



**MINIMUM REGULATORY REQUIREMENTS FOR OPERATION OF
COLLECTIVE INVESTMENT SCHEMES (CIS)**

APRIL 2018

1. Introduction and Summary

Collective Investment Schemes (CIS) have been one of the most significant developments in financial intermediation during the past few decades; and have risen rapidly in Member Countries; the Legal Technical Committee (LTC) of CISNA undertook a project to provide a supervisory, legal and regulatory framework for CIS amongst CISNA member states.

In carrying out this project, a broad information base was developed covering supervisory standards, legal structures, organizational and governance of CIS, using a variety of sources. In most Member Countries, basic laws specify the legal forms in which CIS may be offered to the public; a number of legal forms for CIS are found in most Member countries. These legal forms reflect each country's legal system and its own history. Some jurisdictions permit only one legal form of organisation for CIS while other allows more than one form. No legal form or governance regime for CIS has been accepted as inherently superior to other systems. Thus each country must choose its own means of implementing international principles.

Although all CIS can be loosely defined as pools of assets in which investors share in the results of a specific portfolio, legal forms of CIS differ. The LTC analyzed the legal structures of CIS in Member countries and identified three major forms common to most Member countries namely:

- a) corporate form : where the CIS is a separate corporate entity and the investors are shareholders
- b) trust form where the CIS is organised as a trust
- c) contractual form in which the CIS is a contract under which the investment manager invests funds on behalf of the final investor

No legal form or governance regime for CIS has been accepted as inherently superior to other systems. CIS have the same legal form operate differently in different countries while some of those having different legal forms operate in a similar way. This project is intended to be consistent with and to build upon the work of other international bodies. In particular, the International Organisation of Securities Commissions (IOSCO) which has developed a

detailed set of principles of securities regulation, which includes principles for the proper regulation and supervision of CIS, and a detailed methodology to allow assessment of the extent of implementation of those principles. The provisions of this instrument are not intended to supersede or conflict in any way with those principles. Rather, they seek to provide additional analysis to Member countries on designing and establishing an effective CIS investment framework which resembles at a minimum, the regional integration of CIS in Member countries.

2. Interpretation

In these guidelines, unless the context indicates otherwise,

“Administrator” means a person responsible for the administrative functions of a collective investment scheme.

“Advertising” includes every form of advertising whether in a publication, brochure, handout, by letter head, by display of notice, circular or other document by exhibition of photographs or cinematography, films or videos, or by sound broadcasting or television broadcasting or distribution of recordings electronically communicated or otherwise, which publicly calls or draws attention to a collective investment scheme (CIS).

“Collective Investment Scheme” (CIS) means a scheme or arrangement constituted as a company, a trust or any other legal entity or arrangement whose sole purpose is to invest in portfolio of securities or other financial assets, real property or non-financial assets alongside other investors in order to benefit from the inherent advantages of working as part of a group and whose operations is based on –

- (a) the principle of diversification of risk;
- (b) the obligation, on request of the holder of the securities, to redeem the securities at their net asset value, less commission or fee; and

- (c) participants having no day to day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;

and a collective investment scheme includes-

- (i) an open-ended investment company;
- (ii) unit trust scheme;
- (iii) mutual fund
- (iv) such other arrangement being an arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part on 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.

“Custodian” in CIS it is usually a bank which is responsible for safekeeping of assets, accounting, funds clearing, investment supervision and information disclosure. Custodian is also known as a depository, and holds the assets and performs some monitoring functions.

“delegate” means a third party engaged by the operator of a collective investment scheme to carry out certain tasks for the operator of the CIS, but does not include the custodian of the CIS

“Investment manager” a person, who may or may not be the operator, providing investment advice for the CIS including asset, portfolio, and fund managers, other than a representative.

“Investment Scheme investing in a CIS” means buying units in in other open-ended collective investment schemes ("CIS") where those other CIS sole object of which is the collective investment in transferable securities and/or in other liquid financial assets of capital raised from the public and which operate on the

principle of risk spreading and the units of which are at the request of holders, repurchased or redeemed, directly or indirectly out of those undertakings assets provided that-

- a) such other CIS are authorized under laws which provide that they are subject to supervision considered by the regulatory authority to be equivalent to that laid down in law and that in the case of foreign CIS co-operation between authorities is sufficiently insured;
- b) the level of protection for unit holders in the other CIS is equivalent to that provided for investors and in particular that the rules on assets segregation, borrowing, lending and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of the investing CIS;
- c) the business of the other CIS is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period; and
- d) no more than 10% of the CIS assets, whose acquisition is contemplated, can be according to its rules or instruments of incorporation invested in aggregate in units of other open-ended CIS.

“law” means the law of a member country and includes any rules, codes or regulations adopted under the law or imposed under the power of the regulatory authority.

“Money market instruments” means low risk financial instruments such as bankers' acceptance, certificates of deposit, commercial paper, or treasury bills or transferable securities that are usually traded on a money market, which the regulatory authority agrees are liquid assets and the value of which may be precisely determined at any time according to a permanent valuation methodology

“open-ended- collective Investment Scheme” means a scheme or arrangement which are continually creating new shares when they sell securities and consequently, the Net Asset Value of CIS increases or decreases as investors buy shares or redeem them which net asset value (NAV) is calculated periodically and investors may buy or redeem shares at NAV, net of certain charges, at regular intervals.

“operator” means the legal entity that has overall responsibility for management and performance of the functions of the CIS, which may include investment advice and operational services

“person” means any natural person, partnership or trust, and includes –

- a) any organ of state
- b) any company incorporated or registered as such under any law;
- c) anybody of persons corporate or unincorporated.

“Prospectus/ offer document” a formal written document offering units or shares in a collective investment scheme;

“purchase” when applying to unit or shares, is the acquisition of new units or shares, or existing units or shares, by an investor through purchase from the CIS or the operator;

“redemption” when applying to units or shares, is the sale of units either directly or indirectly by an investor to the CIS or the operator;

“regulated market” a market that is supervised by a public body in charge of defining its organization and functioning rules, its operating and access conditions as well as contract specification and issuing conditions;

“regulatory authority” may mean either a single statutory or government authority or a combination of authorities that derive power from a single statutory or government authority;

“representative agreement” means an agreement between the manager or operator of a scheme and any company registered under the applicable legislation as a manager of a CIS in securities in terms of which agreement the manager or operator of the scheme undertakes to comply with the legislation and the conditions thereto;

“representative office” means an office established by a CIS to conduct marketing and other non-transactional operations, generally in a foreign country where a branch office or subsidiary is not warranted. Representative offices are generally easier to establish than a branch or subsidiary, as they are not used for actual "business" (e.g. sales) and therefore there is less incentive for them to be regulated.

“scheme rules” means rules that govern the operation of a collective investment scheme as laid down in the constituting documents of the CIS and in the case of an investment company, includes matters referred to in the investment company’s instruments of incorporation, by—laws and any standing resolutions;

“transferable securities” means any stocks or other instruments which provide direct or indirect access to the equity capital of an issuer, or which provide a general debt right on its assets;

“Trust Deed” is a deed made between the manager and the trustee (or, in the case of a recognized scheme that is a unit trust scheme, the instrument constituting the scheme as amended from time to time).

“Trustee” means a person holding the property of a collective investment scheme on trust for the participants in the collective investment scheme.

“UCITS” are undertakings for collective investment in transferable securities as recognized in the EC Directive 85/611;

“umbrella funds” means a CIS that offers access to separate portfolios or sub funds covering different types of investments and represented by different classes of units with different issue and redemption prices;

“Unit” refers to the proportionate holding that an investor has in a collective investment scheme and any reference to a unit shall include a share in the investment company.

3. MINIMUM REQUIREMENTS FOR OPERATION OF COLLECTIVE INVESTMENT SCHEMES

3.1 At a minimum, the regulatory authority shall embrace the following principles:

3.1.1 The regulatory authority shall set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.

3.1.2 The regulatory authority shall impose standards of conduct and minimum eligibility standards that require approval by the regulatory authority prior to commencement of marketing of a CIS.

3.2 Eligibility to act as an operator/manager of a CIS

3.2.1 Honesty and Fairness

(a) an operator of a CIS shall have a fiduciary duty towards investors in the fund and should at all times –

- (i) maintain due care and diligence, utmost good faith, high standards of integrity and fair dealing while acting in the best interest of the CIS, the industry and investors;
- (ii) maintain high standards of market conduct; and
- (iii) ensure assets of the portfolio are adequately identified, protected and segregated.

3.2.2 Expertise and Capability

- (a) Directors, senior managers and/or key staff should pass a fit and proper test in terms of expertise both at Board and Management level to operate a CIS;
- (b) Management should demonstrate that they have efficient systems to cope with the demand for calculating the buying and selling prices of units, distributions to investors, marketing of products, administration of accounts and maintenance of control systems.

3.2.3 Capital Adequacy

- (a) Minimum capital requirement for the manager/operator-should be financially sound:
 - (i) Capital may vary as more funds are being managed;
 - (ii) The regulatory authority may impose a requirement on the manager that a minimum of its own resources be invested in each portfolio (such as 10% of the market value of the portfolio and require that such percentage may be reduced as assets of portfolio increases).

3.2.4 Liquidity requirement

- (a) The regulatory authority may impose a minimum proportion (such as 5% of market value of the portfolio) to enable the Manager/operator to repurchase units when required to do so by unit holders of that portfolio.

- (b) The regulatory framework may prohibit the manager/operator of CIS from conducting other business or otherwise seek authorization from the regulator. This is necessary to prevent conflict of interest between the CIS business and such other business.

3.2.5 Diligence and Effectiveness

- (a) Manager/an operator shall-
 - (i) act with due skill, care and diligence;
 - (ii) employ effective resources and procedures needed for proper function of a CIS;
 - (iii) maintain proper records;
 - (iv) ensure employees are suitably, adequately trained and properly supervised;
 - (v) have well defined procedures to ensure compliance with regulatory requirements and regulations;
 - (vi) deal with the regulator in an open and cooperative manner; and
 - (vii) avoid conflict of interest between interest of manager and that of investors.

3.2.6 Specific Powers and Duties of the manager/operator:

(a) The operator shall operate within the investment policy and administrative procedures as determined by the Board of Directors/trustees and the Deed of Trust to secure the objective of each portfolio which shall include:

- (i) maintenance of a register of unit holders;
- (ii) observance of statutory investment limits;
- (iii) deposit of all the moneys in the custody of the trustee;
- (iv) delivery of scrip to the trustee;

(b) The operator shall not exceed powers or restrictions conferred upon it by the Board/trustees or the Trust Deed.

3.2.7 Compliance:

The operator/manager shall comply strictly with defined standards and legal requirements for initial eligibility and continuing operation of the CIS.

3.2.8 Code of Conduct.

The operator/manager shall comply with any code of conduct laid down by the regulatory authorities.

4.0 The regulatory authority shall provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.

4.1 Legal form and structure

4.1.1 The regulatory authority shall have requirements relating to the legal form and structure of CIS which shall provide certainty to investors in

assessing their interests in a CIS and enable the pool of investors' funds to be distinguished from the assets of other entities.

4.1.2 A legal structure of CIS shall consist of the following:

(a) A manager or an operator who shall be a Public or Private company;

(b) The Fund (or a trust which shall have a legal personality)- legislation shall provide that legal personality is allocated to the fund and the fund shall be required to hold in its name on behalf of its investors the assets in which it has invested;

(c) A third party acting as trustee or custodian to supervise the manager and ensure compliance with investment policy while the custodian acts as such in respect of the script evidencing ownership or title of the fund in respect of the investments of the fund); and

(d) An approved Public Accountant or Auditor to conduct an annual audit in terms of the prescribed requirements to safeguard interests of investors.

(e) Custodian, Depositary or Trustee who shall be appointed to hold the assets or be in a position to ensure their safekeeping. The following key issues shall be considered with respect to custodians, Depositary or Trustee:

(i) Financial and other resources of the custodian.

The Regulator shall impose qualifying requirements on custodians relating to their financial resources and other resources and its ability to carry out the task required.

(ii) Independence of a custodian.

A custodian shall be functionally independent of the operator of the CIS and must always act in the best interest of investors.

(iii) Reporting.

A custodian shall submit annual report to regulator on administration of CIS. The custodian shall also report irregularity or undesirable practice.

5. Supervision of conduct, conflict of interest and delegation

5.1 The regulatory authority shall require supervision throughout the life of a particular collective investment scheme. Supervision of an operator shall promote high standards of competence, integrity and fair dealing. There shall be clear powers with respect to:

- (a) registration and authorization of the scheme,
- (b) inspections to ensure compliance by scheme operators,
- (c) investigations of suspected breaches and remedial action in the event of breaches or default.

5.2 Registration and Authorization

The regulatory authority shall take overall responsibility for the CIS authorized within its jurisdiction.

5.3 Inspections and investigations:

The regulatory authority shall have the means to investigate conduct relating to the CIS, including power to conduct onsite inspections either by the authority itself, or its delegate or the CIS auditor.

5.4 Powers of the regulatory authority

Regulatory authority shall have adequate powers to protect investors' interests including but not limited to:

- (a) revoking an operator's licence;
- (b) freezing CIS assets or the operator's assets;
- (c) taking action to withdraw the CIS' authorization or stop the use of a prospectus;
- (d) institute administrative or civil proceedings;
- (e) recommend criminal action where appropriate.
- (f) appointment of curator or judicial manager;
- (g) replace manager or trustee; and
- (h) instruct manager to cease administration of CIS in a specific manner.

5.6 Third party supervision

5.6.1 An independent third party supervision may be approached in two ways:

- (a) through mandatory requirement for appointment of a custodian who shall keep safe in his custody the assets of the investors;
- (b) through mandatory requirement of appointment of a trustees conferring power upon him in the Trust Deed to ensure compliance by the manager of the scheme with investment policy as determined by the board of directors of the manager in consultation with the trustee;

5.6.2 Appointment

- (a) The regulatory authority shall impose a condition that upon appointment a third party is liable for loss suffered by investors as a result of its negligence or failure to perform its obligations;
- (b) The regulatory authority shall impose a condition that to be authorized by the regulator, a third party shall meet the fit and proper test.

5.6.3 Financial and other resources of a Third party

The regulatory authority shall impose a conditions that-

- (a) The third party shall be a public company or recognized functionary and approved by regulator;
- (b) have a minimum capital and have financial and commercial standing;
- (c) is fit to assume the responsibilities;
- (d) is sufficiently experienced and equipped to assume the duties.

5.6.4 Independence

The regulatory authority shall impose a conditions that a third party –

- (a) shall not have any interest direct or otherwise in the manager;
- (b) be functionally independent of manager.

5.6.5 Responsibilities

The regulatory authority shall impose conditions that a third party shall-

- (a) keep control of all scrip in respect of securities which it must hold in safe custody;

(b) control accounts –moneys paid in or out;

5.6.6 Supervision

(a) a trust deed shall confer necessary authority or power to the custodian/trustee/third party to apply effectively the provisions of the Trust Deed through the Trustees/Third party Board of Directors.

(b) Where law permits, an SRO shall be legally empowered to assist with certain aspects of supervision of the industry and have efficient sanctions.

5.6.7 Auditors of the Scheme

(a) Appointment and Qualifications

The regulatory authority must ensure:

(i) an external independent auditing firm in public practice audits affairs of the CIS

(ii) an auditor is approved in relation to experience, expertise and resources to carry out such an audit

(iii) an auditor is required by the regulator to submit such additional information in relation to his audit as the regulatory authority considers necessary;

(iv) an auditor communicates in good faith to the regulatory authority any information where in the course of his work the auditor becomes aware of and has reasonable cause to believe that-

(aa) there has been material adverse change in the risks inherent in the business of the CIS with the potential to jeopardize its ability to continue as a going concern;

- (bb) there is a contravention with the legislation or any directions issued under the existing legislation;
- (cc) a criminal offence involving fraud or other dishonesty has been, is being or is likely to be committed;
- (dd) there are serious irregularities that have occurred under which conditions the auditor will not have been regarded as to have breached his duty.

5.6.8 The regulatory authority shall stipulate in the law or regulations the following conditions pertaining to the auditor of the scheme:

- (a) An Auditor shall be involved in the supervision of compliance with regulatory requirements.
- (b) an Auditor shall not be an officer of the custodian, the CIS manager or any support functionary of the CIS;
- (c) An auditor shall cease to hold an appointment as auditor of a CIS if he no longer fulfills the requirements of the law or regulations made under the law or where the regulatory authority withdraws its approval;
- (d) Where under the CIS structure or where the manager of the CIS revokes the appointment of the auditor, the regulator shall forthwith be notified of revocation and reasons thereof;
- (e) Where there is no auditor appointed, the CIS manager or the CIS shall as soon as practicable appoint a new auditor;

5.6.9 Reporting

There shall be stipulated in the law of the regulatory authority provisions relating to the reports and accounts of a CIS including provisions on-

- (a) Report on the accounts of a CIS, of which shall be prepared in line with International Accounting Standards and an audit of which carried out in line with International Standards on Auditing;
- (b) Report of the auditor to the manager of any irregularities or undesirable practices in the conduct of business of the company;
- (c) The auditor's report to the regulator of uncorrected, rectified or undesirable practices after a lapse of e period (e.g. a month);

5.6.10 Audit Committee

- (a) There shall be stipulated in the law of the regulatory authority provisions -
 - (i) requiring the establishment of the audit committee of the board of the manager, third party/ custodian / Trustee as the case may be, in which the majority shall be non-executive directors.
 - (ii) Setting out the functions of the Audit committee which shall include the following:
 - (aa) evaluation of adequacy and efficiency of internal control systems, accounting practices, information systems and auditing processes;
 - (bb) facilitate and promote communication regarding matters in (aa) above;

(cc) introduce measures that may serve to enhance credibility and objectivity of financial statements and reports of the scheme.

(b) The regulatory framework shall also require that if a committee is not in place, the external auditor shall report on the following issues at least quarterly or period acceptable to the regulatory authority:

(aa) internal control structure-financial control, accounting systems and reporting;

(bb) whether internal audit functions are acceptable;

(cc) whether the manager is complying with regulatory requirements;

(dd) whether the manager is complying with the code of conduct.

5.7 Conflicts of Interest

5.7.1 The operation of a CIS raises the potential for conflict between the interests of investors in the scheme and those of scheme operators or their associates.

5.7.2 The regulator shall recognize that a manager/operator of a CIS may have interest that if exercised without restraint may conflict in a material way with those of investors or the industry. Regulation shall ensure that the possibility of conflict arising is minimized and that any conflicts which do arise are properly disclosed.

5.7.3 Regulators shall provide for the exercise of management responsibilities with full regard to the best interests of the investors and the industry. The responsibilities imposed on the manager may

be general in nature but shall rely on the concept of fiduciary responsibility as interpreted domestically. The regulator shall also establish detailed regulations to monitor potential conflict of interest as a regulatory necessity.

5.7.4 Possible conflict of interest situations may include but shall not be limited to the following situations:

- (a) transactions between the CIS and its affiliates (of trustee/custodian or the operator);
- (b) transactions where the CIS and its affiliates jointly participate;
- (c) Soft commissions;
- (d) lending or borrowing to or from affiliates and lending of script;
- (e) purchase of affiliates securities or securities underwritten by affiliates;
- (f) use of affiliated brokers;
- (g) employee transactions for own account;
- (h) switching of investments.

5.7.5 General duties and Obligations.

- (a) Possible conflict situations may be addressed by-
 - (i) imposing a duty on an operator/manager to, at all times, act in the best interest of investors and the industry;
 - (ii) conferring powers to the regulator to impose sanctions for self-dealing including revoking the authorization, freeze assets of the manager, institute civil proceedings, recommend criminal action.

(b) In addition to the general obligations and duties, specific regulatory response with respect to conflict of interest situations may include:

- (i) direct prohibition under the law on ;
- (ii) precise code of conduct that is enforced by the regulatory Authority;
- (iii) review and approve certain transactions and activities;
- (iv) surveillance of managers by the regulator;
- (v) disclosures by the manager;
- (vi) record keeping by the manager;
- (vii) limitation of business activities by the manager;
- (viii) independent review by a third party or the auditor.

5.8 Delegation/Third Parties

5.8.2 It is common for aspects of the operation of a CIS to be carried out by delegates. The use of delegates shall not in any way, be permitted to diminish the effectiveness of the primary regulation of a CIS. A delegate shall comply with all regulatory requirements applicable to the conduct of the principal's business activities.

5.8.3 Delegated duties may include-

- (a) Investment Management,
- (b) Administration,
- (c) Selling Practices,
- (d) Trustee, Custodian.

5.8.4 Regulatory authority shall ensure that the level of protection to investors in a CIS is maintained at all times. This is attained through management/administration by proper fund managers, safe custody of investments and control over trust accounts.

5.8.5 Where certain activities of the manager of the CIS are contracted out to third parties such as investment of the fund's assets, the same principles which regulate the eligibility and conduct of manager shall apply to third parties. These include but are not limited to the following principles:

- (a) **Responsibilities/duties** where the operator shall take responsibility for the actions or omissions of the delegate as if they were its own.
- (b) **Ongoing monitoring** where an operator shall ensure that procedures are in place and are designed to monitor the behavior of the delegates.
- (c) **Qualifications of the delegate** which an operator shall show that the delegate is and remains competent to undertake the functions in question. The operator shall have sufficiently detailed knowledge of the operating procedures of a delegate to be able to meet its regulatory responsibilities in a full and thorough manner.
- (d) **Ongoing cooperation** in which an operator shall provide all reasonable means to permit a delegate to fulfill its obligations and ensure contractual obligations between them are unambiguous.
- (e) **Level playing field** in which the use of delegates shall not in any way diminish the effectiveness of the primary regulation of a CIS. The regulation of business undertaken by a delegate shall embody principles of regulation similar to those of the regulation of schemes generally.
- (f) **Compliance** in which a delegate shall comply with all regulatory requirements applicable to the conduct of its business activity.
- (g) **Responsibility** in which the manager shall stay at all times responsible for the activities of any delegated third party.

6 Regulation shall require disclosure, as set forth under the principles for issuer which is necessary to evaluate the suitability of a CIS for a particular investor and the value of the investor's interest in the scheme.

6.1 The disclosures shall be of the following nature:

- (a) Full, accurate and timely disclosure of financial results and other information that is material;
- (b) The disclosure shall treat holders of securities in a company in a fair and equitable manner;
- (c) The accounting and auditing standards used shall be of high and internationally acceptable quality;

6.2 Marketing and Disclosure

6.2.1 Regulatory authority shall impose a disclosure requirement to ensure full, accurate and timely disclosure to prospective investors to enable the said investors to make informed decisions;

6.2.2 The principle of full, accurate and timely disclosure of current and reliable information material to investment decisions shall be directly related to the objectives of investor protection and fair, efficient and transparent market.

6.2.3 Financial and other relevant information relating to management and operation of the CIS shall be provided on regular basis such as annually or semi-annually.

6.2.4 Disclosure rules shall extend to at least-

- (a) the content and distribution of prospectus or other offering documents
- (b) advertising in connection with the offering of securities
- (c) periodic reports

6.3 Prospectus

- 6.3.2 There shall be a prospectus which complies with the standards applicable in the home jurisdiction of a CIS which shall be published prior to the issue. No additional marketing documentation should be allowed unless permitted advertisements or other literature which comply with applicable requirements are complied with;
- 6.3.3 A CIS prospectus shall contain all material information which investors would reasonably require and expect to find to make an informed investment decision. A CIS prospectus shall not contain information that is false and misleading.
- 6.3.4 A prospectus shall be in a language or languages recognized the respective country.
- 6.3.5 Prospective investors shall be offered (free of charge) a copy of the prospectus before concluding a transaction.
- 6.3.6 The prospectus shall be kept up to date to take into account material changes affecting the CIS. Any material changes to information in the prospectus shall be notified to the regulator and investors.
- 6.3.7 Circulation of a CIS prospectus to prospective investors shall be conditional on the filing of the prospectus with the regulatory authority.
- 6.3.8 Minimum contents expected to be addressed in the offering documents are in **Appendix 1**.

6.4 Regular Reporting

- 6.4.1 A report to Unit holders in respect of CIS activities shall be prepared on either annual or semi-annual basis and shall be filed with the regulator and be sent to the investors.
- 6.4.2 Annual or semi-annual account reports must contain information relevant to the CIS and a statement concerning units in the CIS that have been redeemed or repurchased over the relevant period.

Accounts must be prepared in accordance with applicable and international accounting standards.

6.5 Advertising

6.5.1 Advertising shall be undertaken after all the necessary authorizations have been granted to permit the CIS to market to the investing public and shall not be false or misleading or in a manner that is deceptive. Advertising shall refer to the prospectus and be consistent with it.

6.5.2 Regulator shall have power to enforce withdrawal of advertisements or take appropriate action against non-compliance with prescribed provisions in respect of advertisements.

6.5.3 Portfolio Disclosure to Public and Regulators

(a) Details of investments should be continuously disclosed by the management company to the existing and prospective investors for proper investment decision making.

(b) Furnish to the regulator returns on regular basis for proper supervision.

(c) All expenses in terms of proper accounting procedures should be made available to all investors at all times.

6.5.4 Performance Presentation

Past performance shall be clearly indicated with proper indication that future performance may not be based on this performance.

6.6 Accounting and Auditing Standards

6.6.1 Financial information shall comply with international accounting standards. Comparability and reliability of financial information are critical to informed decision making. Accounting and auditing standards are necessary safeguards of the reliability of financial information. They ensure that fundamental information is available.

6.6.2 Regulation shall ensure:

- (a) an independent verification of financial statements and compliance with accounting principles through professional external auditing;
- (b) Any audit is conducted pursuant to well defined and internationally acceptable standards (International Standards on Auditing);
- (c) Rules are designed to ensure the independence of the auditor;
- (d) where a set of international standards acceptable to the regulator is available, their use is permitted to facilitate efficient cross border capital raising as an aid to the provisions of internationally comparable information and to assist in the more efficient raising of capital.

7 Regulation shall ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme. In this regard the regulations shall be based on the following principles that:

7.2 The regulatory authority shall establish a comprehensive, documented policies and procedures to govern the valuation of assets held or employed by a CIS.

- 7.3 The policies and procedures shall identify the methodologies that will be used for valuing each type of asset held or employed by the CIS.
- 7.4 The CIS policies and procedures shall set out the methodology to be used for valuing each type of asset, which shall include inputs, models and the selection criteria for pricing and market data sources, having regard to sound and reliable data.
- 7.5 The types of assets that a CIS holds may vary according to the CIS's investment objectives and applicable regulations and therefore, a CIS's policies and procedures shall be consistent the types and complexity of assets that it holds and employs.
- 7.6 The valuation policies and procedures shall seek to address conflicts of interest. The assets held or employed by CIS shall be consistently valued according to the policies and procedures.
- 7.7 A CIS's policies and procedures shall make clear that the CIS's assets are to be valued consistently in accordance with the designated methodologies. In addition, the policies shall also generally be consistent across similar types of assets or securities that share similar economic characteristics and across all CIS that have the same CIS operator.
- 7.8 A CIS shall have policies and procedures in place that seek to detect and prevent pricing errors. Pricing errors that result in a material harm to CIS investors shall be addressed promptly, and investors shall be fully compensated.
- 7.9 The Responsible Entity shall provide for the periodic review of the valuation policies and procedures to seek to ensure their continued appropriateness.

- 7.10 The Responsible Entity shall provide for the periodic review of the valuation policies and procedures to seek to ensure that they are being implemented effectively.
- 7.11 A third-party shall review the CIS's valuation process at least annually.
- 7.12 The Responsible Entity should conduct initial and periodic due diligence on third parties that are appointed to perform valuation services.
- 7.13 The Responsible Entity should seek to ensure that arrangements in place for the valuation of the assets in the CIS's portfolio are disclosed appropriately to investors in the CIS offering documents or otherwise made transparent to investors.
- 7.14 The purchase and redemption of CIS interests shall not be effected at historic NAV. Forward pricing shall be effected for purchasing and redemption of CIS interests at the next computed NAV after receipt of the order. Cut-off times at which the NAV is calculated, and before the orders have to be received shall be established to provide that investors receive the correct NAV for their redemption and purchase orders.
- 7.15 A CIS's portfolio shall be valued on any day that CIS units are purchased or redeemed. CIS investors shall purchase or redeem units at prices that fairly reflect the value of the CIS's assets. If a CIS's assets are not valued on any day that CIS units are purchased or redeemed, investors may purchase or redeem units at too low or too high a price, thus harming CIS investors, and potentially affecting the CIS's payments to its service providers and to the CIS operator, among other things.
- 7.16 A CIS's NAV shall be available to investors at no cost. CIS shall provide regular redemptions and sales to investors at the next computed NAV after receipt of the orders.

8 Asset Valuation and Pricing

8.1 The regulatory authority shall prescribe a system for valuation of CIS assets, pricing of interests and procedures for entry to and exit from a collective investment which is fair to existing investors as well as to investors seeking to purchase or redeem their units. These rules should be formulated in the Trust Deed

8.2 It shall be a fundamental principle that the price of units in a CIS shall be determined at existing market values and calculated according to the Net asset value of the CIS which must be determined on a regular basis in accordance with accepted accounting practices used on a consistent basis.

8.3 Valuations

8.3.1 Assets of a CIS shall be valued at market price which shall be a price at which significant transactions have recently been concluded and disclosed to the market.

8.3.2 The valuation shall be at a specific time on each day.

8.3.3 The Net Asset Value (NAV) to be applicable shall be calculated based on the international accounting standards on Assets-Liabilities vis-à-vis the number of units.

8.3.4 The manager must publish the NAV appropriately, i.e. at the manager's premises, third party office, or through appropriate media.

8.3.5 Rules for asset valuation and calculation of price for the units must be disclosed. These rules should be formulated in the Deed.

8.3.6 the information on the system for pricing, valuation and associated procedures shall be made available to investors on request.

9.0 Purchasing and Redemption of Units

9.1 A CIS shall, at the request of any investor, redeem its units in line with CIS rules which shall be incumbent upon the manager;

9.2 Redemption of units may be suspended on a temporary basis in accordance with CIS rules;

9.3 Purchase of units shall be in cash or if permitted by the CIS, other securities;

9.4 Redemption of units may be in cash except where the CIS is liquidated and as disclosed in the prospectus;

9.5 Purchase and redemption orders to be settled as soon as possible in accordance with the law, CIS rules and the prospectus.

10.0 Units Pricing

10.1 A CIS may calculate purchase price and redemption price of its units on regular basis which shall be done at a specific point in time on each business day;

10.2 Purchase and redemption orders shall be executed at NAV;

10.3 Distribution or re-investment of income of a CIS shall be done in accordance with the CIS rules.

10.4 Re-investment shall only be done at the request of the investor;

10.5 Any purchase or redemption fee applicable to the units in a CIS, including management fee, shall be clearly indicated in the CIS rules or prospectus;

10.6 Prices of units shall be published regularly at specified period either daily, weekly, monthly as may be specified by the CIS.

11.0 Investment and Borrowing Limits

11.1 General:

11.1.1 There shall be investment restrictions, portfolio diversification and borrowing limitations that address the investment goals, the risk profile and the degree of liquidity required of a CIS to meet redemption in all market conditions.

11.1.2 The need for liquidity may compel a CIS to investing primarily in transferable securities, money market instruments and derivatives incidental to management of a securities portfolio.

12.2 Investments

9.2.1 Limitation shall indicate the extent of investment, inter alia, in the following:

(a) in listed equities issued by any one issuer which may not exceed 5% of the total assets of a portfolio; or 5% of the securities of any one class of one particular issuer;

(b) Prohibition on investments in securities not listed on a recognized exchange;

(c) percentage of total assets of a portfolio to be invested in derivatives;

(d) percentage of total assets of a portfolio to be kept in liquid assets which may be less than 5%;

(e) limitation on investment by one fund in another fund.

9.3 Borrowing

9.3.1 Borrowing of funds by a CIS shall be strictly controlled.

9.3.2 Funds for operation of the fund shall be derived from the fund's own resources or capital injected by shareholders-clearly as may be clearly stated in the constitutive documents of the fund or in the Memorandum of Association;

9.3.3 limiting borrowing to provide for the redemption of units may be allowed;

9.3.4 Full disclosure to unit holders shall be mandatory.

10. Use of Derivatives Instruments

10.1 Regulatory authority shall allow a CIS to invest in derivative instruments to hedge investments in underlying assets and income of such assets against adverse market movement to reduce risks or to track an index.

10.2 All exposures in terms of investments in derivatives shall be covered by either cash or underlying investments.

10.3 Where pure derivatives are permitted, investors shall be informed of the risks involved.

11. Investor Rights

11.1 The regulatory framework shall provide investors with certain rights appropriate to CIS regulation including the right to-

(a) withdraw funds from CIS within reasonable period;

(b) participate in significant decisions concerning the CIS; or

(c) the regulatory authority or another third party, to have capacity to act in the interests of investors.

12. Redemption Conditions

12.1 The prospectus shall inform the investor about the management fees and redemption costs;

12.2 The Units of a CIS shall be repurchased or redeemed at the request of any unit holder, in a manner that does not give an unfair advantage to one investor in the CIS over any other investor.

12.3 The regulatory authority shall ensure that investors' interests are maintained in the event of a major change in activities of the CIS and shall provide for arrangements to permit major investors to buy units where the CIS fails to redeem units of an investor;

12.4 Where redemption is not possible or listing is suspended, the CIS constitutive documents shall require the manager to call for a meeting of unit holders to enquire from the unit holders whether the scheme should be wound up or liquidated.

13. Access to Remedies

Besides legal process in courts, investors shall be able to refer matters to the regulatory authority for consideration;

14 Powers of the Shareholder in Investment Companies

Where a CIS is an investment company, investors shall have the ability to participate in the affairs of the company through the exercise of a right to vote at the periodic or special meeting of the shareholders.

15. FOREIGN COLLECTIVE INVESTMENT SCHEMES

15.1The regulatory authority may approve an application by the manager or operator of a foreign CIS to solicit investments in a scheme if the applicant satisfies the requirements of regulations as the regulatory authority considers applicable including but not limited to-

- (a) the form required by the registrar/regulatory authority;
- (b) a copy of the approval or registration by the relevant foreign jurisdiction authorizing the foreign CIS to act as such is submitted;
- (c) the foreign CIS compliance with the conditions determined by the regulatory authority;
- (d) pays all dues as determined by the regulatory authority.

15.2Where the manager or operator of a scheme applies for approval in terms of carrying on business in foreign country, such manager or operator (applicant) he shall be required to satisfy the regulatory authority of the presence of a representative office to enable him carry out the business or service which approval from the regulatory authority is being sought. in the relevant jurisdiction in which permission is sought.

15.3The regulatory authority shall have powers to withdraw the approval if it considers it to be desirable to do so in the interest of investors or potential investors

16. BUSINESS ACTIVITIES AND COLLECTIVE INVESTMENT MANAGEMENT

16.1 Restrictions on business activities

16.1.2 The Collective Investment Management Company shall not:

- (a) undertake any activity other than that of managing the scheme;
- (b) act as a trustee of any scheme
- (c) launch any scheme for the purpose of investing in securities

16.2 Amalgamation of business and cession, transfer or take-over of rights of investors

16.2.1 The business of two or more collective investment schemes or more portfolios of a collective investment scheme may not be amalgamated and the rights of the investors in a portfolio may not be ceded or transferred or be taken over by any other portfolio or collective investment scheme, except with the prior consent of:

- (a) investors holding a majority in value of participatory interests in each collective investment scheme or portfolio to which a proposed amalgamation, cession, transfer or take-over refers; and
- (b) the regulatory authority, granted on such conditions as it may, in writing, determine.

16.2.2 Except in so far as this regulation provides otherwise, an amalgamation, cession, transfer or take-over in terms of this regulation does not derogate from the rights of any creditor on any obligation relating to an original scheme or portfolio.

Compliance with IOSCO Principles

- 17.1 These guidelines comply with the IOSCO principles 17 to 20 relating to Collective Investment Schemes including an embrace of principles 14 to 16 relating to Issuers.
- 17.2 The regulatory authority shall set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
- 17.3 The regulatory authority should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
- 17.4 Regulation should require disclosure, as set forth under the principles for issuer which is necessary to evaluate the suitability of a CIS for a particular investor and the value of the investor's interest in the scheme.

References

IOSCO Public Document No 40, *Report on Investment Management-Principles for the Regulation of Collective investment Schemes and Explanatory Memorandum*, IOSCO Technical Committee, October 1994

IOSCO Public Document No 58, *Collective Investment Schemes in Emerging Markets: Report by the Emerging Markets Committee*, IOSCO Emerging Markets Committee, September 1996

IOSCO Public Document No 69, *Principles for the Supervisions of Operators of Collective Investment Schemes*, IOSCO Technical Committee, Sept 1997

IOSCO Public Document No 129, *Collective Investment Schemes as Shareholders: Responsibilities and Disclosure (Consultation Document)*, IOSCO Technical Committee, July 2000.

IOSCO Public Document No 131, *Investor Disclosure and Informed Decisions: Use of Simplified Prospectuses by Collective Investment Schemes*, IOSCO Technical Committee, July 2002.

IOSCO Public Document No 136, *Investment Management: Areas of Regulatory Concern and Risk Assessment Methods*, IOSCO Technical Committee, November 2002.

Mauritius, *The Securities (Collective Investment Schemes and Closed end Funds) Regulations, 2008*, published in the Government Gazette of Mauritius

South Africa, *Collective Investment Schemes Control Act 45 of 2002*, published in Government Gazette 25283 of 1 August 2003

Appendix I

Minimum contents that would be expected to be addressed in the offering documents include the following:

1. the date of the prospectus;
2. information concerning the legal constitution of the CIS, the rights of the investors in the CIS, and any pending material legal proceedings involving the CIS;
3. information on the operators and its principals;
4. procedures for purchase, redemption and pricing of units;
5. relevant financial information concerning the CIS;
6. information on the custodian;
7. the investment policy of the CIS, indicating the markets, instruments in which investments are made;
8. information on the risks involved in achieving investment objectives;
9. the appointment of any external administrators or investment managers or advisers who have a significant and independent role in relation to the CIS;
10. fees and charges to the CIS;
11. regulatory authority, auditors and other independent third parties and their responsibilities in relation to the CIS.

Appendix 2

Foreign CIS Applicable Conditions

Regulatory Environment

The regulatory environment from which the foreign manager is coming from must be at least of the same standing as the regulatory environment in which they will market their products

Capital Requirement

A representative office must have and maintain paid up share capital and reserves at a minimum prescribed by the regulatory authority which at all times must be invested in assets which are capable of being liquidated within seven days unless exempted on the later condition by the regulatory authority

Application for approval

An application must be accompanied by the following:

- (a) Name of the foreign country in which a scheme was originally authorised to conduct business and a letter of confirmation by the supervisory body which granted such authorisation to the effect that the applicant is -
 - (i) in the opinion of the supervisory body fit and proper to operate a scheme;
 - (ii) actively conducting a scheme in that country; and
 - (iii) permitted to promote its scheme in the Republic.

- (b) If the applicant has entered into a representative agreement, a copy of such agreement.
- (c) If the applicant has established a representative office, the name, physical and registered addresses, a copy of the certificate of incorporation and of the memorandum and articles of association and details of the shareholders, of the representative office and the name of the principal officer appointed for the purposes of compliance with the Companies Act
- (d) Copies of any founding statement, promoter's agreement, prospectus or application form that will be used in the promotion of the scheme as well as the most recent audited annual financial statements of the scheme.
- (e)
 - (i) A list relating to differences and similarities between the scheme and a local collective investment scheme registered under the Act; and
 - (ii) a questionnaire relating to the scheme, completed on forms that may be obtained from the registrar before the lodging of an application.
- (f) Confirmation by the auditor of the scheme that the representative office complies with the requirement in respect of paid-up share capital and reserves.
- (g) Such further information that the registrar/regulatory authority may require.

Risk of Investment

The registrar may refuse to approve a scheme in terms of existing legislation-

- (a) unless the applicant satisfies the registrar/regulatory authority that the investments that a scheme proposes to offer for sale have a risk profile which is not significantly higher when compared to the risk profile of similar investments in participatory interests offered for sale by managers registered under the existing legislation
- (b) if the scheme invests in markets not similar to those qualifying for investment by local collective investment schemes registered under the Act;
- (c) unless not less than 90 per cent of the interest-bearing instruments included in a fund have a credit rating of “investment grade” by Moody’s Investors Service Limited, Standard and Poor’s or Fitch Ratings Limited;
- (d) unless the borrowing of money is limited to 10 per cent of the value of a fund and such borrowing is only permitted for the purpose of the redemption of participatory interests;
- (e) if the inclusion in a fund of unlisted derivative instruments or uncovered exposures is allowed: Provided that such fund may include unlisted forward currency, interest rate or exchange rate swap transactions where the inclusion of such transactions is only utilised for efficient fund management;
- (f) or such other prescribed requirement by the regulatory authority