Authority that it

affords adequate protection to the participants, makes adequate provision for the matters dealt with by regulations under sections 29 and 30, and satisfies the requirements of this section.

(2) The operator must be a body corporate or the scheme must take the form of an open-ended investment company.

(3) Subject to subsection (4), the operator and the depositary or trustee, if any, must be fit and proper persons to act as operator or, as the case may be, as depositary or trustee; and for that purpose, the Authority may take into account any matter relating to—

- (a) any person who is or will be employed by or associated with the operator or depositary or trustee for the purposes of the scheme;
- (b) any director or controller of the operator or depositary or trustee; and
- (c) any other body corporate in the same group as the operator or depositary or trustee and any director or controller of any such other body.

(4) Subsection (3) does not apply to an operator or depositary or trustee who is a licensed person and who is not prohibited from acting as operator or depositary or trustee, as the case may be, by or under regulations made under section 29 or by any prohibition imposed under section 44.

(5) If the operator is not a licensed person, he or she must have a representative in Uganda who is a licensed person and has power to act generally for the operator and to accept service of notices and other documents on his or her behalf.

(6) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.

(7) The participants must be entitled to have their shares or units redeemed in accordance with the scheme at a price related to the net value of the property to which the shares or units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the operator to ensure that a participant is able to sell his or her shares or units on an investment exchange at a price not significantly different from that mentioned in this subsection.

(8) Section 13(2), (3), (4) and (5) applies to an application under this section.

(9) The provisions of section 34 which apply to an alteration of the scheme shall apply also to a scheme recognised under this section; and if the operator or depositary or trustee of any such scheme is to be replaced, the operator or, as the case may be, the depositary or trustee, or in either case the person who is to replace him or her, shall give at least one month's notice to the Authority.

(10) Section 30 has effect in relation to a scheme recognised under this section as it has effect in relation to a licensed scheme.

25. Refusal of recognition

(1) Where the Authority proposes to notify the operator of a scheme under section 23(4), it shall give the operator written notice of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the rights conferred by subsection (2).

(2) A person on whom a notice is served under subsection (1) may, within twenty-one days after the date of service, make written representations to the Authority and, if desired, oral representations to a person appointed for that purpose by the Authority.

(3) The Authority shall have regard to any representations made in accordance with subsection (2) in determining whether to notify the operator, give the direction or refuse to make or revoke the order, as the case may be.

26. Facilities and information in Uganda

(1) The Authority may make regulations requiring operators of recognised schemes to maintain in Uganda or in such part or parts of Uganda as may be specified in the regulations, such facilities as it deems desirable in the interests of participants.

(2) The Authority may, by notice in writing, require the operator of a recognised scheme to include such explanatory information as is specified in the notice in any investment advertisement issued or caused to be issued by the operator in Uganda in which the scheme is named.

PART VII—FEES

27. Application fees

(1) Every application made under section 8, 13 or 24, and every notice given to the Authority under section 23(4) shall be accompanied by a fee prescribed by the Minister.

(2) An application or notice referred to in subsection (1) shall not be regarded as duly made or given unless this section is complied with.

28. Annual fees

The operator of each licensed scheme and of each recognised scheme shall pay an annual fee prescribed by the Minister by statutory instrument.

PART VIII—GENERAL CONTROLS

29. General regulations

(1) The Authority may, by statutory instrument, make regulations for—

- (a) the constitution and management of collective investment schemes;
- (b) the powers and duties of licensed persons, including regulations relating to the conduct of business and the financial resources to be maintained by collective investment schemes; and
- (c) the rights and obligations of the participants in any collective investment scheme.

(2) Without prejudice to the generality of subsection (1), regulations under this section may provide for—

- (a) the issue and redemption of the shares or units under the scheme;
- (b) the expenses of the scheme and the means of meeting them;
- (c) the appointment, removal, powers and duties of an auditor for the scheme;
- (d) restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;

- (e) the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;
- (f) the preparation of periodical reports with respect to the scheme and the furnishing of those reports to the participants and to the Authority; and
- (g) the amendment of the scheme.

(3) Regulations made under this section may provide for the contents of the instrument of incorporation, in the case of an investment company with variable capital, and the trust deed in the case of a unit trust scheme, including provision requiring any of the matters mentioned in subsection (2) to be dealt with in such a document; but regulations under this section shall be binding on the operator, depository or trustee and participants independently of the contents of the document and, in the case of the participants, shall have effect as if contained in it.

(4) Regulations made under this section shall not impose limits on the remuneration payable to the operator of a scheme.

(5) Regulations made under this section may contain such incidental and transitional provisions as the Authority deems necessary or expedient.

30. Regulations as to prospectus or scheme particulars

(1) The Authority may make regulations requiring the operator of a collective investment scheme to submit to it and publish or make available to the public on request a document, “a prospectus” in the case of an investment company with variable capital and “scheme particulars” in the case of a unit trust scheme, containing information about the scheme and complying with such requirements as are specified in the regulations.

(2) Regulations made under this section may require the operator of a collective investment scheme to submit and publish or make available a revised or further document if—

- (a) there is a significant change affecting any matter contained in the document previously published or made available whose inclusion was required by the regulations; or

(b) a significant new matter arises, the inclusion of information in respect of which would have been required in the previous document if it had arisen when that document was prepared.

(3) Regulations made under this section may provide for the payment, by the person or persons who in accordance with the regulations are treated as responsible for any such document, of compensation to any person who has become or agreed to become a participant in the scheme and suffered loss as a result of any untrue or misleading statement in the document or the omission from it of any matter required by the regulations to be included.

(4) Regulations made under this section shall not affect any liability which any person may incur apart from the regulations.

31. Statements of principle

(1) The Authority may issue statements of principle with respect to the conduct and financial standing expected of licensed persons.

(2) The conduct expected may include compliance with a code or standard issued by another person, as for the time being in force, and may allow for the exercise of discretion by any person under any such code or standard.

(3) Failure to comply with a statement of principle under this section is a ground for the taking of disciplinary action or the exercise of powers of intervention, but it does not of itself give rise to any right of action by investors or other persons affected, or affect the validity of any transaction.

(4) The disciplinary action which may be taken under subsection (3) is—

- (a) withdrawal or suspension of a licence under section 39; giving
- (b) of a disqualification direction under section 41;
- (c) making of a public statement under section 42; or
- (d) application by the Authority for an injunction, interdict or other order under section 43,

and the reference in subsection (3) to powers of intervention is a reference to the powers conferred by Part IX of this Act.

(5) Where a statement of principle relates to compliance with a code or standard issued by another person, the statement of principle may provide—

- (a) that failure to comply with the code or standard shall be a ground for the taking of disciplinary action, or the exercise of powers of intervention, only in such cases and to such extent as may be specified; and
- (b) that no such action shall be taken, or any such power exercised, except at the request of the person by whom the code or standard in question was issued.

(6) The Authority shall exercise its powers in such manner as appears to it appropriate to secure compliance with statements of principle under this section.

32. Modification or waiver of statements of principle

- (1) The Authority may on the application of any person—
 - (a) modify a statement of principle issued under section 31 so as to adapt it to the applicant's circumstances or to any particular kind of business carried on by him or her; or
 - (b) exempt the applicant from compliance with any such statement of principle, generally or in relation to any particular kind of business carried on by him or her.
- (2) The powers conferred by this section shall not be exercised unless it appears to the Authority—
 - (a) that compliance with the statement of principle in question would be unduly burdensome for the applicant, having regard to the benefit which compliance would confer on investors; and
 - (b) that the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by this section may be exercised unconditionally or subject to conditions; and section 31 applies in the case of failure to comply with a condition as in the case of failure to comply with a statement of principle.

33. Codes of practice

(1) The Authority may issue codes of practice with respect to any matters dealt with by statements of principle issued under section 31 or by rules or regulations made under this Act.

(2) In determining whether a person has failed to comply with a statement of principle—

- (a) a failure by him or her to comply with any relevant provision of a code of practice may be relied on as tending to establish failure to comply with the statement of principle; and
- (b) compliance by him or her with the relevant provisions of a code of practice may be relied on as tending to negative any such failure.

(3) A contravention of a code of practice with respect to a matter dealt with by rules or regulations shall not of itself give rise to any liability or invalidate any transaction; but in determining whether a person's conduct amounts to contravention of a rule or regulation—

- (a) contravention by him or her of any relevant provision of a code of practice may be relied on as tending to establish liability; and
- (b) compliance by him or her with the relevant provisions of a code of practice may be relied on as tending to negative liability.

34. Alterations

(1) The operator of a licensed scheme shall give written notice to the Authority of

- (a) any proposed alteration to the scheme; and
- (b) any proposal to replace the depositary or, in the case of a unit trust scheme, the trustee of the scheme.

(2) In the case of an open-ended investment company, the following shall be treated as a proposal to alter the scheme—

- (a) any proposed alteration to the company's instrument of incorporation;
- (b) any proposed alteration to the company's prospectus which, if made, would be significant;
- (c) any proposed reconstruction or amalgamation involving the company;

- (d) any proposal to wind up the affairs of the company otherwise than by the High Court; and
- (e) any proposal to replace a director of the company, to appoint any additional director or to decrease the number of directors in post.

(3) The depositary of a licensed scheme or, in the case of a unit trust scheme, the trustee, shall give written notice to the Authority of any proposal to replace the operator of the scheme.

(4) No alteration to a scheme shall be made, nor shall the operator or depositary or, in the case of a unit trust scheme, the trustee, be replaced if any of the criteria set out in section 16 would not be satisfied if the alteration or replacement were made.

(5) In such cases as may be specified in scheme regulations, effect shall not be given to a proposal for alteration of a scheme or the replacement of the operator or the depositary or trustee unless—

- (a) the Authority has given its approval to the proposal; or
- (b) three months have elapsed since the date on which the notice was given under subsection (1) or (2) without the Authority having notified the operator or the depositary or, as the case may be, the trustee, that the proposal is not approved.

35. Restrictions on activities of manager and retirement of trustee

(1) A prohibition under section 44 may prohibit the manager of a licensed unit trust scheme from inviting persons in any specified country or territory outside Uganda to become participants in the scheme.

(2) The trustee of a licensed unit trust scheme may not retire except upon the appointment of a new trustee.

36. Avoidance of exclusion clauses

Any provision of the trust deed of a licensed unit trust scheme or of the instrument of incorporation of an investment company with variable capital shall be void insofar as it would have the effect of exempting the manager or trustee, in the case of a unit trust scheme, or the authorised corporate director or depositary, in the case of an investment company with variable

capital, from liability for any failure to exercise due care and diligence in the discharge of its functions in respect of the scheme.

37. Actions for damages

(1) Without prejudice to section 43, a contravention of any rules or regulations made under this Act shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A person who has a right of action under subsection (1) may refer the claim or dispute for settlement under the Arbitration and Conciliation Act.

38. Restriction on right of action

(1) No action in respect of a contravention to which section 37 applies shall be brought by a person other than a private investor, except in such circumstances as may be specified by regulations made by the Authority.

(2) The term “private investor” shall, for the purposes of subsection (1), be defined by regulations made by the Authority under this section.

(3) Regulations under subsection (1) may make different provision with respect to different cases.

PART IX—POWERS OF INTERVENTION

39. Withdrawal or suspension of licence

(1) The Authority may at any time withdraw or suspend any licence granted by it under this Act if it appears to it—

(a) that the holder of the licence is not a fit and proper person to carry on any activity in relation to a scheme which he or she is carrying on or proposes to carry on; or

(b) without prejudice to paragraph (a), that—

(i) the holder of the licence has contravened any provision of this Act, or rules or regulations made under this Act;

(ii) in purported compliance with this Act or rules or regulations made under this Act, the holder of the licence

- has furnished the Authority with false, inaccurate or misleading information; or
- (iii) the holder of the licence has contravened any prohibition or requirement imposed under this Act.

(2) For the purposes of subsection (1)(a), the Authority may take into account any matters mentioned in section 9(3) and (4).

(3) The suspension of a licence under this section shall be for a specified period, or until the occurrence of a specified event, or until specified conditions are complied with; and, for the avoidance of doubt, while a licence is suspended the holder is not a licensed person.

(4) The Authority may, on the application of a licence holder, vary any period, event or condition of a licence specified under subsection (3).

40. Notice of proposed withdrawal or suspension

(1) Where the Authority proposes—

(a) to withdraw or suspend a licence; or

(b) to refuse to grant an application under section 39(4),

it shall give the applicant or the licensed person written notice of its intention to do so, stating the reasons for which it proposes to act.

(2) In the case of a proposed withdrawal or suspension, the notice shall state the date on which it is proposed that the withdrawal or suspension should take effect and, in the case of a proposed suspension, its proposed duration.

(3) Where the reasons stated in a notice under this section relate specifically to matters which—

- (a) refer to a person identified in the notice other than the applicant or the holder of the licence; and
- (b) are in the opinion of the Authority, prejudicial to that person in any office or employment,

the Authority shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(4) A notice under this section shall give particulars of the right to require the case to be referred to the High Court under section 61.

(5) Where a case is not required to be referred to the High Court by a person on whom a notice is served under this section, the Authority shall, at the expiration of the period within which such a requirement can be made—

- (a) give that person written notice of the refusal to grant an application, its withdrawal or suspension; or
- (b) give that person written notice of the grant of the application or, as the case may be, written notice that the licence is not to be withdrawn or suspended,

and the Authority may give public notice of any decision notified by it under paragraph (a) or (b) and the reasons for the decision; except that it shall not do so in the case of a decision notified under paragraph (b), unless the person concerned consents to its doing so.

41. Employment of prohibited persons

(1) Where it appears to the Authority that an individual is not a fit and proper person to be employed in connection with a collective investment scheme or a scheme of a particular kind, it may direct that that person shall not, without the written consent of the Authority, be employed in connection with a collective investment scheme or, as the case may be, a scheme of that kind—

- (a) by licensed persons; or
- (b) by any specified person or persons.

(2) A direction under subsection (1), in this section referred to as a disqualification direction, shall specify the date on which it is to take effect and a copy of it shall be served on the person to whom it relates.

(3) Any consent by the Authority to the employment of a person who is the subject of a disqualification direction may—

- (a) relate to employment generally or to employment of a particular kind;
- (b) be given subject to conditions and restrictions; and
- (c) be varied by the Authority from time to time.

(4) Where the Authority proposes—

- (a) to give a disqualification direction in respect of any person; or
- (b) to refuse an application for consent under this section or for the variation of the consent,

it shall give that person or the applicant written notice of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the right to require the case to be referred to the High Court under section 61.

(5) Any person who accepts or continues in any employment in contravention of a disqualification direction commits an offence and is liable, on summary conviction, to a fine not exceeding five hundred currency points.

(6) It is the duty of a licensed person to take reasonable care not to employ or continue to employ a person in contravention of a disqualification direction.

(7) The Authority may revoke a disqualification direction.

(8) In this section, references to employment include references to employment otherwise than under a contract of service.

42. Public statement

(1) Where the Authority determines that a licensed person has contravened any provision of this Act, the Authority may publish a statement to that effect, stating any action that the Authority may have taken in respect of that contravention.

(2) Before publishing a statement under subsection (1), the Authority shall give the person concerned written notice of the proposed statement and of the reasons for which it proposes to act.

(3) Where the reasons stated in the notice relate specifically to matters which—

- (a) refer to a person identified in the notice other than the person who is or was the licensed person; and
- (b) are in the opinion of the Authority prejudicial to that person in any office or employment,

the Authority shall, unless it considers it impracticable to do so, serve a copy of the notice on that other person.

(4) A notice under this section shall give particulars of the right to have the case referred to the High Court under section 61.

(5) Where a case is not required to be referred to the High Court under section 61 by a person on whom a notice is served under this section, the Authority shall, at the expiration of the period within which such a requirement can be made, give that person written notice that the statement is or is not to be published; and if it is to be published, the Authority shall, after publication, send a copy of the statement to that person and to any person on whom a copy of the notice under subsection (2) was served.

43. Injunctions and restitution orders

(1) Where, on the application of the Authority, the High Court is satisfied

- (a) that there is a reasonable likelihood that any person will contravene a provision of any rules or regulations made under this Act;
- (b) that any person has contravened a provision referred to in paragraph (a), and that there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) that any person has contravened a provision referred to in paragraph (a), and that there are steps that could be taken for remedying the contravention,

the Court may grant an injunction restraining the contravention or, as the case may be, make an order requiring that person and any other person who appears to the Court to have been knowingly concerned in the contravention, to take such steps as the Court may direct to remedy it.

(2) The High Court may, on the application of the Authority, make an order under subsection (3) if satisfied—

- (a) that profits have accrued to any person as a result of his or her contravention of any provision mentioned in subsection (1)(a); or
- (b) that one or more investors have suffered loss or been otherwise adversely affected as a result of that contravention.

(3) The High Court may, under this subsection, order the person concerned to pay into court or appoint a receiver to recover from him or her, such sum as appears to the Court to be just, having regard—

- (a) in a case within subsection (2)(a), to the profits appearing to the Court to have accrued;
- (b) in a case within subsection (2)(b), to the extent of the loss or other adverse effect; or

- (c) in a case within subsection (2)(a) and (b), to the profits and to the extent of the loss or other adverse effect.

(4) Any amount paid into the High Court by or recovered from a person in pursuance of an order under subsection (3) shall be paid out to such person or distributed among such persons as the Court may direct, being a person or persons appearing to the Court to have entered into transactions with the person concerned as a result of which the profits mentioned in subsection (2) (a) have accrued to him or her, or the loss or adverse effect mentioned in subsection (2)(b) has been suffered.

(5) On an application under subsection (2), the High Court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him or her as mentioned in subsection (2)(a) and for determining how any amounts are to be paid or distributed under subsection (4); and the Court may require any such accounts or other information to be verified in such manner as it may direct.

(6) Nothing in this section affects the right of any person, other than the Authority, to bring proceedings in respect of the matters to which this section applies.

44. Restriction of business

- (1) The Authority may prohibit a licensed person from
 - (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 than from such persons or in a specified country or territory outside Uganda; or
 - (c) carrying on business in a specified manner or otherwise than in a specified manner.

(2) A prohibition under this section may relate to transactions entered into 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.

45. Restriction on dealing with assets

(1) The Authority may prohibit a licensed person or his or her appointed representative from disposing of or otherwise dealing with any assets, or any specified assets, of that licensed person or, as the case may be, his or her appointed representative in any specified manner or otherwise than in a specified manner.

(2) A prohibition under this section may relate to assets outside Uganda.

46. Vesting of assets in trustee

(1) The Authority may impose a requirement that all assets, or all assets of any specified class or description, which at any time while the requirement is in force—

- (a) belonging to a licensed person or appointed representative; or
- (b) belonging to participants and are held by or to the order of a licensed person or appointed representative,

shall be transferred to and held by a trustee approved by the Authority.

(2) Where a requirement is imposed under this section, it shall be the duty of the licensed person or, as the case may be, of the appointed representative, to transfer the assets to the trustee and to give the trustee all other assistance as may be required to enable the trustee to discharge his or her functions in accordance with the requirement.

(3) Assets held by a trustee in accordance with a requirement under this section shall not be released or dealt with except in accordance with directions given by the Authority or in such circumstances as may be specified by the Authority.

(4) A requirement under this section may relate to assets outside Uganda.

47. Rescission and variation

The Authority may, either on its own motion or on the application of a person on whom a prohibition or requirement has been imposed under this Part, rescind or vary the prohibition or requirement if it appears to the Authority

that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

48. Notices

(1) The power to impose, rescind or vary a prohibition notice or requirement under this Part is exercisable by written notice served by the Authority on the person concerned; and the notice shall take effect on a date specified in it.

(2) Where the Authority refuses to rescind or vary a prohibition or requirement on the application of the person to whom it applies, it shall serve that person with a written notice of the refusal.

(3) A notice imposing, a prohibition or requirement, or varying a prohibition or requirement otherwise than on the application of the person to whom it applies, and a notice under subsection (2) shall state the reasons for which the prohibition or requirement was imposed or varied or, as the case may be, why the application was refused.

(4) Where the reasons stated in a notice to which subsection (3) applies relate specifically to matters which

(a) refer to a person identified in the notice other than the person to whom the prohibition or requirement applies; and

(b) are in the opinion of the Authority prejudicial to that person in any office or employment,

the Authority shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(5) A notice to which subsection (3) applies shall give particulars of the right to have the case referred to the High Court under section 61.

(6) The Authority may give public notice of any prohibition or requirement imposed by it under this Part and of the rescission and variation of any such prohibition or requirement; and any such notice may, if the Authority thinks fit, include a statement of the reasons for which the prohibition or requirement was imposed, rescinded or varied.

49. Breach of prohibition or requirement

(1) Sections 37, 42 and 43 shall have effect in relation to a contravention of a prohibition or requirement imposed under this Part as they have effect in relation to any contravention mentioned in those sections.

(2) This section is without prejudice to any equitable remedy available in respect of property which is subject to a trust.

50. Revocation of licence

(1) The Authority may revoke a licence in respect of a collective investment scheme and may direct that a scheme shall cease to be a recognised scheme by virtue of section 23 if in any case it appears to it—

- (a) that, in the case of a licence, any of the requirements for the grant of the licence are no longer satisfied;
- (b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be licensed; or
- (c) without prejudice to paragraph (b), that in the case of an investment company with variable capital, the operator or depositary of the scheme or any of the directors of the company or, in the case of a unit trust scheme, the manager or trustee has contravened any provision of this Act or any rules or regulations made under this Act or, in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information, or has contravened any prohibition or requirement imposed under this Act.

(2) For the purposes of subsection (1)(b), the Authority may take into account—

- (a) any matter relating to the scheme, the operator or depositary;
- (b) any matter relating to a director or controller of the operator or depositary or trustee;
- (c) any matter relating to any person employed by or associated with the operator or depositary or trustee in connection with the scheme; or
- (d) any matter relating to—
 - (i) any director of the company; or

(ii) any person who would be such a person mentioned in section 14(2) if that subsection applied in respect of a director of the company as it applies in respect of a proposed director.

(3) Before revoking a licence that has come into effect in respect of an investment company with variable capital, the Authority shall ensure that such steps as are necessary and appropriate to secure the winding up of the company, whether by the High Court or otherwise, have been taken.

(4) This section confers the same powers in relation to a shadow director of an investment company with variable capital as it confers in relation to a director of such a company.

(5) The Authority may revoke a licence or give a direction under subsection (1) at the request of the operator or depositary or trustee of the scheme; but it may refuse to do so if it considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the licence should be revoked, or that revocation would not be in the interests of the participants.

51. Representations against revocation

(1) Where the Authority proposes to revoke a licence or give a direction under section 50 otherwise than at the request of the operator or depositary or trustee of the scheme, it shall give the applicants or, as the case may be, the operator and depositary or trustee of the scheme, written notice of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the rights conferred by subsection (2).

(2) A person on whom a notice is served under subsection (1) may, within twenty-one days after the date of service, make written representations to the Authority and, if desired, oral representations to a person appointed for that purpose by the Authority.

(3) The Authority shall have regard to any representations made in accordance with subsection (2) in determining whether to revoke the licence or give the direction, as the case may be.

52. Directions

(1) The Authority may give a direction under subsection (2) if it appears to it—

- (a) that any of the requirements for the making of an order declaring a scheme to be a licensed scheme are no longer satisfied;
- (b) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in the scheme; or
- (c) without prejudice to paragraph (b), that the operator or depositary or trustee of such a scheme or any director of the operator has contravened any provision of this Act or any rules or regulations made under this Act or, in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.

(2) A direction under this subsection may—

- (a) require the operator of the scheme to cease the issue or redemption or both the issue and redemption, of shares or units under the scheme on a date specified in the direction until such further date as is specified in that or another direction;
- (b) in the case of an investment company with variable capital
 - (i) require a director, who is the person designated in the company's instrument of incorporation for the purposes of paragraph 30 of Schedule 6 to this Act, to cease transfers to or from or both to and from, his own holding of shares, or of any class of shares, in the company on a date specified in the direction until such further date as is specified in that or another direction;
 - (ii) if it is an umbrella company, require that investments made in respect of one or more parts of the scheme property which are pooled separately, be realised and, following the discharge of such liabilities of the company as are attributable to the relevant part or parts of the scheme property, that the resulting funds be distributed to shareholders in accordance with scheme regulations;
 - (iii) require any director of the company, by such date as is specified in the direction or if no date is specified, as soon

as is practicable, to present a petition to the High Court to wind up the company; or

- (iv) require that the affairs of the company be wound up otherwise than by the High Court.

(3) Subject to subsection (4), the revocation of the licence under section 50 shall not affect the operation of any direction under subsection (2) which is then in force; and a direction may be given under subsection (2) in relation to a scheme in the case of which the licence has been revoked if a direction under that subsection was already in force at the time of revocation.

(4) Where, in the case of an investment company with variable capital, a winding up order has been made by the High Court, no direction under this section shall have effect in relation to the company concerned.

(5) For the purposes of subsection (1)(b), the Authority may, in relation to an investment company with variable capital, take into account—

- (a) any matter relating to the company or its depositary;
- (b) any matter relating to a director or controller of the depositary of the company;
- (c) any matter relating to any person employed by or associated, for the purposes of the business of the company, with the company or its depositary; or
- (d) any matter relating to—
 - (i) any director of the company; or
 - (ii) any person who would be such a person as is mentioned in section 14(2) if that subsection applied in respect of a director of the company as it applied in respect of a proposed director.

(e) Sections 37, 42 and 43 have effect in relation to a contravention of a direction under subsection (2) as they have effect in relation to any contravention mentioned in those sections.

- (7) Where it appears to the Authority—
 - (a) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in a scheme recognised under section 23 or 24 who are in Uganda;
 - (b) without prejudice to paragraph (a), that the operator of such a scheme has contravened this Act or any rules or regulations

made under this Act or, in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or

- (c) that any of the requirements for the recognition of a scheme under section 24 are no longer satisfied,

it may direct that the scheme shall not be a recognised scheme for a specified period, or until the occurrence of a specified event, or until specified conditions are complied with.

(8) For the purposes of subsections (1)(b) and (5)(a), the Authority may take into account any matter relating to the scheme, the operator or depositary or trustee, a director or controller of the operator or depositary or trustee or any person employed by or associated with the operator or depositary or trustee in connection with the scheme.

(9) The Authority may, either of its own motion or on the application of the depositary or trustee or operator of the scheme concerned, withdraw or vary a direction given under this section if it appears to the Authority that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

53. Notice of directions

(1) The power to give a direction under section 52, in relation to a scheme, shall be exercised by written notice served by the Authority on the operator and depositary or trustee or, in the case of a recognised scheme with no depositary or trustee, on the operator, and the notice shall take effect on a date to be specified in it.

(2) If the Authority refuses to withdraw or vary a direction on the application of the operator or depositary or trustee of the scheme concerned, it shall serve that person with a written notice of refusal.

(3) A notice giving a direction, or varying it otherwise than on the application of the operator or depositary or trustee concerned, or refusing to withdraw or vary a direction on the application of such a person, shall state the reasons for which the direction was given or varied or, as the case may be, why the application was refused.

(4) The Authority may give public notice of a direction given by it under section 52, and of any withdrawal or variation of that direction; and any such notice may, if the Authority thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

54. Applications to High Court

(1) In any case in which the Authority has power to give a direction under section 52 in relation to a licensed scheme or under section 52(3) in relation to a scheme which has been such a scheme, it may apply to the High Court for an order

- (a) in the case of an investment company with variable capital, removing any director of the company or removing the depositary of the company; and
- (b) in the case of a unit trust scheme, removing the manager or trustee of the scheme,

and replacing either or both of them with a person or persons nominated by it to satisfy the requirements of section 16.

(2) Where it appears to the Authority that no suitable person satisfying the requirements of subsection (1)(b) is available, it may apply to the High Court for an order removing the manager or trustee, or both the manager and trustee, and appointing a licensed person to wind up the scheme.

(3) On an application under this section, the High Court may make such order as it thinks fit; and the Court may, on the application of the Authority, rescind an order mentioned in subsection (2) and substitute an order mentioned in subsection (1)(b).

(4) The Authority shall give written notice of the making of an application under this section to—

- (a) the operator and the depositary or trustee of the scheme concerned; and
- (b) where the application seeks the removal of any director of an investment company with variable capital, that director,

and shall take such steps as it considers appropriate for bringing the making of the application to the attention of the participants.

(5) Section 35 shall not apply to a manager appointed by an order made on an application under subsection (2).

PART X—WINDING UP

55. Winding up orders

(1) The Authority may present a petition to the High Court to wind up a collective investment scheme.

(2) The High Court may, on receipt of a petition under subsection (1), wind up a collective investment scheme if

- (a) the scheme is unable to pay its debts; or
- (b) the Court is of the opinion that it is just and equitable that it should be wound up.

(3) For the purposes of subsection (2)(a), a scheme is deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the scheme is indebted in a sum exceeding fifty currency points then due, has served on the scheme a demand requiring the scheme to pay the sum due and has for seven days thereafter neglected or failed to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) if execution or other process issued on a decree or order of any High Court in favour of a creditor of the scheme is returned unsatisfied in whole or in part and there is no action taken by the scheme in court to indicate any other reason for the non-payment other than disability;
- (c) if, taking into account the contingent and prospective liabilities of the scheme, the High Court is satisfied that the scheme is unable to pay its debts; or
- (d) if a scheme defaults in an obligation to pay any sum due and payable under any investment agreement and a demand requiring the scheme to pay the sum due has been served on the scheme and the scheme has for seven days thereafter neglected or failed to pay the sum or secure or compound for it to the reasonable satisfaction of the creditor.

56. Dissolution on winding up by High Court

(1) This section applies where, in respect of an investment company with variable capital, the Registrar of Companies receives a notice from the

official receiver that the winding up by the High Court, of the company, is complete.

(2) The Registrar of Companies shall, on receipt of the notice, under subsection (1), immediately register it and; subject to this section, at the end of the period of three months beginning with the day of the registration of the notice, the company shall be dissolved.

(3) The Authority may, on the application of the official receiver or any other person who appears to the Authority to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Authority thinks fit.

(4) A person aggrieved by a decision of the Authority on an application for a direction under subsection (3), may appeal to the High Court.

- (5) It is the duty of the person
- (a) on whose application a direction is given under subsection (3); or
 - (b) in whose favour an appeal with respect to an application for such a direction is determined,

not later than seven days after the giving of the direction or the determination of the appeal, to deliver to the Registrar of Companies for registration, a copy of the direction or determination.

(6) Any person, who, without reasonable excuse fails to deliver a copy as required by subsection (5), commits an offence and is liable, on conviction

- (a) to a fine not exceeding one hundred currency points; and
- (b) on a second or subsequent conviction, to a fine of twenty-five currency points for each day on which the contravention is continued.

57. Dissolution in other circumstances

(1) Where the affairs of an investment company with variable capital have been wound up otherwise than by the High Court, the Authority shall ensure that, as soon as is reasonably practicable after the winding up is complete, the Registrar of Companies is sent a notice of that fact.

(2) The Registrar of Companies shall, upon receipt of the notice under subsection (1), immediately register it; and, subject to subsection (3), at the end of the period of three months beginning with the day of the registration of the notice, the company shall be dissolved.

(3) The High Court may, on the application of the Authority or the company, make an order deferring the date at which the dissolution of the company is to take effect for such period as the Court thinks fit.

(4) It is the duty of the person on whose application an order of the High Court under subsection (3) is made, to deliver, not later than seven days after the making of the order, to the Registrar of Companies a copy of the order for registration.

(5) Where a company is dissolved under subsection (2), any sum of money, including unclaimed distributions, standing to the account of the company at the date of the dissolution shall, in relation to the dissolution of that company, on a date to be determined by the High Court in accordance with scheme regulations, be paid into court.

PART XI—INVESTIGATIONS

58. Investigations

(1) The Authority may, if it appears to it that it is in the interests of the participants to do so, or that the matter is of public concern, appoint one or more competent inspectors to investigate and report on—

- (a) the affairs of the operator or depositary or trustee of any licensed scheme;
- (b) the affairs of the operator or depositary or trustee of any recognised scheme in relation to activities carried on in Uganda; or
- (c) the affairs of any director of an investment company with variable capital.

(2) An inspector appointed under subsection (1) may also, if he or she thinks it necessary for the purposes of that investigation, investigate the affairs of the operator or depositary or trustee of any other such scheme as is mentioned in that subsection if the operator or depositary or trustee or, in the case of an investment company with variable capital, any director is the

same person as the operator or depositary or trustee or director of the first mentioned scheme or company.

(3) Section 172 of the Companies Act, shall apply in relation to an inspector appointed under this section as it applies to an inspector appointed under section 169 of that Act but with the modifications specified in subsection (4).

(4) In section 172 of the Companies Act as applied by subsection (3), for any reference to a company there shall be substituted a reference to the scheme under investigation by virtue of this section and any reference to an officer of the company includes a reference to any director of the operator or depositary or trustee of the scheme.

59. Disclosure of investigations

(1) A person shall not, under section 58, be required to disclose any information or produce any document which he or she would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in High Court, except that an advocate may be required to furnish the name and address of his or her client.

(2) Nothing in section 58 requires a person, except as mentioned in subsection (3), to disclose any information or produce any document in respect of which he or she owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
- (b) the making of the requirement was authorised by the Authority.

(3) Subsection (2) does not apply where the person owing the obligation of confidence, or to whom it is owed, is an operator, depositary or director under investigation by virtue of that section.

60. Supplementary investigations

(1) Where a person claims a lien on a document, its production under section 42 shall be without prejudice to the lien.

(2) An inspector appointed under section 58 may, and if directed by the Authority shall, make interim reports to the Authority and on the conclusion of his or her investigation, shall make a final report to the Authority.

(3) Where it appears to the Authority that matters have been revealed in the course of an inspector's investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, the Authority may direct the inspector to take no further steps in the investigation, or to take only such steps as are specified in the direction.

(4) Where an investigation is the subject of a direction under subsection (3), the inspector shall make a final report to the Authority only where the Authority directs him or her to do so.

(5) The final report shall be written or printed as the Authority may direct and the Authority may, if it thinks fit—

- (a) give a copy, on request and on payment of the prescribed fee—
 - (i) to any director or participant, or to the depositary, of a company under investigation under section 58(1);
 - (ii) where a director under investigation by virtue of that subsection is a body corporate, to any director of that body;
 - (iii) to any director of a depositary or trustee under investigation by virtue of section 58; or
 - (iv) to any other person whose conduct is referred to in the report; and
- (b) cause the report to be published.

(6) A person who is convicted on a prosecution instituted as a result of an investigation under section 58 may, in the same proceedings, be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

(7) For the purposes of subsection (6), there shall be treated as expenses of the investigation, in particular, such reasonable sums as the Authority may determine in respect of general staff costs and overheads.

PART XII—HIGH COURT

61. Reference of matters to High Court

(1) A person—

- (a) on whom a notice is served under section 10, 40, 41(4), 42(2) or 48; or
- (b) on whom a copy of a notice under section 10, 40, 42(2) or 48 is served, or on whom the Authority considers that a copy of such a notice should have been served if it had been practicable to do so,

may, within twenty-eight days after the date of service of the notice, require the Authority to refer the matter to which the notice relates to the High Court and, subject to this section, the Authority shall refer that matter accordingly.

(2) The Authority need not refer a matter to the High Court at the request of the person on whom a notice was served under section 10, 40, 41(4), 42(2) or 48 if within the period mentioned in subsection (1), the Authority—

- (a) decides to grant the application or, as the case may be, decides not to withdraw or suspend the licence, give the direction or publish the statement to which the notice, relates; and
- (b) gives written notice of its decision to that person.

(3) The Authority need not refer a matter to the High Court at the request of the person on whom a notice is served under section 48 if

- (a) that matter is the refusal to grant an application for the rescission or variation of a prohibition or requirement and within the period mentioned in subsection (1), the Authority—
 - (i) decides to grant the application; and
 - (ii) gives written notice of its decision to that person; or
- (b) that matter is the imposition or variation of a prohibition or requirement, being a prohibition, requirement or variation which has not yet taken effect, and within the period mentioned in subsection (1) and before the prohibition, requirement or variation takes effect the Authority—
 - (i) decides to rescind the prohibition or requirement or decides not to make the variation; and
 - (ii) gives written notice of its decision to that person.

(4) Where the notice served on a person under section 40 and at any time within the period mentioned in subsection (1), the Authority serves a new notice on that person in substitution of the notice previously served, then, if the substituted notice complies with subsection (5), subsection (1) shall have effect in relation to the substituted notice instead of the original notice and as the period mentioned in subsection (1) were twenty-eight days after the date of service of the original notice or fourteen days after the date of service of the substituted notice, whichever ends later.

(5) A notice served in substitution for a notice within subsection (4) complies with this subsection if it proposes—

- (a) the suspension of a licence; or
- (b) the exercise of the power conferred by section 42.

(6) The reference of the imposition or variation of a prohibition or requirement under Part IX of this Act to High Court shall not affect the date on which it comes into effect.

62. Decision on references by applicant or licensed person *etc.*

(1) Where a case is referred to the High Court at the request of a person under section 61(1)(a), the Court shall—

- (a) investigate the case; and
- (b) make a report to the Authority stating what would in its opinion be the appropriate decision in the matter and the reasons for that opinion,

and the Authority shall immediately decide the matter in accordance with the report of the High Court.

(2) Where the matter referred to the High Court is the refusal to grant an application, the Court may, under this section, report that the appropriate decision would be to grant or refuse to grant the application or—

- (a) in the case of an application for the variation of a suspension, direction, consent, prohibition or requirement, to vary it in a specified manner; or
- (b) in the case of an application for the rescission of a prohibition or requirement, to vary the prohibition or requirement, in a specified manner.

(3) Where the matter referred to the High Court is any action of the Authority other than the refusal to grant an application, the Court may report that the appropriate decision of the Authority would be

- (a) to take or not to take the action taken or proposed to be taken by the Authority, or to take any other action that the Authority could take under the provision in question; or
- (b) to take instead or in addition, any action that the Authority could take in the case of the person concerned under any one or more of the provisions of Part IX of this Act, other than that under which the Authority was acting or proposing to act.

(4) Sections 40, 42(2), 42(3), 48(2) and 48(4) shall not apply to any action taken by the Authority in accordance with the report of the High Court.

(5) The High Court shall send a copy of its report under this section to the person at whose request the case was referred to it; and the Authority shall serve that person with a written notice of the decision made by the Authority in accordance with the report.

63. Decisions on references by third parties

Where a case is referred to the High Court at the request of a person under section 61(1)(b), the Court shall report to the Authority whether the reasons stated in the notice in question which relate to that person are substantiated; and the Court shall send a copy of the report to that person and to the person on whom the notice was served.

64. Withdrawal of references

(1) A person who has required a case to be referred to the High Court may, at any time before the conclusion of the proceedings before the Court, withdraw the case.

(2) The Authority may, at any time, withdraw a case made at the request of a person on whom a notice was served under section 61(1)(a) if it—

- (a) decides as mentioned in subsection (2)(a) or (3)(a)(i) or (3)(b)(i) of that section; and
- (b) gives such a notice as is mentioned in subsection (2)(b) or (3)(a)(ii) or (b)(ii) of that section,

but a case shall not be withdrawn by virtue of such a decision and notice as are mentioned in subsection (3)(b) unless the decision is made and the notice is given before the prohibition, requirement or variation has taken effect.

(3) Where a case is withdrawn from the High Court under this section, the Court shall not further investigate the case or make a report under section 62 or 63; but where the case is withdrawn otherwise than by the Authority, the Authority may require the Court to make a report to it on the results of its investigation up to the time when the case was withdrawn.

(4) Where two or more persons have required a case to be referred to the High Court, the withdrawal of the case by one or more of them shall not affect the functions of the Court insofar as the case relates to a person who has not withdrawn the reference.

(5) Where a person on whom a notice was served under section 10 or 42 withdraws a case from the High Court, section 10(5) and section 42(5) shall apply to that person as if he or she had not required the case to be referred.

65. Reports

(1) In preparing its report on a case, the High Court shall have regard to the need to exclude, so far as practicable, any matter which relates to the affairs of a particular person not being a person who required or could have required the case to be referred to the Court, where the publication of that matter would or might, in the opinion of the Court, seriously and prejudicially affect the interests of that person.

(2) The Authority may, in such cases as it thinks fit, publish the report of the High Court and offer copies of any such report for sale.

(3) The Authority may, on request and on payment of the prescribed fee, supply a copy of a report of the High Court to any person whose conduct is referred to in the report or whose interests as a client or creditor are affected by the conduct of a person to whom the proceedings before the Court related.

(4) Where the Authority is of the opinion that there is good reason for not disclosing any part of a report, it may cause that part to be omitted

from the report as published under subsection (2) or from the copy of it supplied under subsection (3).

(5) A copy of a report of the High Court endorsed with a certificate signed by or on behalf of the Authority stating that it is a true copy shall be admissible as evidence of the opinion of the Court as to any matter referred to in the report; and a certificate purporting to be signed in the manner specified by this section shall be deemed to have been duly signed unless the contrary is shown.

PART XIII—INFORMATION

66. Register

(1) The Authority shall keep a register containing an entry in respect of—

- (a) each licensed person;
- (b) each licensed scheme;
- (c) each recognised scheme; and
- (d) each person in respect of whom a direction under section 41 is in force.

(2) The entry in respect of each licensed person shall consist of—

- (a) the name and address of that person;
- (b) the activities covered by the licence; and
- (c) such other information as the Authority may determine.

(3) The entry in respect of each such scheme shall consist of—

- (a) its name;
- (b) in the case of a licensed scheme, the name and address of the operator and depositary or trustee;
- (c) in the case of a recognised scheme, the name and address of the operator and of any representative of the operator in Uganda; and
- (d) in either case, such other information as the Authority may determine.

(4) The entry in respect of each such person shall include particulars of any consent for that person's employment given by the Authority.

(5) Where a licensed person or licensed scheme or recognised scheme in respect of which there is an entry in the register has ceased to be licensed or recognised, the Authority shall make a note to that effect in the register.

(6) An entry in respect of which a note is made under subsection (5) may be removed from the register at the end of such period as the Authority thinks appropriate.

67. Inspection of register

(1) The information contained in the entries included in the register shall be open to inspection; and the Authority may publish the information contained in those entries in any form it thinks appropriate and may offer copies of any such information for sale.

(2) Information, which by virtue of this section is open to inspection, shall be open to inspection free of charge but only at such times and places as the Authority may appoint and a person entitled to inspect any information may obtain a certified copy of it from the Authority on payment of a prescribed fee.

(3) The Authority shall keep a register in such form as it thinks appropriate with a view to facilitating inspection of the information which it contains.

68. Power to call for information

(1) The Authority may, by notice in writing, request an operator or depositary or trustee of a licensed scheme or recognised scheme to furnish it with such information which it may reasonably require for the exercise of its functions under this Act.

(2) The Authority may request that any information which it requires under this section must be furnished within such reasonable time and verified in such manner as it may specify.

(3) Sections 37, 42 and 43 have effect in relation to a contravention of a requirement imposed under subsection (1) as they have effect in relation to a contravention of the provisions to which those sections apply.

PART XIV—RESTRICTIONS ON DISCLOSURE

69. Restrictions on disclosure of information

(1) Subject to section 70, restricted information which relates to the business, or other affairs of any person shall not be disclosed by

- (a) a person mentioned in subsection (3) “the primary recipient”; or
- (b) any person obtaining the information directly or indirectly from him or her,

without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.

(2) Subject to subsection (4), restricted information for the purposes of this section is information obtained by the primary recipient for the purposes of, or in the discharge of his or her functions under this Act or under any rules or regulations made under this Act, whether or not by virtue of any requirement to supply it made under those provisions.

- (3) The persons mentioned in subsection (1) are—
- (a) the Authority;
 - (b) a person appointed or authorised to exercise powers under section 58;
 - (c) an officer or servant of a person mentioned in paragraphs (a) or (b); and
 - (d) a police officer or other person named in a warrant issued under this Act.

(4) Information shall not be treated as restricted information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances in which or for any purpose for which disclosure is not precluded by this section.

(5) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred currency points or to imprisonment for a term not exceeding two years, or both.

70. Exceptions from restrictions on disclosure

- (1) Section 69 shall not preclude the disclosure of information—

- (a) with a view to the institution of, or otherwise, for the purposes of criminal proceedings;
- (b) with a view to the institution of, or otherwise, for the purposes of any civil proceedings arising under or by virtue of this Act; or
- (c) to the Authority if the disclosure is made in the interests of investors or in the public interest.

(2) Subject to subsection (4), section 69 shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this subsection by the Minister by statutory order, to discharge any functions specified in that order.

(3) An order under subsection (2) designating an authority for the purposes of that subsection may—

- (a) impose conditions subject to which the disclosure of information is permitted; and
- (b) otherwise restrict the circumstances in which that disclosure is permitted.

(4) Section 69 shall not preclude the disclosure of any information contained in any notice or copy of a notice served under this Act, the contents of which have not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from him or her.

71. Directions restricting disclosure of information overseas

(1) The Minister may, if it appears to him or her to be in the public interest to do so, give a direction prohibiting the disclosure of such information as may be specified in the direction to—

- (a) any person in a country or territory outside Uganda which is specified in the direction; or
- (b) such persons in such a country or territory as may be so specified.

(2) A direction under subsection (1) may—

- (a) prohibit the disclosure of the information to which it applies by all persons or only by such persons or classes of persons as may be specified in it; and

(b) prohibit the disclosure absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in it,
and a direction prohibiting disclosure by all persons shall be published by the Minister in a manner as appears to him or her to be appropriate.

(3) This section applies to any information relating to the business or other affairs of any person which was obtained, whether or not by virtue of any requirement to supply it, directly or indirectly by the Authority or any person appointed or authorised to exercise any powers under section 58, or any officer or servant of any such body or person, for the purposes or in the discharge of any functions of that body or person under this Act or any rules or regulations made under this Act.

(4) A direction under this section shall not prohibit the disclosure by any person other than a person mentioned in subsection (3)—

- (a) of information relating only to the affairs of that person; or
- (b) of information obtained by that person otherwise than directly or indirectly from a person mentioned in subsection (3).

72. Offences under section 71

Any person who knowingly discloses information in contravention of a direction under section 71 commits an offence and is liable, on conviction, to a fine not exceeding two hundred currency points or to imprisonment for a term not exceeding two years, or both.

PART XV—COMPENSATION SCHEME

73. Establishment of compensation scheme

(1) The Authority shall, by statutory instrument, make rules to establish a compensation scheme for compensating persons in cases where licensed persons are unable, or are likely to be unable, to satisfy claims against them.

(2) Rules made under subsection (1) shall, in particular, provide for the Authority—

- (a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with licensed schemes carried on by licensed persons; and
- (b) to impose levies on licensed persons, or any class of licensed persons, for the purpose of meeting its expenses, including in particular, expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks.

(3) An amount payable to the Authority as a result of a provision of the scheme made under subsection (2) may be recovered as a civil debt due to the Authority.

PART XVI—MISCELLANEOUS AND SUPPLEMENTARY

74. Exemption from liability for damages

The Authority, member, officer or servant of the Authority shall not be liable in damages for anything done or omitted to be done in good faith in the discharge or purported discharge of any functions of the Authority under this Act.

75. Jurisdiction of High Court

Proceedings arising out of any act or omission or of proposed act or omission of the Authority in the discharge or purported discharge of any of its functions under this Act may be brought in High Court.

76. Powers of entry

(1) A judge or a magistrate not below grade 1 may issue a warrant under this section if satisfied on oath given by or on behalf of the Authority that there are reasonable grounds for believing that an offence has been committed under section 4, and that there are, on any premises, documents relevant to the question whether that offence has been committed.

(2) A magistrate may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Authority or by a person appointed or authorised to exercise powers under section 58, that there are reasonable grounds for believing that there are, on any premises, documents

whose production has been required under section 58 and which have not been produced in compliance with the requirement.

(3) A warrant under this section shall authorise a police officer, together with any other person named in it—

- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be documents mentioned in subsection (1) or, as the case may be, in subsection (2), or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of any such documents; and
- (d) to require any person named in the warrant to provide an explanation of the documents, or to state where they may be found.

(4) A warrant under this section shall continue in force until the end of thirty days beginning with the day on which it is or was issued.

(5) Any documents of which possession is taken under this section may be retained

- (a) for a period of three months; or
- (b) if within that period, proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(6) Any person who intentionally obstructs a police officer or other person in the exercise of any rights conferred by a warrant issued under this section, or fails without reasonable excuse, to comply with any requirement imposed in accordance with subsection (3)(d) commits an offence and is liable, on conviction, to a fine not exceeding two hundred currency points or to imprisonment for a term not exceeding two years, or both.

(7) In this section, “documents” includes information recorded in any form.

77. False and misleading statements

A person commits an offence if—

- (a) for the purposes of or in connection with any application under this Act; or
- (b) in purported compliance with any requirement imposed on him or her under this Act,

he or she furnishes information which he or she knows to be false or misleading in a material particular, or recklessly furnishes information which is false or misleading in a material particular.

78. Punishments for offences under section 77

Any person who commits an offence under section 77 is liable, on conviction, to a fine not exceeding two hundred currency points or to imprisonment for a term not exceeding two years, or both.

79. Offences by bodies corporate, partnerships and unincorporated associations

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; or
- (b) a controller of the body corporate,

he or she, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by the members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(3) Where a partnership commits an offence under this Act, every partner, other than a partner who is proved to have been ignorant of, or to have attempted to prevent the commission of the offence, also commits that offence and is liable to be proceeded against and punished accordingly.

(4) Where an unincorporated association, other than a partnership, is guilty of an offence under this Act—

(a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or

(b) if there is no such officer, every member of the governing body, other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

is also guilty of the offence and is liable to be proceeded against and punished accordingly.

80. Jurisdiction and procedure in respect of certain offences

(1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated association shall be brought in the name of the association, and not in that of any of its members, and for the purposes of the proceedings, any rules of High Court relating to the service of documents shall have effect as if the association were a corporation.

(2) A fine imposed on an unincorporated association on its conviction for an offence under this Act shall be paid out of the funds of the association.

81. Service of notices

(1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to, or served on, any person other than the Authority.

(2) A document referred to in subsection (1) may be given to or served on the person in question

- (a) by delivering it to him or her;
- (b) by leaving it at his or her proper address; or
- (c) by sending it by post to him or her at that address.

(3) A document referred to in subsection (1) may—

- (a) in the case of a body corporate, be given to or served on the secretary or clerk of that body;
- (b) in the case of a partnership, be given to or served on any partner;
- (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of the association; or
- (d) in the case of an appointed representative, be given to or served on his or her principal.

(4) For the purposes of this section and the Interpretation Act in its application to this section, the proper address of any person is his or her last known address, whether of his or her residence or of a place where he or she carries on business or is employed, and also any address applicable in his or her case under the following provisions—

- (a) in the case of a body corporate, its secretary or its clerk, the address of its registered or principal office in Uganda; and
- (b) in the case of an unincorporated association other than a partnership or a member of its governing body, its principal office in Uganda.

(5) Where a person has notified the Authority of an address or a new address at which documents may be given to or served on him or her under this Act, that address shall also be his or her proper address for the purposes mentioned in subsection (4) or, as the case may be, his or her proper address for those purposes in substitution for that previously notified.

82. Regulations

The Minister or the Authority, as the case may be, may, by statutory instrument, make regulations prescribing anything which by this Act is authorised or required by the Minister or Authority to be prescribed.

83. Publication of information and advice

(1) The Authority may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as it considers appropriate with respect to—

- (a) the operation of this Act and the rules and regulations made under it, including in particular the rights of investors, the duties of operators, trustees and depositaries and the steps to be taken for enforcing those rights or complying with those duties;
- (b) any matters relating to the functions of the operators, trustees and depositaries under this Act or under any such rules or regulations; and
- (c) any other matters about which it appears to it to be desirable to publish information or give advice for the protection of investors or any class of investors.

(2) The Authority may offer for sale, copies of information published under this section and may, if it thinks fit, make a reasonable charge for advice given under this section at any person's request.

(3) This section shall not be construed as authorising the disclosure of restricted information within the meaning of section 69 in any case in which it could not be disclosed apart from this section.

84. Power to amend Schedule 1

The Minister may, by statutory instrument, with the approval of Cabinet, amend Schedule 1 to this Act.

SCHEDULES

Schedule 1

Sections 1, 84

Currency Point

A currency point is equivalent to twenty thousand shillings.

Schedule 2

Section 13

Formation Documents

PART I—INSTRUMENT OF INCORPORATION

1. Contents of instrument

The instrument of incorporation shall contain—

- (a) the statements required by paragraph 2 of this Schedule; and
- (b) provisions made in accordance with paragraphs 3 and 4 of this Schedule.

2. Statements

The statements referred to in paragraph 1(a) are—

- (a) the head office of the company is situated in Uganda;
- (b) the company is an open-ended investment company with variable share capital;
- (c) the shareholders are not liable for the debts of the company;
- (d) the scheme property is entrusted to a depository 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 scheme property.

3. Specific matters

(1) The instrument of incorporation shall provide for the following matters—

- (a) the object 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 this Act or scheme regulations; and
- (c) the currency in which the accounts of the company are to be prepared.

(2) Subject to subparagraph (3), the matter referred to in subparagraph (1)(a) as to the object of an investment company with variable capital shall be a statement that the object of the company is to invest the scheme property in property of a kind described in the statement, the holding of which is

consistent with any requirements of this Act or scheme 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. Other matters

(1) The instrument of incorporation shall also contain the following matters—

- (a) the name of the company;
- (b) the category, if any is specified in the scheme regulations, to which the company belongs;
- (c) the maximum and minimum sizes of the company's capital;
- (d) in the case of an umbrella company, the investment objectives applicable to each part of the scheme property that is pooled separately;
- (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 scheme property 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 bearer shares, a statement to that effect together with details of any limitations on the classes of the company's shares which are to include bearer shares;
- (h) in the case of a company which issues securities, title to units of which is permitted to be evidenced and transferred by means of a computer based system without a written instrument, a statement to that effect together with an indication of any class of shares in the company which is permitted to be so treated;
- (i) if the company is to dispense with the requirements of paragraph 12 of Schedule 3 of this Act, the details of any substituted procedures for evidencing title to the company's shares; and
- (j) the form, custody and use of the company's common seal, if any.

(2) For the purposes of subparagraph (1)(c), the size at any time of a company's capital shall be taken to be the value at that time, as determined in

accordance with scheme regulations, of the scheme property of the company less the liabilities of the company.

PART II—PROSPECTUS

5. Contents of prospectus

A prospectus shall contain the matters specified in this Part and may contain any other matter expressly provided for in scheme regulations.

6. Prominent statement

The prospectus shall state that it is the prospectus of the company valid as at the date on which it is made.

7. Company prospectus

The prospectus shall state—

- (a) the name of the company;
- (b) that the company is an open-ended investment company with variable capital;
- (c) that the shareholders are not liable for the debts of the company;
- (d) the registered number of the company;
- (e) the address of its head office;
- (f) the effective date of the licence granted by the Authority;
- (g) if the duration of the company is not unlimited, when it may terminate;
- (h) the category, if any is specified in scheme regulations, to which the company belongs;
- (i) the address of the place in Uganda for service on the company of notices or other documents required or authorised to be served on it;
- (j) the base currency for the company;
- (k) the maximum and minimum sizes of the company's capital; and
- (l) the circumstances in which the company may be wound up and a summary of the procedure for, and the rights of shareholders under, such a winding up.

8. Investment objectives and policy

The prospectus shall give sufficient information to enable a shareholder to ascertain—

- (a) (i) the investment objectives such as capital growth or income of the company or of each sub-fund of an umbrella company;
- (ii) the company's investment policy for achieving those investment objectives, including the general nature of the portfolio and any intended specialisation such as economic sector, geographical area or type of investment; and
- (iii) the extent, if any, to which that policy does not envisage remaining fully invested at all times;
- (b) any restrictions in the range of property in which investment may be made, including restrictions in the extent to which the company may invest in any category of investment, indicating, where appropriate where the restrictions are tighter than those imposed by the regulations;
- (c) the names of the countries, local authorities and public international bodies in whose securities the company may invest more than thirty-five percent of its assets and whether or not it has done so; and
- (d) in the case of a company which may invest in other collective investment schemes, the extent to which the property of the company may be invested in the units of collective investment schemes which are managed by the authorised corporate director or by an associate of the authorised corporate director.

9. Clarification of objectives

Where, in accordance with scheme regulations, all or part of the remuneration of the authorised corporate director is to be treated as a capital charge, it shall be made clear that the investment objectives of the company 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.

10. Other matters in prospectus

The prospectus shall—

- (a) list any individual property through which the company may invest or deal under scheme regulations;
- (b) state whether it is intended that the company will have an interest in any immovable property, *e.g.* its office, or tangible movable property such as office equipment; and
- (c) state the policy in relation to the exercise of borrowing powers by the company and to entry into transactions for the purpose of efficient portfolio management.

11. Distributions

The prospectus shall state—

- (a) the date on which the company's annual accounting period is to end in each year;
- (b) if there are interim accounting periods, what they are and the policy in relation to interim distributions for example whether interim distributions 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 and, if there are holders of bearer shares, how they are to identify themselves for the purposes of receiving payment of income;
- (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.

12. Characteristics of shares in company

The prospectus shall state—

- (a) where there is more than one class of shares in issue or available for issue, the name of each such class and the company rights attached to each class insofar as they vary from the rights attached to other classes;

- (b) if the instrument of incorporation provides for the issue of bearer shares, that fact and in what multiples bearer shares may be issued;
- (c) how shareholders may exercise their voting rights and what those rights are;
- (d) what the method is for conversion between shares of different classes; and
- (e) in what circumstances, if any, a mandatory redemption, cancellation or conversion of shares from one class to another may be required, for instance, if an investor does not satisfy the residence condition for income to be paid or accumulated without tax being deducted.

13. Authorised corporate director

The prospectus shall state the following particulars of the authorised corporate director—

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) the date of its incorporation;
- (e) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (f) the address of its registered office;
- (g) the address of its head office if that is different from the address of its registered office;
- (h) if neither the registered office nor the head office of the authorised corporate director is in Uganda, the address of the authorised corporate director's principal place of business in Uganda;
- (i) the names of its directors;
- (j) if the duration of its corporate status is limited, when that status will or may cease;
- (k) the amount of its issued share capital and how much of it is paid up;
- (l) if it holds a licence under the Capital Markets Authority Act or this Act, details of that licence;
- (m) in what capacity, if any, the authorised corporate director acts in relation to any other licensed or recognised schemes and the name of those schemes; and

- (n) a summary of the material provisions of the contract between the company and the authorised corporate director which may be relevant to shareholders, including provisions, if any, relating to termination, compensation on termination and indemnity.

14. Directors of company

- (1) The prospectus shall state—
 - (a) the names and positions in the company of the directors;
 - (b) the main business activities of each of the directors, other than those connected with the business of the company, where these are significant to the company's business;
 - (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 company and a director; and
 - (e) if the director is a body corporate in a group of which any other corporate director of the company is a member, a statement of that fact.
- (2) In this paragraph, “director” does not include the authorised corporate director.

15. Depositary

The prospectus shall state the following particulars of the depositary—

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (e) the address of its registered office;
- (f) the address of its head office if that is different from the address of its registered office;
- (g) if neither its registered office nor its head office is in Uganda, the address of its principal place of business in Uganda;
- (h) a description of its principal business activity;
- (i) if it holds a licence under the Capital Markets Authority Act or this Act, details of that licence; and

- (j) a summary of the material provisions of the contract between the company and the depository which may be relevant to participants, including provisions relating to the remuneration of the depository.

16. Investment adviser

If an investment adviser is retained in connection with the business of the company, the prospectus shall state the following—

- (a) its name;
- (b) if it is a body corporate in a group of which any director of the company is a member, that fact;
- (c) if its principal activity is not providing services to the company as an investment adviser, what the principal activity is;
- (d) a summary of the material provisions of the contract between the company and the investment adviser which may be relevant to shareholders and, if it has the Authority of the authorised corporate director or the company to make decisions on behalf of the company or the authorised corporate director, that fact and a description of the matters in relation to which it has that authority; and
- (e) whether it is a broker fund adviser in relation to the company, that is to say a person who has for whatever reason an expectation that the company or its authorised corporate director will consider any advice, recommendation, notification, review or decision by that person or his or her associate or nominee for the purpose of determining the composition of the property of the company.

17. Auditor

The prospectus shall state the name and address of the auditor of the company.

18. Register of shareholders

The prospectus shall state the address in Uganda where the register of shareholders is kept and can be inspected by participants.

19. Payments

(1) The prospectus shall state the payments that may be made to the authorised corporate director, whether as such or in any other capacity, out of the scheme property whether by way of remuneration for its services or reimbursement of expenses.

- (2) For each category of remuneration, the prospectus shall specify—
- (a) the maximum and current rates or amounts of such remuneration;
 - (b) how it will be calculated and accrue and when it will be paid;
 - (c) if notice has been given to participants of the authorised corporate director's intention to introduce a new category of remuneration for its services or to increase any rate or amount currently charged, particulars of that introduction or increase and when it will take place;
 - (d) if, in accordance with scheme regulations all or part of the remuneration is to be treated as a capital charge—
 - (i) that fact; and
 - (ii) the actual or maximum amount of the charge which may be so treated; and
 - (e) if notice has been given to participants of an intention to propose an increase in the maximum amount of that charge at a meeting of participants, particulars of that proposal.

20. Other payments out of scheme property

The prospectus shall provide details of—

- (a) any liability of the company to reimburse costs incurred by any of its directors, its depositary or any third party;
- (b) any remuneration payable by the company to any third party;
- (c) any remuneration, to which subparagraph (b) does not apply payable by the company for services provided by an affected person; and
- (d) the types of any other charges and expenses that may be taken out of the scheme property.

21. Movable and immovable property

The prospectus shall give an estimate of any expenses likely to be incurred by the company in respect of movable and immovable property in which the company has an interest.

22. Amortisation

The prospectus shall state the amount of any costs remaining to be amortised under the scheme regulations as at the date of the prospectus and the method of amortisation.

23. Sale and redemption of shares

The prospectus shall state—

- (a) the dealing days, and times in the dealing day, on which the authorised corporate director 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 shareholder in redeeming shares before he or she can receive the proceeds;
- (e) the circumstances in which the redemption of shares may be suspended;
- (f) the days, and times in the day, 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 company
 - (i) the minimum number of shares which any one person may hold;
 - (ii) the minimum value of shares which any one person may hold;
 - (iii) the minimum number of shares which may be the subject of any one transaction of sale or redemption; and
 - (iv) the minimum value of shares which may be the subject of any one transaction of sale or redemption;
- (h) the circumstances in which the authorised corporate director may arrange for, and the procedure for, a cancellation of shares in specie;

- (i) when and in which Ugandan national newspaper the most recent price will be published; and
- (j) the investment exchanges, if any, on which shares in the scheme are listed or dealt.

24. Valuation of scheme property

The prospectus shall state—

- (a) how frequently, and at what time or times of the day, the scheme property will be regularly valued for the purpose of determining the price at which shares in the company may be purchased or redeemed by the authorised corporate director and a description of any circumstance in which the scheme property may be specially valued;
- (b) the basis on which the scheme property will be valued; and
- (c) how the price of shares of each class will be determined.

25. Dilution levy

The prospectus shall state—

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

26. Forward pricing

The prospectus shall state that the authorised corporate director's basis of dealing will be forward pricing, that is to say, the calculation of price by reference to the valuation point next following the authorised corporate director's agreement to sell or, as the case may be, to redeem the shares in question.

27. Preliminary charge

If the authorised corporate director makes a preliminary charge, the prospectus shall state—

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

28. Redemption charge

If the authorised corporate director may make a redemption charge, the prospectus shall state—

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

29. General information

The prospectus shall state—

- (a) when annual and half yearly reports will be published;
- (b) the interim and annual accounting dates;
- (c) the address at which copies of the instrument of incorporation, any amending instrument and the most recent annual and half yearly reports may be inspected and from which copies may be obtained;
- (d) how the company will publish, for the benefit of participants holding bearer shares, notice—
 - (i) of the fact that annual and half yearly reports are available for inspection and how copies may be obtained;
 - (ii) of when a distribution of income will become payable and how it may be collected;
 - (iii) of the calling of meetings;
 - (iv) of the winding up of the company, or the termination of a sub-fund of an umbrella company, or the revocation of its licence;
 - (v) that amendments have been made to the instrument of incorporation;
 - (vi) that a significant alteration has been made to the prospectus; and

- (vii) of any subdivision or consolidation of shares, other than a consolidation of smaller denomination shares, into larger denomination shares; and
- (e) the extent to which and the circumstances in which—
 - (i) the company is liable to pay or suffer tax on any appreciation in the value of the scheme property or on the income derived from the scheme property; and
 - (ii) deductions by way of withholding tax may be made from distributions of income to participants and payments made to participants on the redemption of shares.

30. Umbrella company

- (1) The prospectus shall state, in the case of an umbrella company—
 - (a) that a participant is entitled to exchange shares in one sub-fund for shares in any other sub-fund;
 - (b) that an exchange of shares in one sub-fund for shares in any other sub-fund is treated as a redemption and sale and will, for persons subject to Ugandan taxation, be a realisation for the purposes of capital gains taxation;
 - (c) that in no circumstances will a shareholder who exchanges shares in one sub-fund for shares in any other sub-fund be given a right by law to withdraw from or cancel the transaction;
 - (d) what charges if any may be made on exchange of shares in one sub-fund for shares in any other sub-fund;
 - (e) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of the scheme property which are not attributable to any particular sub-fund;
 - (f) how the method of amortisation of any costs to be amortised under scheme regulations may be affected by the introduction or termination of a sub-fund;
 - (g) in respect of each sub-fund, the currency in which the scheme property allocated to it will be valued, and the price of shares calculated and payments made, if this currency is not the base currency of the umbrella company; and
 - (h) if there are shares in respect of less than two sub-funds in issue, the effect of scheme regulations upon such shares.
- (2) In the application of this Part to an umbrella company, information required

- (a) shall be stated in relation to each sub-fund where the information for any sub-fund differs from that for any other;
- (b) shall be stated for the company as a whole, but only where information is relevant to the company as a whole; and
- (c) shall contain a statement to the effect that the sub-funds of an umbrella company are not 'ring fenced' and in the event of an umbrella company being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to that sub-fund, the excess liabilities may have to be met out of the assets attributable to the other sub-funds.

31. Additional information

The prospectus shall state any other material information which is within the knowledge of the directors, or which the directors would have obtained by the making of reasonable enquiries—

- (a) which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgment about the merits of investing in the company and the extent and characteristics of the risks accepted by so participating;
- (b) including a statement of any risks that investment in the company may reasonably be regarded as presenting for reasonably prudent investors of moderate means and in particular, the fact that the price of shares and the income from them can go down as well as up and that past performance is not necessarily a guide to future performance; and
- (c) including anything else which may reasonably be regarded as relevant and requisite to enable persons advising customers to comply with scheme regulations.

PART III—TRUST DEED

32. Trust deed

A trust deed—

- (a) shall contain the matters specified in paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 45, 46, 47 and 52;
- (b) may contain the matters specified in the remaining provisions of this Part so far as they are applicable to it; and

- (c) subject to subparagraph (b), shall not provide for any matters which are dealt with in scheme regulations.

33. Name of scheme

A trust deed shall contain a statement of the name of the scheme which shall be a name not inconsistent with the scheme's licensed status under paragraph 34 and any restricted economic or geographical objectives under paragraph 48.

34. Licensed status

A trust deed shall contain a statement—

- (a) in all cases of the relevant category of licensed unit trust schemes to which the scheme belongs, insofar 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 insofar as categories are specified, that part would belong if it were itself the subject of a separate licence under section 9.

35. Governing law

A trust deed shall contain a statement that the deed is made under and governed by the laws of Uganda.

36. Trust deed to be binding and authoritative

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

37. Base currency

A trust deed shall contain a statement of what currency is the base currency of the scheme.

38. Investment powers in eligible markets

A trust deed shall contain a statement that, subject to any restriction in the Act or scheme regulations or the trust deed, the scheme has the power to invest in any securities market approved by the Authority for the purpose of this paragraph.

39. Declaration trust

A trust deed shall contain a declaration that, subject to the provisions of the deed 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 on trust for the holders of the units on an equal basis according to the number of units held by each holder or, in the case where income units and accumulation units are both in issue, according to the number of undivided shares in the property of the scheme represented by the units held by each holder; 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.

40. Holder's liability to pay

A trust deed shall contain a provision that a holder 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.

41. Duration of scheme

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

42. Manager's preliminary charge

A trust deed shall contain a statement—

- (a) authorising the 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.

43. Manager's periodic charge

A trust deed shall contain a statement authorising the manager to make a periodic charge payable out of the property of the scheme, and any statement under this paragraph must—

- (a) provide for the charge to be expressed as an annual percentage, to be specified in the scheme particulars 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 property of the scheme.

44. Manager's charge on an exchange of units in relation to umbrella funds

A trust deed shall contain a statement authorising the 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 holder in any one annual accounting period) and specifying what the maximum of that percentage or amount may be.

45. Manager's charge on redemption

A trust deed shall contain a statement authorising the manager to deduct a charge on redemption out of the proceeds of redemption.

46. Trustee's remuneration

A trust deed shall contain 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 property of the scheme 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.

47. Constituent property, permitted transactions and borrowing powers

If the descriptions of assets of which the capital property of the scheme may consist or the proportion of the capital property of the scheme which may consist of an asset of any description or the descriptions of transactions which may be effected on behalf of the scheme or the borrowing powers exercisable in relation to the scheme are narrower than those permitted for the category of scheme to which the scheme belongs under scheme regulations, a trust deed shall contain a statement of those narrower descriptions of assets, proportion, transactions or borrowing powers.

48. Restricted economic geographic objectives

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

49. Accumulation units

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

50. Limited categories of holder

A trust deed shall contain a provision that holders of units in the scheme apart from the manager shall be confined to persons who hold units such that any gain accruing upon their disposal at any time will be wholly exempt from income tax in Uganda otherwise than by reason of residence.

51. Certificates

The trust deed shall contain—

- (a) a provision authorising the issue of bearer certificates accompanied by a statement of how the holders of bearer certificates 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 units.

52. Grouping periods

The trust deed shall contain a provision authorising grouping for equalisation under scheme regulations and, if grouping is to be permitted for periods within an accounting period, what those periods are to be.

53. Enabling and restricting provisions

A provision in a trust deed

- (a) dealing with a matter not referred to in this Part of the Schedule the inclusion of which serves to enable the scheme, the manager or the trustee to obtain any privilege or power conferred by this Act or scheme regulations; or
- (b) which is expressly contemplated in this Act or scheme regulations.

54. Restatement of statutory provisions

A provision in a trust deed, which in all material respects has the same effect as a provision contained in this Act or in scheme regulations at the time when the provision is made, has the same effect as that provision.

PART IV—SCHEME PARTICULARS**55. Particulars**

The scheme particulars shall contain the matters specified in this Part and may contain any other matter—

- (a) the inclusion of which is necessary to enable the scheme, the manager or the trustee to obtain any privilege or power granted subject to there being such a provision by this Act or scheme regulations; or
- (b) which is expressly contemplated by this Act or scheme regulations.

56. Manager

(1) The scheme particulars shall state the following particulars of the manager—

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (e)
 - (i) the address of the manager's registered office;
 - (ii) the address of the manager's head office if that is different from the address of its registered office; and
 - (iii) if neither the registered office nor the head office of the manager is in Uganda, the address of the manager's principal place of business in Uganda;
- (f) the date of its incorporation;
- (g) if the duration of its corporate status is limited, when that status will or may cease;
- (h) except in the case of an open-ended investment company, the amount of its issued share capital and how much of it is paid up;
- (i) the names of the directors and, in each case, any significant business activities of the director not connected with the business of the operator;
- (j) if the manager is licensed by the Authority to carry on any activity in Uganda, that fact; and
- (k) if the manager is the operator of another collective investment scheme which is either a licensed unit trust scheme or a recognised scheme, the name of that other scheme, whether it is a licensed unit trust scheme or a recognised scheme and, if it is a recognised scheme, whether it is recognised under section 23 or 24 and the fact that the manager is the operator of it.

(2) Where a director of the manager is a body corporate, there shall also be stated in relation to that director, the matters referred to in subparagraph (1)(a), (b), (c), (d), (f), (g), (h) and (i).

57. Trustee

The scheme particulars shall state the following particulars of the trustee—

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (e) the address of its registered office;
- (f) the address of its head office if that is different from the address of its registered office;
- (g) if neither its registered office nor its head office is in Uganda and it has a place of business in Uganda, the address of its principal place of business in Uganda;
- (h) a description of its principal business activity; and
- (i) if it is licensed to carry on investment business in Uganda by the Authority, that fact.

58. Investment adviser

If the manager employs the services of an investment adviser, the scheme particulars shall state the following particulars of the investment adviser—

- (a) his or her name;
- (b) whether or not he or she is a licensed person;
- (c) if the investment adviser is a body corporate in a group of which the operator is a member, that fact;
- (d) if his or her principal activity is not providing services as an investment adviser, what the principal activity is;
- (e) the main terms of the agreement or arrangement between him or her and the manager, other than those relating to his or her remuneration and, if he or she has the Authority of the manager to make decisions on behalf of the manager, that fact and a description of the matters in relation to which he or she has that authority; and
- (f) if the investment adviser is licensed to deal on behalf of the scheme and is an associate of the manager, the relationship by virtue of which he or she is an associate, and the fee payable to him or her under the agreement or arrangement in subparagraph (e).

59. Registrar

The scheme particulars shall state whether the trustee is the Registrar and, if not, the registrar's name and address.

60. Auditor

The scheme particulars shall state the name and address in Uganda of the auditor of the scheme.

61. Register of holders

The scheme particulars shall state the address in Uganda where the register of holders can be inspected.

62. Constitution and objectives of the scheme

The scheme particulars shall state

- (a) the name of the scheme;
- (b) that the scheme is a licensed unit trust scheme;
- (c) the relevant category, if any, to which the scheme belongs, of licensed unit trust schemes under scheme regulations;
- (d) additionally, in the case of an umbrella fund, the relevant category in subparagraph (c) to which each constituent party would belong if it were itself the subject of a separate licence under section 14;
- (e) the date on which the scheme was established and, if the duration of the scheme is not unlimited, when it will or may terminate;
- (f) sufficient information to enable a participant to ascertain—
 - (i) (A) the objective of the fund;
 - (B) the manager's investment policy for achieving that objective; and
 - (C) if that policy does not envisage remaining fully invested at all times, a statement of the manager's policy in that respect;
 - (ii) the general nature of the portfolio and any intended specialisation such as in an economic sector, geographical area to type of investment or other property;
 - (iii) a description of the types of property which may be included in the scheme and any limitations on the extent to

- which the scheme may invest in such property indicating, where appropriate, where the restrictions imposed on the scheme are tighter than would otherwise be imposed by scheme regulations;
- (iv) where the scheme's ability to invest in a particular type of property or to a particular extent is provided by the instrument constituting the scheme, that fact;
 - (v) the names of the states, local authorities and public international bodies in whose securities the scheme may invest more than thirty-five percent of its assets and whether or not it has done so;
 - (vi) whether the manager may enter into any, and if so what, transactions for the purposes of efficient portfolio management; and
 - (vii) a statement of what borrowing powers are exercisable in relation to the scheme;
- (g) in the case of a scheme which may invest in other collective investment schemes, the extent to which the property of the scheme may be invested in the units of collective investment schemes which are managed by the manager or by an associate of the manager;
- (h) in the case of a property fund, that is to say a scheme dedicated to interests in land, buildings and other property as specified in scheme regulations—
- (i) the maximum extent to which the property of the scheme may be invested in
 - (A) immovables; and
 - (B) property related assets;
 - (ii) where the manager expects that the property will be invested, during the period when that version of the scheme particulars may be in circulation, in Government and other public securities—
 - (A) the fact that the property may be so invested; and
 - (B) the maximum limit permitted for such investment, whether by virtue of this Schedule or a decision by the manager to adopt a lower maximum;
- (i) the circumstances in which the winding up of the scheme can be decided upon, a description of the procedure to be followed in a winding up and what the rights of participants will be in a winding up;

- (j) the accounting reference date; and
- (k) the date of the interim accounting period.

63. List of eligible markets

The scheme particulars shall list any individual securities and derivatives markets through which the scheme may invest or deal by virtue of scheme regulations.

64. Characteristics of units in the scheme

The scheme particulars shall state—

- (a) in relation to each available type of unit in the scheme, the entitlement of the holder of that unit to participate in the property of the scheme and the income of the scheme, a statement of the nominal value, if any, of each type of unit and, where there is more than one type of unit, the names given to each type and the characteristics of each type which distinguishes it from the others;
- (b) if the instrument constituting the scheme authorises the issue of bearer certificates, that fact;
- (c) the fact that the nature of the right represented by units is that of a beneficial interest under a trust; and
- (d) what voting rights are exercisable at meetings of holders by the holders of units and, if different rights attach to different classes of units, what those different rights are.

65. Characteristics of the scheme

(1) The particulars shall state any characteristics of the scheme, including in particular—

- (a) any risks it may reasonably be regarded as presenting for reasonably prudent investors of moderate means, including the fact that the price of units and the income from them can go down as well as up and that past performance is not necessarily a guide to future performance; and
- (b) anything else which may reasonably be regarded as relevant and requisite to enable persons advising customers to comply with scheme regulations.

(2) Where, in accordance with scheme regulations, the manager and trustee have agreed that all or part of the periodic charge is to be treated as a capital charge, it shall state that the fund has been structured so as to concentrate on the generation of income as a higher priority than on capital growth, or as the case may be so as to place equal emphasis on the generation of income and on capital growth, and that this may accordingly constrain capital growth.

66. Valuation of property

The scheme particulars shall state—

- (a) how frequently, and at what time of the day, the property of the scheme will be regularly valued for the purpose of determining prices at which units in the scheme may be purchased or redeemed by the manager and a description of any circumstances in which the scheme may be specially valued; and
- (b) in relation to each purpose for which the property of the scheme will be required to be valued, the basis on which it will be valued in accordance with scheme regulations.

67. Preliminary charge

Where the price at which units may be purchased from the manager include a preliminary charge by the manager, the scheme particulars shall state—

- (a) the maximum amount of that charge, expressed either as a fixed amount in the base currency or as a percentage of the creation price of those units which is permitted by the trust deed;
- (b) if the amount of that charge currently included in the price of units is below the maximum—
 - (i) that amount; and
 - (ii) if notice has been given to holders of the operator's intention to increase the amount currently charged, particulars of that increase and when it will take effect; and
- (c) if notice has been given to holders of an intention to propose an increase in the maximum amount of that charge at a meeting of holders, particulars of that proposal.

68. Periodic charge

Where the manager makes a periodic charge out of the property of the scheme, the scheme particulars shall state—

- (a) the maximum amount of that charge, expressed as an annual percentage of the value of the property of the scheme, which is permitted by the trust deed;
- (b) if the amount of that charge currently made is below the maximum—
 - (i) that amount; and
 - (ii) if notice has been given to holders of the manager's intention to increase the amount currently charged, particulars of that increase and when it will take effect;
- (c) if, in accordance with scheme regulations, the manager and the trustee have agreed that all or part of that charge is to be treated as a capital charge—
 - (i) that fact; and
 - (ii) the actual or maximum amount of the charge which may be so treated; and
- (d) if notice has been given to holders of an intention to propose an increase in the maximum amount of that charge at a meeting of holders, particulars of that proposal.

69. Charge on redemption

Where the manager makes a charge by way of deduction from the proceeds of redemption, the scheme particulars shall state—

- (a) the amount of that charge or, if it is variable, the rate or method of arriving at it;
- (b) if the amount or rate or method has been changed, that details of any previous amount or rate or method may be obtained from the operator on request; and
- (c) if notice has been given to the trustee of an intention to propose an increase in the amount or rate or method at a meeting of holders, particulars of that proposal.

70. Other charges and expenses

The scheme particulars shall state

- (a) if the trustee is to be remunerated out of the property of the

- scheme, the basis for calculating and paying such remuneration, and that remuneration will be paid out of the property of the scheme;
- (b) if the trustee is to be reimbursed out of the property of the scheme expenses incurred in performing any of the duties of the trustee, what those duties are, and that expenses incurred in their performance will be reimbursed out of the property of the scheme; and
 - (c) the nature of any other payments which may lawfully be made out of the property of the scheme and how their amounts will be determined.

71. Distribution

The scheme particulars shall state—

- (a) the annual income allocation date and the interim income allocation dates if any, and, if there are participants who are holders of bearer certificates, how they are to identify themselves for the purposes of receiving distributions of income; and
- (b) if grouping for equalisation is permitted by the trust deed, that fact with an explanation of its meaning and a statement of what the grouping periods are.

72. Issue and redemption of units in scheme

The scheme particulars shall state—

- (a) the dealing days and times in the dealing day on which the operator will be available to receive requests for the issue and redemption of units;
- (b) the procedures for effecting the issue and redemption of units and the settlement of transactions;
- (c) the steps required to be taken by a unit holder in redeeming units before he can receive the proceeds of redemption;
- (d) the amounts of the following minima, if they apply, for each type of unit in the scheme—
 - (i) the minimum number of units which any one person may hold;
 - (ii) the minimum value of units which any one person may hold;

- (iii) the minimum number of units which may be the subject of any one transaction of purchase;
- (iv) the minimum value of units which may be the subject of any one transaction of purchase;
- (v) the minimum number of units which may be the subject of any one act of redemption; or
- (vi) the minimum value of units which may be the subject of any one act of redemption;
- (e) the circumstances under which the redemption of the units may be suspended;
- (f) the days and times in the day on which the recalculation of creation and cancellation prices will commence;
- (g) where and when the most recent issue and redemption prices will be published; and
- (h) the investment exchanges, if any, on which units in the scheme are listed or dealt.

73. Pricing basis for issue and redemption

The scheme particulars shall state that the manager's basis of dealing will be forward pricing, that is to say the calculation of price by reference to the valuation point next following the manager's agreement to issue or, as the case may be, to redeem the units in question.

74. General information

The scheme particulars shall state—

- (a) when annual and half yearly reports will be published;
- (b) the address at which copies of the instrument constituting the scheme, any amending instrument and of the most recent annual and half yearly reports may be inspected and from which copies of them may be obtained;
- (c) that the cancellation price last notified to the depositary is available on request;
- (d) how the manager will publish, for the benefit of holders whose units are evidenced by bearer certificates, notice—
 - (i) of the fact that annual and half yearly reports are available for inspection;
 - (ii) that the distribution of income has been declared;
 - (iii) of the calling of a meeting of participants;

- (iv) of the termination of the scheme or the revocation of its authorisation;
- (v) that amendments have been made to the trust deed; and
- (vi) that the scheme particulars have been revised; and
- (e) the extent to which, and the circumstances in which—
 - (i) the scheme is liable to pay or suffer tax on any appreciation in the value of the property of the scheme or on the income of the property of the scheme; and
 - (ii) deductions by way of withholding tax may be made from distributions of income to participants and payments made to participants on the redemption of units.

75. Additional information in all cases

The scheme particulars shall state any other material information which—

- (a) investors and their professional advisers would reasonably require, and reasonably expect to find in the scheme particulars, for the purpose of making an informed judgment about the merits of participating in the scheme and the extent of the risks accepted by so participating; and
- (b) is within the knowledge of the manager or which the manager would have obtained by the making of reasonable inquiries.

76. Umbrella funds

- (1) The scheme particulars shall state, in the case of an umbrella fund—
 - (a) that an exchange of rights or units in one part of the scheme for rights or units in another part of the scheme may be a realisation for the purposes of capital gains taxation;
 - (b) that in no circumstances will a holder who exchanges rights or units in one part of the scheme for rights or units in another part, be given a right by law to withdraw from or cancel the transaction; and
 - (c) what arrangements are made by the trust deed for charges in the case of an exchange of units in one constituent part for units in another, including the maximum amount of the charge and the minimum number of exchanges that will be permitted free of charge.

- (2) In the application of this Part to an umbrella fund, information required—
- (a) shall be stated in relation to each part of the scheme where the information for any part of the scheme differs from that for any other part; and
 - (b) shall be stated for the scheme as a whole, but only where the information is meaningful in relation to the scheme as a whole.
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Schedule 3

Section 16(4)

Criteria for Determining Fit and Proper Persons

1. In order to determine, for purposes of this Act, the professional suitability of a person proposing to establish or operate a collective investment scheme, the Authority shall have regard to the following qualities, where they are reasonably determinable, of the person concerned
 - (a) his or her general probity;
 - (b) his or her competence and soundness of judgment for the fulfilment of the responsibilities of the office in question; and
 - (c) the diligence with which he or she is likely to fulfil those responsibilities.

 2. For purposes of, and without prejudice to the generality of paragraph 1, the Authority may have regard to the previous conduct and activities of the person concerned in business or financial matters, and in particular to any evidence that that person—
 - (a) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
 - (b) has contravened the provisions of any Act designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of banking, insurance, investment or other financial services; or
 - (c) has wilfully defaulted on a loan of an institution of which he or she is a director.

 3. The Authority may request any person to furnish additional information as may be necessary in determining the professional suitability of a person proposing to establish or operate a collective investment scheme.
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Schedule 4

Section 19

Application of Companies Act

1. Part VII of the Companies Act shall, subject to the modifications set out in paragraphs 2, 3, 4 and 5 of this Schedule, apply for the purposes of the registration of and the functions of the Registrar of Companies, in relation to investment companies with variable capital under this Act as it applies to the registration of, and the functions of the Registrar of Companies in relation to companies within the meaning given by section 1(1) of the Companies Act.
 2. Any reference to a company shall be taken to be a reference to an investment company with variable capital.
 3. Any reference to the Act shall be taken to be a reference to this Act and to scheme regulations.
 4. Any power to make regulations in relation to companies shall be exercisable in relation to investment companies with variable capital (a) for similar purposes; and (b) subject to the same conditions.
 5. Section 261 of the Companies Act shall apply as if
 - (a) subsection (1)(b) of that section there was substituted the following paragraph
“(b) require a copy or extract of any document to be certified by the registrar on payment for the certified copy or extract of the prescribed fee”;
 - (b) subsection (1)(c) and (d) of that section was omitted; and
 - (c) subsection (5) of that section was omitted.
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Schedule 5

Section 21(3)

Depositories**1. Appointment**

On the coming into effect of a licence in respect of an investment company with variable capital, the person named in the application under section 8 as depositary of the company shall be deemed to be appointed as its first depositary.

2. Subsequent appointment

Subject to sections 34 and 54, any subsequent appointment of the depositary of an investment company with variable capital shall be made by the directors of the company.

3. Retirement

The depositary of an investment company with variable capital may not retire voluntarily except on the appointment of a new depositary.

4. Entitlements to depositary

(1) The depositary of an investment company with variable capital is entitled—

- (a) to receive all such notices of, and other communication relating to any general meeting of the company as a shareholder of the company is entitled to receive;
- (b) to attend any general meeting of the company;
- (c) to be heard at any general meeting which he or she attends on any part of the business of the meeting which concerns him or her as depositary;
- (d) to convene a general meeting of the company when it deems fit;
- (e) to require from the company's officers such information and explanations as it thinks necessary for the performance of its functions as depositary; and
- (f) to have access, except insofar as they concern its appointment or removal, to any reports, statements or other papers which are to be considered at any meeting held by the directors of the

company, when acting in their capacity as such, at any general meeting of the company or at a meeting of holders of shares of any particular class.

(2) Subparagraph (1)(e) applies to a shadow director of an investment company with variable capital as it applies to an officer of such a company.

5. Statement by depositary ceasing to hold office

(1) Where the depositary of an investment company with variable capital ceases, for any reason other than by virtue of an order of the High Court made under section 54, to hold office, it may deposit at the head office of the company, a statement of any circumstances connected with its ceasing to hold office which it considers should be brought to the attention of the shareholders or creditors of the company or, if it considers that there are no such circumstances, a statement that there are none.

(2) If the statement under subparagraph (1) is of circumstances which the depositary considers should be brought to the attention of the shareholders or creditors of the company, the company shall, not later than fourteen days after the deposit of the statement, either—

- (a) send a copy of the statement to each of the shareholders whose name appears on the register of shareholders, other than the person who is designated in the company's instrument of incorporation for the purposes of paragraph 30 of Schedule 3 of this Act and take such steps as scheme regulations may require for the purpose of bringing the fact that the statement has been made to the attention of the holders of any bearer shares; or
- (b) apply to the High Court; and, where an application is made under this paragraph, the company shall notify the depositary.

(3) Unless the depositary receives notice of an application to the High Court before the end of twenty-one days beginning with the day on which it deposited the statement, it shall, not later than seven days after the end of that period, send a copy of the statement to the Registrar of Companies and the Authority.

(4) If the High Court is satisfied that the depositary is using the statement to secure needless publicity for defamatory matter

- (a) it shall direct that copies of the statement need not be sent out and that the steps required by scheme regulations need not be taken; and
- (b) it may further order the company's costs on the application to be paid in whole or in part by the depositary, notwithstanding that the depositary is not a party to the application; and the company shall, not later than fourteen days after the decision of the High Court, take such steps in relation to a statement setting out the effect of the order as are required by subparagraph (2)(a) in relation to the statement deposited under subparagraph (1).

(5) If the High Court is not satisfied under paragraph (4), the company shall not later than fourteen days after the decision of the Court, take the steps required by subparagraph (2)(a) and notify the depositary of the decision of the Court.

(6) The depositary shall, not later than seven days after receiving a notice under subparagraph (5), send a copy of the statement to the Registrar of Companies and the Authority.

(7) Where a notice of appeal is filed not later than fourteen days after the decision of the Court, any reference to that decision in subparagraphs (4) and (5) shall be construed as a reference to the final determination or withdrawal of that appeal, as the case may be.

6. Application

(1) This paragraph applies where copies of a statement have been sent to shareholders under paragraph 5.

(2) The depositary who made the statement has, notwithstanding that it has ceased to hold office, the rights conferred by paragraph 4(1)(a), (b) and (c) in relation to the general meeting of the company next following the date on which the copies were sent out.

(3) The reference in paragraph 4(1)(c) to business concerning the depositary as depositary shall be construed in relation to a depositary who has ceased to hold office, as a reference to business concerning it as former depositary.

Schedule 6

Section 22

Corporate Code

PART I—ORGANS

1. Directors

(1) On the coming into effect of a licence in respect of an investment company with variable capital, the persons named in the application under section 8 as directors of the company shall be deemed to be appointed as its first directors.

(2) Subject to sections 34 and 54, any subsequent appointment as a director of a company shall be made by the company in an annual general meeting; except that the directors of the company may appoint a person to act as director to fill any vacancy until such time as the next following annual general meeting of the company takes place.

(3) Any act of a director is valid notwithstanding

(a) any defect that may thereafter be discovered in his or her appointment or qualifications; or

(b) that it is afterwards discovered that his or her appointment had terminated by virtue of any provision contained in scheme regulations which requires a director to retire upon attaining a specified age.

(4) The business of a company shall be managed—

(a) where a company has only one director, by that director; or

(b) where a company has more than one director, by all the directors but subject to any provision contained in the scheme regulations as to the allocation of responsibilities between the directors for the management of the company, including any provision there may be as to the allocation of such responsibility to one or more directors to the exclusion of others.

(5) Subject to the provisions of this Act, the scheme regulations and the company's instrument of incorporation, the directors of a company may exercise all the powers of the company.

2. Directors to have regard to interests of employees

(1) Without prejudice to the generality of the powers and duties that any director of an investment company with variable capital has apart from this paragraph, the matters to which that director is to have regard in the performance of his or her functions include the interests of the employees of the company in general, as well as its shareholders.

(2) The duty imposed by this paragraph on any director of a company is owed by him or her to the company and is enforceable in the same way as any other fiduciary duty owed to an investment company with variable capital by its directors.

(3) This paragraph applies to a shadow director of an investment company with variable capital as it applies to a director of that company.

3. Inspection of directors' service contracts

(1) Every investment company with variable capital shall keep at an appropriate place

- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract; and
- (b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms.

(2) All copies and memoranda kept by a company in accordance with subparagraph (1), shall be kept in the same place.

(3) The following are appropriate places for the purposes of subparagraph (1)—

- (a) the head office of the company;
- (b) the place where the company's register of shareholders is kept; and
- (c) where any person designated in the company's instrument of incorporation for the purposes of paragraph 1 is a director of the company and is a body corporate, the registered or principal office of that person.

(4) Every copy and memorandum required by subparagraph (1) to be kept, shall be open to the inspection of any shareholder of the company.

(5) If an inspection under subparagraph (4) is refused, the High Court may, by order, compel an immediate inspection of the copy or memorandum concerned.

(6) Every copy and memorandum required by subparagraph (1) to be kept shall be made available by the company for inspection by any shareholder at the company's annual general meeting.

(7) This paragraph applies to a variation of a director's contract of service as it applies to the contract.

4. General meeting

(1) Subject to subparagraph (2), every investment company with variable capital shall, hold a general meeting, annual general meeting, in addition to any other meetings, whether general or otherwise, it may hold in that year.

(2) Where a company holds its first annual general meeting within eighteen months after the date on which the licence issued by the Authority in respect of the company comes into effect, the company is not required to hold any other meeting as its annual general meeting in the year of its incorporation or in the following year.

(3) Subject to subparagraph (2), not more than fifteen months shall elapse between the date of one annual general meeting of a company and the date of the next.

5. Capacity of the company

(1) The validity of an act done by an investment company with variable capital shall not be called into question on the ground of lack of capacity by reason of anything in this Act, scheme regulations or the company's instrument of incorporation.

(2) Nothing in subparagraph (1) shall affect the duty of the directors to observe any limitations on their powers.

6. Power of directors and general meeting to bind company

(1) The following powers shall be deemed to be free of any limitation under the constitution of a company in favour of a person dealing in good faith—

- (a) the power of the directors of an investment company with variable capital, whether or not acting as a board, to bind the company, or authorise others to do so; and
- (b) the power of such a company in general meeting to bind the company, or authorise others to do so.

(2) For the purposes of this paragraph—

- (a) a person “deals with” a company if he or she is party to any transaction or other act to which the company is a party;
- (b) subject to subparagraph (4), a person shall not be regarded as acting in bad faith by reason only of his or her knowing that under the company’s constitution, an act is beyond any of the powers referred to in subparagraph (1)(a) or (b); and
- (c) subject to subparagraph (4), a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The reference in subparagraph (1) to any limitation under the company’s constitution on the powers set out in subparagraph (1)(a) or (b) of that paragraph shall include any limitation deriving from this Act, the scheme regulations or a resolution of the company in general meeting or of a meeting of any class of shareholders.

(4) Subparagraph (2)(b) and (c) do not apply where—

- (a) by virtue of a limitation deriving from this Act or from scheme regulations, an act is beyond any of the powers referred to in subparagraph (1)(a) or (b); and
- (b) the person in question
 - (i) has actual knowledge of that fact; or
 - (ii) has deliberately failed to make inquiries in circumstances in which a reasonable and honest person would have done so.

(c) Subparagraph (1) does not affect any liability incurred by the directors or any other person by reason of the directors exceeding their powers.

7. No duty to inquire as to capacity etc.

Subject to paragraph 6(4)(b)(ii), a party to a transaction with an investment company with variable capital is not bound to inquire

- (a) as to whether the transaction is permitted by this Act, scheme regulations or the company's instrument of incorporation; or
- (b) as to any limitation on the powers referred to in paragraph 6(1) (a) or (b).

8. Exclusion of deemed notice

(1) A person shall not be taken to have notice of any matter merely because of its being disclosed in a document made available by an investment company with variable capital for inspection; but this does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such inquiries as ought reasonably to be made.

(2) In subparagraph (1), "document" includes any material which contains information.

9. Restraint and ratification by shareholders

(1) A shareholder of an investment company with variable capital may bring proceedings to restrain the doing of an act which but for paragraph 5(2), would be beyond the company's capacity.

(2) Paragraph 6(1) does not affect any right of a shareholder of an investment company with variable capital to bring proceedings to restrain the doing of an act which is beyond any of the powers referred to in that paragraph.

(3) No proceedings shall lie under subparagraph (1) in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company, and subparagraph (2) shall not have the effect of enabling proceedings to be brought in respect of any such act.

- (4) Any action by the directors of a company—
 - (a) which, but for paragraph 5(1), would be beyond the company's capacity; or

(b) which is within the company's capacity but beyond the powers referred to in paragraph 6(1)(a), may only be ratified by resolution of the company in a general meeting.

(5) A resolution ratifying an action referred to in subparagraph (4) shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by resolution of the company in a general meeting.

(6) Nothing in this paragraph shall affect any power or right conferred by or arising under section 37 or section 43.

10. Invalidity of certain transactions involving directors

(1) This paragraph applies where—

- (a) an investment company with variable capital enters into a transaction to which the parties include any of the following—
 - (i) a director of the company; or
 - (ii) any person who is an associate of a director; and
- (b) in connection with the transaction, the directors of the company, whether or not acting as a board, exceed any limitation on their powers under the company's constitution.

(2) A transaction referred to in subparagraph (1) is voidable at the instance of the company.

(3) Whether or not the transaction is void, a party to the transaction as is mentioned in subparagraph (1)(a)(i) or (ii), and any director of the company who authorised the transaction, is liable—

- (a) to account to the company for any gain which he or she has made directly or indirectly by the transaction; and
- (b) to indemnify the company for any loss or damage resulting from the transaction.

(4) Nothing in subparagraph (1), (2) or (3), shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called into question or any liability to the company may arise.

(5) The transaction referred to in subparagraph (1) ceases to be voidable if

- (a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible;
- (b) the company is indemnified for any loss or damage resulting from the transaction;
- (c) rights which are acquired, *bona fide* for value and without actual notice of the directors concerned exceeding their powers, by a person who is not a party to the transaction would be affected by the avoidance; or
- (d) the transaction is ratified by resolution of the company in a general meeting.

(6) A person other than a director of the company is not liable under subparagraph (3) if he or she shows that at the time the transaction was entered into, he or she did not know that the directors concerned were exceeding their powers.

(7) This paragraph does not affect the operation of subparagraph (6) in relation to any party to the transaction not within subparagraph (1)(a)(i) or (ii); but where a transaction is voidable by virtue of this paragraph and valid by virtue of subparagraph (6) in favour of such a person, the High Court may on the application of that person or of the company, make such order affirming, severing or setting aside the transaction on such terms as appear to the Court to be just.

(8) For purposes of this paragraph—

- (a) “associate” in relation to any person who is a director of the company, means that person’s wife, husband, child, step child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of such a subsidiary;
- (b) “transaction” includes any act; and
- (c) the reference in subparagraph (1)(b) to any limitation on directors’ powers under the company’s constitution shall include any limitation deriving from this Act, from scheme regulations or from a resolution of the company in a general meeting or of a meeting of any class of shareholders.

PART II—SHARES**11. Shares**

(1) Without prejudice to the generality of section 29, an investment company with variable capital may issue more than one class of shares.

(2) A shareholder shall have no interest in the scheme property of the company.

(3) The rights that attach to each share of any given class are—

- (a) the right, in accordance with the instrument of incorporation, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the scheme property;
- (b) the right, in accordance with the instrument of incorporation, to vote at any general meeting of the company or at any relevant class meeting; and
- (c) such other rights as may be provided for, in relation to shares of that class, in the instrument of incorporation of the company.

(4) In respect of any class of shares, the rights referred to in subparagraph (3) may, if the company's instrument of incorporation so provides, be expressed in two denominations; and in the case of any such class, the smaller denomination shall be such proportion of the larger denomination as is fixed by the instrument of incorporation.

(5) In respect of any class of shares within subparagraph (4), any share to which are attached rights expressed in the smaller denomination shall, in this Schedule, be known as a smaller denomination share and any share to which are attached rights expressed in the larger denomination shall, in this Schedule, be known as a larger denomination share.

(6) In respect of any class of shares, the rights that attach to each share of that class shall be—

- (a) except in respect of a class of shares within subparagraph (4), equal to the rights that attach to each other share of that class; and
- (b) in respect of a class of shares within that subparagraph, equal to the rights that attach to each other share of that class of the same denomination.

(7) In respect of any class of shares within subparagraph (4), the rights that attach to any smaller denomination share of that class shall be a proportion of the rights that attach to any larger denomination share of that class and that proportion shall be the same as the proportion referred to in subparagraph (4).

12. Share certificates

(1) Subject to paragraph 13, an investment company with variable capital shall prepare share certificates as documentary evidence of title as follows—

- (a) in respect of any new shares issued by it;
- (b) where a shareholder has transferred part only of his or her share holding back to the company, in respect of the remainder of that holding;
- (c) where a shareholder has transferred part only of his or her shareholding to any person who is designated in the company's instrument of incorporation for the purposes of paragraph 30 in respect of the remainder of that holding;
- (d) where a company has registered a transfer of shares made to a person other than either the company or a person designated as mentioned in subparagraph (1)(c)—
 - (i) in respect of the shares transferred to the transferee; and
 - (ii) in respect of any shares retained by the transferor which were evidenced by any certificate sent to the company for the purposes of registering the transfer;
- (e) in respect of any holding of bearer shares for which a certificate evidencing title has already been issued but where the certificate has been surrendered to the company for the purpose of being replaced by two or more certificates which between them evidence title to the shares comprising that holding; and
- (f) in respect of any shares for which a certificate has already been issued but where it appears to the company that the certificate needs to be replaced as a result of having been lost, stolen or destroyed or having become damaged or worn out.

(2) A company shall exercise due diligence and take all reasonable steps to ensure that certificates prepared in accordance with subparagraph (1) (a), (b), (c), (d) and (e) are ready for delivery as soon as reasonably practicable.

(3) Certificates shall be prepared in the circumstances referred to in subparagraph (1)(e) and (f) only if the company has received—

- (a) a request for a new certificate;
- (b) the old certificate, if there is one;
- (c) such indemnity as the company may require; and
- (d) such reasonable sum as the company may require in respect of the expenses incurred by it in complying with the request.

(4) Each share certificate shall state—

- (a) the number of shares, the title to which is evidenced by the certificate;
- (b) where the company has more than one class of shares, the class of shares, title to which is evidenced by the certificate; and
- (c) except in the case of bearer shares, the name of the holder.

(5) Where, in respect of any class of shares, the rights that attach to shares of that class are expressed in two denominations, the reference in subparagraph (4)(a), as it applies to shares of that class, to the number of shares is a reference to the total of—

$$N + n/p$$

(6) In subparagraph (5)—

- (a) **N** is the relevant number of the larger denomination shares of the class in question;
- (b) **n** is the relevant number of the smaller denomination shares of that class; and
- (c) **p** is the number of smaller denomination shares of that class that are equivalent to one larger denomination share of that class.

(7) Nothing in this Schedule shall be taken as preventing the total arrived at under subparagraph (5) being expressed on the certificate as a single entry representing the result derived from the formula set out in that paragraph.

(8) A share certificate specifying shares held by any person which is—

- (a) under the common seal of the company; or
- (b) authenticated in accordance with paragraph 44,

is, *prima facie* evidence of that person's title to the shares.

13. Exceptions to paragraph 12

(1) An investment company with variable capital which issues securities, title to units of which is permitted to be evidenced and transferred by means of a computer based system without a written instrument, shall not prepare share certificates in respect of any share in the company which is to be so treated.

(2) Nothing in paragraph 12 requires a company to prepare share certificates in the following cases

- (a) where the company's instrument of incorporation states that share certificates will not be issued and contains provision as to other procedures for evidencing a person's entitlement to shares;
- (b) where a shareholder has indicated to the company in writing that he or she does not wish to receive a certificate;
- (c) where shares are issued or transferred to the person who is designated in the company's instrument of incorporation for the purposes of paragraph 30; and
- (d) where shares are issued or transferred to a nominee of a recognised investment exchange who is designated for the purposes of this paragraph in the rules of the investment exchange in question.

14. Bearer shares

An investment company with variable capital may, if its instrument of incorporation so provides, issue bearer shares evidenced by a share certificate, or by any other documentary evidence of title for which provision is made in the instrument of incorporation, which indicates—

- (a) that the holder of the document is entitled to the shares specified in it; and
- (b) that no entry will be made on the register of shareholders identifying the holder of those shares.

PART III—REGISTER OF SHAREHOLDERS**15. General**

(1) Subject to subparagraph (2), every investment company with variable capital shall keep a register of persons who hold shares in the company.

(2) Except to the extent that the aggregate number of shares mentioned in paragraphs 19(1)(b) and 22 include bearer shares, nothing in this Schedule requires any entry to be made in the register in respect of bearer shares.

16. Register to be evidence

The register of shareholders shall be *prima facie* evidence of any matter which is by this Schedule directed or authorised to be contained in it.

17. Prohibited notice

No notice of any trust, express, implied or constructive, shall be entered on the company's register or be received by the company.

18 Register to be up-to-date

A company shall exercise all due diligence and take all reasonable steps to ensure that the information contained in the register is at all times complete and up-to-date.

19. Contents of register

- (1) The register of shareholders shall contain an entry consisting of
 - (a) the name of the person who is designated in the company's instrument of incorporation for the purposes of paragraph 30 of this Schedule, in this Schedule referred to as the designated person; and
 - (b) a statement of the aggregate number of all shares in the company held by that person.

(2) For purposes of subparagraph (1)(b), the designated person shall be taken as holding all shares in the company which are in issue and in respect of which no other person's name is entered on the register.

(3) The statement referred to in subparagraph (1)(b) shall be updated at least once a day or at such longer interval as may be permitted by the Authority.

20. Exemption

(1) This paragraph shall not apply to any issue of shares to the designated person or to any transfer of shares to the designated person to which paragraph 30 applies.

(2) Where a company issues a share to any person and the name of that person is not already entered on the register, the company shall enter that person's name on the register.

(3) In respect of any person whose name is entered on the register in accordance with subparagraph (2) or paragraph 32, the register shall contain an entry consisting of

- (a) the address of the shareholder;
- (b) the date on which the shareholder's name was entered on the register; and
- (c) a statement of the aggregate number of shares held by the shareholder, distinguishing each share by its number and, where the company has more than one class of shares, by its class.

21. Statement of bearer shares

The register of shareholders shall contain a monthly statement of the aggregate number of all the bearer shares in issue, except for any bearer shares in issue which, at the time when the statement is made, are held by the designated person.

22. Rights in two denominations

(1) This paragraph applies where the aggregate number of shares referred to in paragraphs 19, 20 and 21 of this Schedule includes any shares to which attach rights expressed in two denominations.

(2) In respect of each class of shares to which are attached rights expressed in two denominations, the number of shares of that class held by any person referred to in paragraph 19 or 20 of this Schedule, or the number of bearer shares of that class referred to in paragraph 21 of this Schedule, shall be taken to be the total of—

$$N + n/p$$

- (3) In subparagraph (2)—
- (a) N is the relevant number of larger denomination shares of that class;
 - (b) n is the relevant number of smaller denomination shares of that class; and
 - (c) p is the number of smaller denomination shares of that class that are equivalent to one larger denomination share of that class.

(4) Nothing in this Schedule shall be taken as preventing the total arrived at under subparagraph (2) being expressed on the register as a single entry representing the result derived from the formula set out in that subparagraph.

23. Location

The register of shareholders of a company shall be kept at its head office, except that—

- (a) if the work of making it up is done at another office of the company, it may be kept there; and
- (b) if the company arranges with some other person for the making up of the register to be undertaken on its behalf by that other person, it may be kept at the office of that other person at which the work is being done.

24. Index

(1) Every company shall keep an index of the names of the holders of its registered shares.

(2) The index shall contain, in respect of each shareholder, a sufficient indication to enable the account of that shareholder in the register to be readily found.

(3) The index shall at all times be kept at the same place as the register of shareholders.

(4) The company shall, not later than fourteen days after the date on which any alteration is made to the register of shareholders, make any necessary alteration in the index.

25. Inspection

(1) Subject to paragraph 27 and to scheme regulations, the register of shareholders and the index of names shall be open to the inspection of any shareholder, including any holder of bearer shares, without charge.

(2) Any shareholder may require a copy of the entries on the register relating to him or her, and the company shall cause any copy so required by a person to be sent to him or her free of charge.

(3) If an inspection required under this paragraph is refused, or if a copy so required is not sent, the High Court may, by order, compel an immediate inspection of the register and index, or direct that the copy required be sent to the person requiring it.

26. Agent's default

(1) Subparagraphs (2) and (4) apply where, in accordance with paragraph 23(b), the register of shareholders kept at the office of a person other than the company and by reason of any default of that person

- (a) the company fails to comply with any of the requirements of paragraph 24 or 25 of this Schedule; or
- (b) the company fails to comply with any of the requirements of section 20(2) of the Act.

(2) In a case to which this subparagraph applies, the person at whose office the register of shareholders is kept commits an offence if he or she knowingly or recklessly authorises or permits the default in question.

(3) Any person guilty of an offence under subparagraph (2) is liable, in respect of each default, on conviction to a fine not exceeding one hundred currency points.

(4) The power of the High Court under paragraph 25(3) of this Schedule extends to the making of orders directed to the person at whose office the register of shareholders is kept and to any officer or employee of that person.

27. Power to close register

(1) Subject to subparagraph (2), an investment company with variable capital may, on giving notice by advertisement in a national newspaper circulating in all the countries in which shares in the company are sold, close the register of shareholders for any time not exceeding 30 days in each year.

(2) Subparagraph (1) has effect subject to any requirements contained in scheme regulations.

28. Power of High Court to rectify register

(1) An application to the High Court may be made under this paragraph if

- (a) the name of any person is, without sufficient cause entered in or omitted from the register of shareholders of an investment company with variable capital;
- (b) default is made as to the details contained in any entry on the register in respect of a person's holding of shares in the company; or
- (c) default is made or unnecessary delay takes place, in amending the register so as to reflect the fact of any person having ceased to be a shareholder.

(2) An application under this paragraph may be made by the person aggrieved by any shareholder of the company or by the company itself.

(3) The High Court may either refuse the application or order rectification of the register of shareholders and payment by the company of any damages sustained by any aggrieved party.

(4) On an application under this paragraph, the High Court may decide any question necessary or expedient to be decided for rectification of the register of shareholders including, in particular, any question relating to the right of a person who is a party to the application to have his or her name entered in or omitted from the register, whether the question arises as between shareholders and alleged shareholders or as between shareholders or alleged shareholders on the one hand and the company on the other hand.

PART IV—SHARE TRANSFERS

29. General

(1) The instrument of incorporation of a company may contain provision as to share transfers in respect of any matter for which provision is not made in this Act or scheme regulations.

(2) Where any shares are transferred to the company, the company shall cancel those shares.

30. Transfer of registered shares

(1) Where a transfer of shares is made by the person who is designated in the company's instrument of incorporation for the purposes of this paragraph, the company may not register the transfer unless such evidence as the company may require to prove that the transfer has taken place, has been delivered to the company.

(2) Where, for any reason, a person ceases to be designated for the purposes of this paragraph—

- (a) any shares held by that person which are not disposed of on or before his or her ceasing to be so designated, shall be deemed to be the subject of a new transfer to him or her which takes effect immediately after he or she ceases to be so designated; and
- (b) the company shall make such adjustments to the register as are necessary to reflect that person's change of circumstances.

31. Transfer documents

(1) Except in the case of any transfer of shares referred to in paragraph 30, the company may not register any transfer unless the transfer documents relating to that transfer have been delivered to the company.

(2) No share certificate shall be required to be delivered by virtue of subparagraph (1) in any case where shares are transferred by a nominee of a recognised investment exchange who is designated for the purposes of paragraph 13(2)(d) in the rules of the investment exchange in question.

(3) In this Schedule, “transfer documents” in relation to any transfer of registered shares means—

- (a) such instrument of transfer as is authorised by, and completed and executed in accordance with any requirements in the company’s instrument of incorporation;
- (b) except in a case falling within paragraph 13(2)(a) or (b), a share certificate relating to the shares in question;
- (c) in a case falling within paragraph 13(2)(a), such other evidence of title to those shares as is required by the instrument of incorporation of the company; and
- (d) such other evidence as the company may require to prove the right of the transferor to transfer the shares in question.

32. Registration of certain transfers

In the case of any transfer of shares which meets the requirements of paragraph 30 or 31, the company shall—

- (a) register the transfer; and
- (b) where the name of the transferee is not already entered on the register, enter that name on the register.

33. Refusal of registration

(1) A company may, before the end of twenty-one days, commencing with the date of receipt of the transfer documents relating to any transfer of shares, refuse to register the transfer if—

- (a) there exists a minimum requirement as to the number or value of shares that must be held by any shareholder of the company and the transfer would result in either the transferor or transferee holding less than the required minimum; or
- (b) the transfer would result in a contravention of any provision of the company’s instrument of incorporation or would produce a result inconsistent with any provision of the company’s prospectus.

(2) A company shall give the transferee written notice of any refusal to register a transfer of shares.

(3) Nothing in this Schedule shall require a company to register a transfer or give notice to any person of a refusal to register a transfer where

registering the transfer or giving the notice would result in a contravention of any provision of law.

34. Certification

(1) Where, in respect of any transfer of shares, a company certifies that it has received the transfer documents referred to in paragraph 31(3)(b) or (c), as the case may be, that certification shall be taken as a representation by the company to any person acting on the faith of the certification that there has been produced to the company such evidence as on its face shows a *prima facie* title to the shares in the transferor named in the instrument of transfer.

(2) For purposes of subparagraph (1), a certification is made by a company if the instrument of transfer—

- (a) bears the words “certificate lodged” or words to that effect; and
- (b) is signed by a person acting under authority, whether express or implied, given by the company to issue and sign such certifications.

(3) A certification under subparagraph (1) shall not be taken as a representation that the transferor has any title to the shares in question.

(4) Where a person acts on the faith of a false certification by a company which is made negligently or fraudulently, the company is liable to pay to that person any damages incurred by him or her.

35. Transfer of bearer shares

A transfer of title to any bearer share in a company is effected by the transfer from one person to another of the instrument mentioned in paragraph 14 which relates to that share.

36. Transfer of shares less than number specified

Where the holder of bearer shares proposes to transfer to another person a number of shares which is less than the number specified in the instrument relating to those shares, he or she may only do so if he or she surrenders the instrument to the company and obtains a new instrument specifying the number of shares to be transferred.

37. Miscellaneous

(1) Nothing in the preceding provisions of this Schedule shall prejudice any power of the company to register as shareholder, any person to whom the right to any shares in the company has been transmitted by operation of law.

(2) A transfer of registered shares that are held by a deceased person at the time of his or her death, which is made by his or her personal representative, is as valid as if the personal representative had been the holder of the shares at the time of the execution of the instrument of transfer.

(3) On the death of any one of the joint holders of any shares, the survivor or survivors shall be the only persons recognised by the company as having any title to or any interest in those shares.

PART V—OPERATION**38. Power incidental to carrying on business**

An investment company with variable capital shall have power to do all things which are incidental or conducive to the carrying on of its business.

39. Name to appear in correspondence, etc.

(1) Every investment company with variable capital shall have its name mentioned in legible characters in all letters of the company and in all other documents issued by the company in the course of business.

(2) If an officer of a company or a person on the company's behalf signs or authorises to be signed on behalf of the company, any cheque or order for money or goods in which the company's name is not mentioned as required by subparagraph (1), he or she is personally liable to the holder of the cheque or order for money or goods for the amount of it, unless it is duly paid by the company.

40. Particulars to appear in correspondence, etc.

Every investment company with variable capital shall have the following particulars mentioned in legible characters in all letters of the company and in all other documents issued by the company in the course of business—

- (a) the company's place of registration;
- (b) the number with which it is registered;
- (c) the address of its head office; and
- (d) the fact that it is an investment company with variable capital.

41. Contracts

A contract may be made—

- (a) by an investment company with variable capital, by writing under its common seal; or
- (b) on behalf of an investment company, by any person acting under its authority, whether express or implied,

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of an investment company with variable capital.

42. Execution of documents

(1) The following provisions have effect with respect to the execution of documents by an investment company with variable capital—

- (a) a document is executed by a company by affixing its common seal;
- (b) a company need not have a common seal, and the following provisions of this paragraph apply whether it does or not;
- (c) a document that is signed by at least one director and expressed, in whatever form of words, to be executed by the company has the same effect as if executed under the common seal of the company;
- (d) a document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being executed; and
- (e) in favour of a purchaser, a document shall be deemed to have been duly executed by a company if it purports to be signed by

at least one director or, in the case of a director which is a body corporate, it purports to be executed by that director and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, it shall be deemed to have been delivered upon its being executed.

(2) In subparagraph (e), “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who, for valuable consideration, acquires an interest in property.

43. Execution of deeds outside Uganda

(1) An investment company with variable capital may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute a deed on its behalf outside Uganda.

(2) A deed executed by an attorney referred to in subparagraph (1) on behalf of the company has the same effect as if it were executed under the company’s common seal.

44. Authentication of documents

A document or proceeding requiring authentication by an investment company with variable capital is sufficiently authenticated—

- (a) by the signature of a director or other authorised officer of the company; or
- (b) in the case of a director which is a body corporate if it is executed by that director.

45. Official seal for share certificates

(1) An investment company with variable capital which has a common seal may have an official seal which is a facsimile of its common seal with the addition on its face of the word “securities” for sealing shares issued by the company and documents creating or evidencing shares so issued.

(2) The official seal, when duly affixed to a document, has the same effect as the company’s common seal.

46. Personal liability for contracts and deeds

(1) A contract which purports to be made by or on behalf of an investment company with variable capital at a time before the company's instrument of incorporation has been registered in accordance with section 19(2) of the Act shall have effect, subject to any agreement to the contrary, as a contract made with the person purporting to act for the company or as agent for it, and he or she shall be personally liable on the contract accordingly.

(2) Subparagraph (1) applies to the making of a deed as it applies to the making of a contract.

(3) Where a company enters into a transaction at a time after the licence in respect of the company has been revoked and the company fails to comply with its obligations in respect of that transaction within twenty-one days after being called upon to do so, the person who authorised the transaction is liable, and where the transaction was authorised by two or more persons, they are jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by that party by reason of the company's failure to comply with those obligations.

47. Exemptions from liability to be void

(1) This paragraph applies to any provision, whether contained in the instrument of incorporation of an investment company with variable capital or in any contract with the company or otherwise—

- (a) which exempts from or indemnifies against any officer of the company or any person whether or not an officer of the company employed by the company as auditor, against liability which by virtue of any law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company; or
- (b) which exempts the depositary of the company from, or indemnifies him or her against, any liability for any failure to exercise due care and diligence in the discharge of his or her functions in respect of the company,

except as provided by subparagraph (2), any such provision is void.

- (2) This paragraph does not prevent a company
 - (a) from purchasing and maintaining for any such officer, auditor or depositary insurance against any such liability; or
 - (b) from indemnifying any such officer, auditor or depositary against any liability incurred by him or her—
 - (i) in defending any proceedings whether civil or criminal in which judgment is given in his or her favour or is acquitted; or
 - (ii) in connection with any application under paragraph 50 in which relief is granted to him or her by the High Court.

48. Power of High Court to grant relief in certain cases

- (1) This paragraph applies to—
 - (a) any proceedings for negligence, default, breach of duty or breach of trust against an officer of an investment company with variable capital or a person, whether or not an officer of the company, employed by the company as auditor; or
 - (b) any proceedings against the depositary of such a company for failure to exercise due care and diligence in the discharge of his or her functions in respect of the company.
- (2) Where in any proceedings to which this paragraph applies, it appears to the High Court hearing the case—
 - (a) that the officer, auditor or depositary is or may be liable in respect of the cause of action in question;
 - (b) that, nevertheless, the officer, auditor or depositary has acted honestly and reasonably; and
 - (c) that having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused from the liability sought to be enforced against him or her,the High Court may relieve that person, either wholly or partly, from his or her liability on such terms as it may think fit.
- (3) Where an officer, auditor or depositary has reason to apprehend that any claim will or might be made against him or her in proceedings to which this paragraph applies, he or she may apply to the High Court for relief.

(4) The High Court, on an application under subparagraph (3), has the same power to relieve the applicant as under this paragraph it would have had if it had been a court before which the relevant proceedings against the applicant had been brought.

49. Punishment for fraudulent trading

(1) Where any business of an investment company with variable capital is carried on with intent to defraud creditors of the company or any other person, or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or to imprisonment for a term not exceeding five years, or both.

(2) This paragraph applies whether or not the company has been, or is in the course of being, wound up, whether by the High Court or otherwise.

50. Power to provide for employees on cessation or transfer of business

(1) The powers of an investment company with variable capital include power to make provision for the benefit of persons employed or formerly employed by the company, which shall be in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company.

(2) The power conferred by subparagraph (1) is exercisable notwithstanding that its exercise is not in the best interests of the company.

(3) The power which a company may exercise by virtue of subparagraph (1) shall only be exercised by the company if sanctioned—

- (a) in a case not falling within subparagraph 3(b) or (c) by a resolution of the company in general meeting;
- (b) where so authorised by the instrument of incorporation —
 - (i) in the case of a company that has only one director, by a resolution of that director; and
 - (ii) in any other case, by such resolution of directors as is required by scheme regulations; or
- (c) where the instrument of incorporation requires the exercise of the power to be sanctioned by a resolution of the company in a

general meeting for which more than a simple majority of the shareholders voting is necessary, by a resolution of that majority, and in any case, after compliance with any other requirements of the instrument of incorporation applicable to the exercise of the power.

PART VI—REPORTS

51. Report preparation

(1) The directors of an investment company with variable capital shall—

- (a) prepare an annual report for each annual accounting period of the company; and
- (b) subject to subparagraph (2), prepare a half-yearly report for each half-yearly accounting period.

(2) Where a company's first annual accounting period is a period of less than twelve months, a half-yearly report need not be prepared for any part of that period.

(3) The directors of a company shall lay copies of the annual report before the company in a general meeting.

(4) Nothing in this paragraph or in paragraph 52 shall prejudice the generality of section 29 of the Act.

(5) In this paragraph, a reference to annual and half-yearly accounting periods of a company is a reference to those periods as determined in relation to that company in accordance with scheme regulations.

52. Accounts in annual report

(1) The annual report of an investment company with variable capital shall, in respect of the annual accounting period to which it relates, contain accounts of the company.

(2) The company's auditors shall make a report to the company's shareholders in respect of the accounts of the company contained in its annual report.

(3) A copy of the auditors' report shall form part of the company's annual report.

53. Revised annual report

(1) Where it appears to the directors of an investment company with variable capital that any annual report of the company did not comply with the requirements of this Act or scheme regulations, they may prepare a revised annual report.

(2) Where copies of the previous report have been laid before the company in a general meeting or delivered to the Registrar of Companies, the revision shall be confined to—

- (a) the correction of anything in the previous report which did not comply with the requirements of this Act or scheme regulations; and
- (b) the making of any necessary consequential alterations.

PART VII—AUDITORS

54. Eligibility

A person is not eligible for appointment as an auditor of an investment company with variable capital unless he or she is eligible under section 165 of the Companies Act for appointment as a company auditor.

55. Disqualifications

(1) A person is not eligible for appointment as an auditor of an investment company with variable capital if he or she is—

- (a) an officer or employee of the company; or
- (b) a partner or employee of a person mentioned in subparagraph (a), or a partnership of which that person is a partner.

(2) For the purposes of subparagraph (1), an auditor of a company shall not be regarded as an officer or employee of the company.

(3) A reference in this paragraph to an officer of an investment company with variable capital includes a reference to a shadow director of such a company.

56. Ineligibility and vacation of office

(1) A person shall not act as an auditor of a company if he or she is not eligible for appointment to that office.

(2) Where, during his or her term of office, an auditor of a company becomes ineligible for appointment to the office, he or she shall thereupon vacate office and shall immediately give notice in writing to the company concerned that he or she has vacated it by reason of ineligibility.

(3) Any person who acts as an auditor of a company in contravention of subparagraph (1) or fails to give notice of vacating office as required by subparagraph (2) commits an offence and is liable

(a) on conviction, to a fine not exceeding two hundred currency points or to imprisonment for a term not exceeding two years, or both; and

(b) in the case of continued contravention, on a second or subsequent conviction to a fine not exceeding twenty-five currency points in respect of each day on which the contravention is continued.

(4) In proceedings against a person for an offence under this paragraph, it is a defence for that person to show that he or she did not know, and had no reason to believe that he or she was, or had become, ineligible for appointment.

57. Appointment

(1) Every company shall appoint an auditor or auditors in accordance with this paragraph.

(2) A company shall, at each general meeting at which the company's annual report is laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which an annual report is laid.

(3) The first auditors of a company may be appointed by the directors of the company at any time before the first general meeting of the company at which an annual report is laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) Where no appointment is made under subparagraph (3), the first auditors of any company may be appointed by the company in a general meeting.

58. Filling of vacancies

If, in any case, no auditors are appointed as required in paragraph 57, the Authority may appoint a person to fill the vacancy.

59. Filling of casual vacancies

(1) The directors of a company, or the company in a general meeting, may fill a casual vacancy in the office of the auditor.

(2) While a casual vacancy continues, any surviving or continuing auditor or auditors may continue to act.

60. Appointment of partnership as auditors

(1) Subparagraphs (2), (3), (4) and (5) apply to the appointment as auditor of a company of a partnership constituted under the laws of Uganda, or under the laws of any other country or territory in which a partnership is not a legal person and subparagraphs (3), (4) and (5) apply to the appointment as such an auditor of a partnership constituted under the laws of any other country or territory in which a partnership is a legal person.

(2) The appointment is, unless the contrary intention appears, an appointment of the partnership as such and not of the partners.

(3) Where the partnership ceases, the appointment shall be treated as extending to—

- (a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment; and
- (b) any person who succeeds to that practice, having previously carried it on in partnership, and is eligible for the appointment.

(4) For the purpose of subparagraph (3), a partnership shall be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and a partnership or other person shall be regarded as

succeeding to the practice of a partnership only if it or he or she succeeds to the whole or substantially the whole of the business of the former partnership.

(5) Where the partnership ceases and no person succeeds to the appointment under subparagraph (3), the appointment may, with the consent of the company, be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership, or to such part of it as is agreed by the company shall be treated as comprising the appointment.

61. Rights of auditors

(1) The auditors of a company shall have a right of access at all times to the company's books, accounts and vouchers and are entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of a company commits an offence if he or she knowingly or recklessly makes to the company's auditors a statement whether written or oral, which—

- (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company; and
- (b) is misleading, false or deceptive in a material particular.

(3) Any person who commits an offence under subparagraph (2) is liable, on conviction, to a fine not exceeding two hundred currency points or to imprisonment for a term not exceeding two years, or both.

(4) This paragraph applies to a shadow director of an investment company with variable capital as it applies to an officer of such a company.

62. Entitlements of auditors

- (1) The auditors of a company are entitled
 - (a) to receive all such notices of, and other communications relating to, any general meeting of the company as a shareholder of the company is entitled to receive;
 - (b) to attend any general meeting of the company; and

- (c) to be heard at any general meeting which they attend on any part of the business of the meeting concerning them as auditors.

(2) The right to attend and be heard at a meeting is exercisable, in the case of a body corporate or partnership, by an individual authorised by it in writing to act as its representative at the meeting.

63. Remuneration

(1) The remuneration of auditors of a company who are appointed by the company in a general meeting shall be fixed by the company in a general meeting or in such manner as the company in a general meeting may determine.

(2) The remuneration of auditors who are appointed by the directors or the Authority shall, as the case may be, be fixed by the directors or the Authority, and shall be payable by the company even where it is fixed by the Authority.

64. Removal

(1) A company may by resolution remove an auditor from office notwithstanding anything in any agreement between the company and the auditor.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall, not later than fourteen days after the holding of the meeting, notify the Authority of the passing of the resolution.

(3) Nothing in this paragraph shall be taken as depriving a person removed under it of compensation or damages payable to him or her in respect of the termination of his or her appointment as auditor or of any appointment terminating with that as auditor.

65. Rights on removal or non-re-appointment

- (1) A resolution at a general meeting of a company
 - (a) removing an auditor before the expiration of his or her period of office; or

(b) appointing as auditor a person other than the retiring auditor, is not effective unless notice of the intention to move it has been given to the investment company with variable capital at least twenty-eight days before the meeting at which it is moved.

(2) On receipt of notice of an intended resolution under subparagraph (1), the company shall immediately send a copy of the notice to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed or, as the case may be, the retiring auditor may make with respect to the intended resolution, representations in writing to the company, not exceeding a reasonable length, and request their notification to the shareholders of the company.

(4) The company shall, unless the representations are received by the company too late for it to do so—

- (a) in any notice of the resolution given to the shareholders of the company, state the fact of the representations having been made;
- (b) send a copy of the representations to each of the shareholders whose name appears on the register of shareholders other than the person who is designated in the company's instrument of incorporation for the purposes of paragraph 30 and to whom notice of the meeting is or has been sent;
- (c) take such steps as scheme regulations may require for the purpose of bringing the fact that the representations have been made to the attention of the holders of any bearer shares; and
- (d) at the request of any holder of bearer shares, provide a copy of the representations.

(5) If a copy of any such representations is not sent out as required because they were received too late or because of the company's default, or if, for either of those reasons, any steps required by subparagraph (4)(c) or (d) are not taken, the auditor may, without prejudice to his or her right to be heard orally, require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out, the steps required by subparagraph (4)(c) or (d) need not be taken and the representations need not be read out at the meeting if, on the application of the company or any other person claiming to be aggrieved, the High Court is satisfied that

the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; and the High Court may order the costs of the company on such an application to be paid in whole or in part by the auditor, notwithstanding that he or she is not a party to the application.

66. Rights at general meetings after removal

(1) An auditor who has been removed from office has, notwithstanding his or her removal, the rights conferred by paragraph 62 in relation to any general meeting of the company at which his or her term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his or her removal.

(2) Any reference in paragraph 62 to business concerning the auditors as auditors shall be construed, in relation to an auditor who has been removed from office, as a reference to business concerning him or her as former auditor.

67. Resignation

(1) An auditor of a company may resign his or her office by depositing a notice in writing to that effect at the company's head office.

(2) A notice under subparagraph (1) is not effective unless it is accompanied by the statement required by paragraph 68(4).

(3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited, or on such later date as may be specified in it.

(4) The company shall, not later than fourteen days after the deposit of a notice of resignation, send a copy of the notice to the Authority.

68. Notice accompanied by statement

(1) This paragraph applies where a notice of resignation of an auditor is accompanied by a statement of circumstances which he or she considers ought to be brought to the attention of the shareholders or creditors of the company.

(2) An auditor may deposit with the notice a signed requisition that a general meeting of the company be convened immediately for the purpose of receiving and considering such explanation of the circumstances connected with his or her resignation which he or she may wish to place before the meeting.

(3) The company shall, not later than twenty-one days after the date of the deposit of a requisition under this paragraph, proceed to convene a meeting for a day not more than twenty-eight days after the date on which the notice convening the meeting is given.

(4) The auditor may request the company to circulate to the shareholders of the company whose names appear on the register of shareholders other than the person who is designated in the company's instrument of incorporation for the purposes of paragraph 30, a statement in writing of the circumstances connected with his or her resignation—

- (a) before the meeting convened on his or her requisition; or
- (b) before any general meeting at which his or her term of office would otherwise have expired, or at which it is proposed to fill the vacancy caused by his or her resignation.

(5) The company shall—

- (a) in any notice or advertisement of the meeting given or made to shareholders of the company, state the fact of the statement having been made;
- (b) send a copy of the statement to every shareholder of the company to whom notice of the meeting is or has been sent; and
- (c) at the request of any holder of bearer shares, provide a copy of the statement.

(6) If a copy of the statement is not sent out or provided as required because it was received too late or because of the company's default, the auditor may, without prejudice to his or her right to be heard orally, require that the statement be read out at the meeting.

(7) Copies of a statement need not be sent out or provided and the statement need not be read out at the meeting if, on the application of the company or any other person claiming to be aggrieved, the High Court is satisfied that the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; and the Court may order the costs

of the company on such an application to be paid in whole or in part by the auditor, notwithstanding that he or she is not a party to the application.

69. Rights at general meeting after resignation

(1) An auditor who has resigned has, notwithstanding his or her removal, the rights conferred by paragraph 64 in relation to any such general meeting of the company as is mentioned in paragraph 68(4)(a) or (b).

(2) The reference in paragraph 62 to business concerning the auditors as auditors shall be construed in relation to an auditor who has resigned, as a reference to business concerning him or her as former auditor.

70. Statement by auditor ceasing to hold office

(1) Where an auditor ceases for any reason to hold office, he or she shall deposit at the head office of the company, a statement of any circumstances connected with his or her ceasing to hold office which he or she considers should be brought to the attention of the shareholders or creditors of the company or, if he or she considers that there are no such circumstances, a statement that there are none.

(2) The statement shall be deposited—

- (a) in the case of resignation, along with the notice of resignation;
- (b) in the case of failure to seek re-appointment, not less than fourteen days before the end of the time allowed for next appointing auditors; and
- (c) in any other case, not later than the end of the period of fourteen days beginning with the date on which the auditor ceases to hold office.

(3) Where the statement is of circumstances which the auditor considers should be brought to the attention of the shareholders or creditors of the company, the company shall, not later than fourteen days after the deposit of the statement either—

- (a) send a copy of the statement to each of the shareholders whose name appears on the register of shareholders other than the person who is designated in the company's instrument of incorporation for the purposes of paragraph 30, and take such steps as scheme regulations may require for the purpose of bringing the fact that

the statement has been made to the attention of the holders of any bearer shares; or

- (b) apply to the High Court; and, where an application is made under this paragraph, the company shall notify the auditor.

(4) Unless the auditor receives notice of an application to the High Court before the end of the period of twenty-one days beginning with the day on which he or she deposited the statement, he or she shall, not later than seven days after the end of that period, send a copy of the statement to the Registrar of Companies and to the Authority.

(5) Where the High Court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—

- (a) it shall direct that copies of the statement need not be sent out and that the steps required by scheme regulations need not be taken; and
- (b) it may further order the company's costs on the application to be paid in whole or in part by the auditor notwithstanding that he or she is not a party to the application,

and the company, shall, not later than fourteen days after the decision of the Court, take such steps in relation to a statement setting out the effect of the order as are required by subparagraph (3)(a) in relation to the statement deposited under subparagraph (1).

(6) Where the High Court is not so satisfied, the company shall, not later than fourteen days after the decision of the Court, send to each of the shareholders a copy of the auditor's statement and notify the auditor of the decision of the Court.

(7) The auditor shall, not later than seven days after receiving a notice referred to in subparagraph (6), send a copy of the statement to the Registrar of Companies and to the Authority.

(8) Where a notice of appeal is filed not later than fourteen days after the decision of the Court, any reference to that decision in subparagraphs (5) and (6) shall be construed as a reference to the final determination or withdrawal of that appeal, as the case may be.

71. Failure to make statements

(1) Where a person ceasing to hold office as auditor fails to comply with paragraph 70, he or she commits an offence and is liable, on conviction, to a fine of ten currency points.

(2) In proceedings for an offence under subparagraph (1), it is a defence for the person charged to show that he or she took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

PART VIII—MERGERS AND DIVISIONS**72. Application of Part**

This Part applies to any reconstruction or amalgamation involving an investment company with variable capital which takes the form of a scheme described in paragraph 75.

73. Application to High Court by company with variable capital

An investment company with variable capital may apply to High Court under section 230 of the Companies Act for an order sanctioning a scheme falling within paragraph 75(1)(a), (b) and (c) where—

- (a) the scheme in question involves a compromise or arrangement with its shareholders or creditors or any class of its shareholders or creditors; and
- (b) the consideration for the transfer or each of the transfers envisaged by the scheme is to be—
 - (i) shares in the transferee company receivable by members of the transferor company; or
 - (ii) where there is more than one transferor company and any one or more of them is a public company, shares in the transferee company receivable by shareholders or members of the transferor companies, as the case may be,

in each case with or without any cash payment to shareholders.

74. Application to High Court by public company

A public company may apply to the High Court under section 230 of the Companies Act for an order sanctioning a scheme falling within paragraph 75(1)(b) or (c) where—

- (a) the scheme in question involves a compromise or arrangement with its members or creditors or any class of its members or creditors; and
- (b) the consideration for the transfer or each of the transfers envisaged by the scheme is to be—
 - (i) shares in the transferee company receivable by members of the transferor company; or
 - (ii) where there is more than one transferor company and any one or more of them is an investment company with variable capital, shares in the transferee company receivable by members or shareholders of the transferor companies, in each case with or without any cash payment to shareholders.

75. Schemes

- (1) The schemes falling within this paragraph are—
 - (a) any scheme under which the undertaking, property and liabilities of an investment company with variable capital are to be transferred to another such company, other than one formed for the purpose of, or in connection with, the scheme;
 - (b) any scheme under which the undertaking, property and liabilities of two or more bodies corporate, each of which is either—
 - (i) an investment company with variable capital; or
 - (ii) a public company,

are to be transferred to an investment company with variable capital formed for the purpose of, or in connection with, the scheme; and

- (c) any scheme under which the undertaking, property and liabilities of an investment company with variable capital or a public company are to be divided among and transferred to two or more investment companies with variable capital, whether or not formed for the purpose of, or in connection with, the scheme.

(2) Nothing in this Part shall be taken as enabling High Court to sanction a scheme under which the whole or any part of the undertaking, property or liabilities of an investment company with variable capital may be

transferred to any person other than to an investment company with variable capital.

History: Act 4/2003; S.I. 87/2003; Act 17/2023

Cross References

Arbitration and Conciliation Act, Cap.
5 Capital Markets Authority Act, Cap.
64 Companies Act, Cap. 106
Financial Institutions Act, Cap. 57
Insurance Act, Cap. 191
Interpretation Act, Cap. 2
