

NOTICE 2076 OF 2003
FINANCIAL SERVICES BOARD
COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

CONDITIONS IN RESPECT OF A COLLECTIVE INVESTMENT SCHEME
CARRIED ON OUTSIDE BUT PROMOTED IN THE REPUBLIC

Under section 65(1)(c) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby determine the Conditions in the Schedule, with which a collective investment scheme carried on outside but promoted in the Republic, must comply.



REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

SCHEDULE

Definitions

1. In these Conditions "the Act" means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it and, unless the context otherwise indicates –

"**associate**", in relation to a juristic person -

- (a) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
- (b) which is not a company, means another juristic person which would have

been a subsidiary of the first-mentioned juristic person -

- (i) had such first-mentioned juristic person been a company; or
 - (ii) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;
- (c) means any person in accordance with whose directions or instructions the board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act;

“foreign country” means any country other than the Republic in which a scheme is authorised to conduct business;

“operator” includes any person or entity participating in the administration of a scheme;

“representative agreement” means an agreement between the manager or operator of a scheme and any company registered under the Act as a manager of a collective investment scheme in securities in terms of which agreement the manager or operator of the scheme undertakes to comply with the Act and the conditions set out in this Schedule;

“representative office” means a company incorporated under the Companies Act, 1973 (Act No. 61 of 1973);

“scheme” means a collective investment scheme authorised to conduct business in a foreign country.

Representative agreement or office

2. If the manager or operator of a scheme applies for approval in terms of section 65 of the Act, such manager or operator (“the applicant”) must enter into a representative agreement or maintain a representative office.

Regulatory environment

3. The foreign country in which a scheme referred to in condition 2 is carried on must have a regulatory environment at least of the same standing as the regulatory environment of the Republic.

Capital requirement

4. A representative office must have and maintain a paid-up share capital and reserves of not less than R2 000 000, which at all times must be invested in assets which are capable of being liquidated within seven days: Provided that the registrar may exempt a representative office from compliance with this condition for such a period, not exceeding six months, as he or she may determine.

Application for approval

5. An application for approval in terms of section 65 of the Act, must be accompanied by the following:
 - (a) The 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 officer appointed for the purposes of section 176 of the Companies Act, 1973, in respect of the representative office.

- (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 may require.

Risk of Investment

- 6. The registrar may refuse to approve a scheme in terms of section 65 of the Act -
 - (a) unless the applicant satisfies the registrar that the investments that a scheme proposes to offer for sale in the Republic have a risk profile which is not significantly higher when compared to the risk profile of similar investments in participatory interests offered for sale in the Republic by managers registered under the Act;
 - (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;
- (f) if gearing (leveraging) by a fund is permitted; or
- (g) if investments are offered for sale which may not in terms of the Act be offered for sale by a manager registered under the Act.

Change of scheme

7. If a scheme, subsequent to its approval in terms of section 65 of the Act, undergoes a change in the scheme that it promotes or the kind of investments that it solicits, it must obtain the approval of the registrar for such change against payment of the prescribed fee.

Advertising and disclosure of information in marketing material

8. A scheme approved in terms of section 65 of the Act must comply with the Code of Advertising for Unit Trusts, which has been adopted by The Association of Unit Trusts of South Africa and which forms part of the Code of Advertising Practice as administered by the Advertising Standards Authority of South Africa.

Disclosure of Information

9. A scheme approved in terms of section 65 of the Act must disclose the following minimum information in any document in terms of which an investment is offered to members of the public by such scheme:
 - (a) Details of the structure of the scheme, (that is whether founded as a trust, a company, a mutual fund or any other type of entity), including the stated objectives and the investment policy of the scheme and the ownership to be acquired by investors in relation to such scheme.
 - (b) The primary risks related to investment in the scheme including currency

- rate risks.
- (c) The borrowing powers of the scheme and whether its assets may be encumbered in any way or whether it may engage in scrip lending.
 - (d) Whether the scheme employs a third party that is not an associate of any other party involved in the scheme, to act as trustee or custodian and the manner in which assets are safeguarded and regulatory compliance by the scheme is monitored.
 - (e) The charges that are levied on investors and the quantum and basis of calculation thereof.
 - (f) If any investment is offered by the scheme and the regulatory requirements applicable to such scheme differ from those applicable in the Republic, full details of such differences must be disclosed in any price list, advertisement, marketing material, application form or similar document, including the fact that the scheme has to comply with different requirements in respect of -
 - (i) investment of its own resources in the scheme;
 - (ii) any limit imposed on the scheme as regards investment in individual underlying assets;
 - (iii) investment in derivative instruments;
 - (iv) the expenditure that may be charged against or deductions that may be made from the income of the scheme; and
 - (v) taxation of the scheme.
 - (g) The policy of the scheme regarding investment in listed instruments or in unlisted instruments as well as the manner in which the market value of unlisted instruments is determined.
 - (h) The terms and conditions on which the scheme repurchases participatory interests and the manner in which selling and repurchase prices are calculated.
 - (i) The intervals at which pricing of participatory interests for the purpose of sales and repurchases are done.
 - (j) The name of the auditor of the scheme.
 - (k) The nature and frequency of reports that are furnished to investors and

the availability of other reports to investors.

- (l) The manner in which a distribution to the investor and any capital gain or loss accruing to the investor will be taxed in the country of origin of the scheme and in the Republic.

Compliance

10. The auditor of a representative office must certify annually to the registrar that the requirement in respect of paid-up share capital and reserves has been complied with.

Cancellation of approval

11. If for any reason -
 - (a) any representative agreement is cancelled, the manager which is a party to that agreement, must notify the registrar immediately in writing and cease to promote any investment offered by the scheme concerned;
 - (b) the operation of a representative office is discontinued, the person appointed for the purposes of section 176 of the Companies Act, 1973, must notify the Registrar immediately in writing thereof.

Withdrawal of approval

12. (1) If the registrar receives any notification in terms of condition 11, he or she may withdraw the approval of the scheme concerned.
 - (2) The registrar may at any time withdraw or review any approval in terms of section 65(1) of the Act.

Levy

13. A scheme approved in terms of section 65(1) of the Act must pay an annual levy to the Financial Services Board in terms of section 65(2) of the Act.

Penalties

14. (1) A person who contravenes or fails to comply with any provision of these Conditions, commits an offence.
- (2) In respect of such offence a penalty, not exceeding the penalty prescribed in section 18(3)(b) of the Act, may be imposed.

Commencement

15. (1) Notice 579 of 2003, as published in *Government Gazette* No. 24984 of 28 February 2003, is hereby repealed.
- (2) This Notice comes into effect on 1 August 2003.
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