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### General Notice No. 13 of 2003.

THE LOCAL GOVERNMENTS (AMENDMENT) ACT,  
2001

Act No. 13 of 2001

Section 53

and

THE PARLIAMENTARY ELECTIONS ACT, 2001

Act No. 8 of 2001

Section 19(1)(b)

NOTICE

APPOINTMENT OF TIME AND PLACE FOR  
TALLYING OF VOTES CAST IN THE MUKONO  
LOCAL GOVERNMENT CHAIRPERSON  
BY-ELECTION, MUKONO DISTRICT

NOTICE IS HEREBY GIVEN that in exercise of the powers conferred upon the Electoral Commission by Section 19(1) (b) of the Parliamentary Elections Act, No. 8 of 2001, and subject to section 53 of the Local Governments (Amendment) Act, No. 13 of 2001, the Commission for purposes of the Local Governments Council Chairperson by-election in Mukono District:

- (a) directs that the time appointed for tallying by the Returning Officer of the number of votes given to each candidate from each polling station shall be as soon as practicable on receiving the declaration of results form in respect of each polling station within the district.

- (b) appoints the office of the District Returning Officer, Mukono District to be the place for tallying the number of votes cast in favour of each candidate from each polling station within the district.

Issued at Kampala this 7th day of January, 2003.

ENG. DR. BADRU M. KIGGUNDU,  
*Chairman, Electoral Commission.*

### General Notice No. 14 of 2003.

THE COMPANIES ACT, 1964.

(Cap. 85).

NOTICE.

Pursuant to section 20 (3) of the Companies Act notice is hereby given that JB Computing Limited has by Special Resolution passed on 10th December, 2002 and with the approval of the Registrar of Companies changed its name to JB Computing Institute Limited and that such new name has been entered in my register.

DATED at Kampala, this 9th day of January, 2003.

RITA BBANGA-BUKENYA (MRS),  
*Assistant Registrar of Companies.*

### General Notice No. 15 of 2003.

THE COMPANIES ACT, 1964.

(Cap. 85).

NOTICE.

Pursuant to section 20 (3) of the Companies Act notice is hereby given that Uganda Communications Institute Limited (By Guarantee) has by Special Resolution passed on 19th November, 2002 and with the approval of the Registrar of Companies changed its name to Uganda Institute of Information and Communications Technology and that such new name has been entered in my register.

DATED at Kampala, this 23rd day of December, 2002.

MUGOYA HUMPHREY,  
*Assistant Registrar of Companies.*

### General Notice No. 16 of 2003.

THE COMPANIES ACT, 1964.

(Cap. 85).

NOTICE.

Pursuant to section 343 (3) of the Companies Act, notice is hereby given that unless cause is shown to the contrary the name of the following company will be struck off the Register after the expiration of three months from the date of publication of this notice.

TRANS AFRICA RAILWAY CORPORATION UGANDA LIMITED

DATED at Kampala, this 16th day of December, 2002.

BEN TURYESINGURA,  
*Assistant Registrar of Companies.*

General Notice No. 17 of 2003.

**THE COMPANIES ACT, 1964.**

(Cap. 85).

**NOTICE.**

Pursuant to section 288 (4) and section 343(5) of the Companies Act notice is hereby given that Interfreight Forwarders Ltd. is struck off the Register with effect from publication of this Gazette.

DATED at Kampala, this 23rd day of December, 2002.

**BISEREKO KYOMUHENDO,**  
*Registrar of Companies.*

General Notice No. 18 of 2003.

**THE COMPANIES ACT, 1964.**

(Cap. 85).

**NOTICE.**

Pursuant to section 288 (4) and section 343(5) of the Companies Act notice is hereby given that Uganda Container Terminal Ltd. is struck off the Register with effect from publication of this Gazette.

DATED at Kampala, this 23rd day of December, 2002.

**BISEREKO KYOMUHENDO,**  
*Registrar of Companies.*

General Notice No. 19 of 2003.

**IN THE MATTER OF COMPANIES ACT CAP. 85**

**AND**

**IN THE MATTER OF THE PUBLIC ENTERPRISES  
REFORM AND DIVESTITURE STATUTE NO. 9 OF 1993**

**AND**

**IN THE MATTER OF COFFEE MARKETING BOARD  
LIMITED**

**NOTICE OF APPOINTMENT OF LIQUIDATOR**

By Special Resolution of the members of the above named Company dated 22nd October, 2002 the Official Receiver has been appointed Liquidator of the above named Company.

TAKE NOTICE that anyone having any claim whatsoever from the Company should submit such claim to the Liquidator at the address mentioned hereunder. Anyone indebted to the Company in any way is required to settle his/her debt with the Company within one month from the date of this notice.

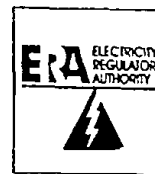
The public is hereby notified that no director, employee or other person is authorized to act in any way on behalf of the Company without written authority from the Liquidator.

Address: Plot 38 Kampala Road  
Crane Chambers 2nd Floor - Room A8  
P. O. Box 7151 Kampala  
Telephone: 345727 or 077 409013

Dated at Kampala this 17th day of December, 2002.

**BEMANYA TWEBAZE**  
*for: Official Receiver.*

General Notice No. 20 of 2003.



**OUR MISSION:**

**"PROMOTING QUALITY AND SUSTAINABLE  
ELECTRICITY SUPPLY AT EQUITABLE PRICES"**

**ELECTRICITY REGULATORY AUTHORITY P.O. BOX  
10332 KAMPALA UGANDA**

**NOTICE OF APPLICATION FOR A LICENSE FOR  
GENERATION AND SALE OF ELECTRICITY**

The Electricity Regulatory Authority has received an application for a license for generation and sale of electricity from Kasese Cohalt Company Ltd. This notice is made in accordance with S.36 of the Electricity Act of 1999.

Kasese Cohalt Company Ltd intends to generate and sell electricity to the National Grid using their existing plant on Mobuku River, Kasese District.

Interested persons are invited to obtain the details of the intended Project from the following addresses below;

The Electricity Regulatory Authority  
8th Floor Communication House  
Plot 1, Colville Street  
Tel: 041 341852/341646 Fax: 341624  
E-mail- era@africaonline.co.ug  
P.O.Box 10332 KAMPALA

The LCV Chairman's Office Kasese, District-KASESE

Under Section 36 of the 1999 Electricity Act the Electricity Regulatory Authority hereby invites parties directly affected by the project to forward written comments to the Electricity Regulatory Authority within 30 days. Interested parties must notify the ERA office about their objections in writing within 30 days from the publication of this notice.

**ENG. DR. F. B. SEBBOWA**  
*Chief Executive Officer.*

General Notice No. 21 of 2003.

**THE TRADE MARKS ACT.**

(Cap. 83).

**NOTICE.**

NOTICE IS HEREBY GIVEN that any person who has grounds to oppose the registration of any of the marks advertised herein may within sixty days from the date of this Gazette, lodge a Notice of opposition on Trade Mark Form No. 6 together with a fee of Shs. 4000 in case of National applicants or US\$ 250 in case of Foreign applicants. The period of lodging Notice of opposition may be extended in suitable cases by the Registrar as he thinks fit upon such terms as he may direct. Forms of opposition should not be lodged until after reasonable notice has been given by letter to the applicant so that he may have an opportunity to withdraw his application before the expense of opposition proceedings is incurred. Failure to give such notice will be taken into account in considering any application by the opponent for an order for costs if the opposition is uncontested by the applicant. Representations of the marks herein advertised can be inspected at the office of the Registrar of Trade Marks, Parliamentary Buildings, P.O. Box 7151, Kampala.



- (21) APPLICATION No. 25463 IN PART "A".  
 (52) Class 5.  
 (54)

## SUNRISE

- (53)  
 (59)  
 (64)  
 (57) *Nature of goods*— All goods included in class 5.  
 (73) *Name of applicant*— Fauzia Enterprises.  
 (77) *Address*—P.O. Box 29226, Kampala, Uganda.  
 (74)  
 (22) *Date of filing application*—13th January, 2003.

- (21) APPLICATION No. 24752 IN PART "A".  
 (52) Class 9.  
 (54)

## INTEL XEON

- (53)  
 (59)  
 (64)  
 (57) *Nature of goods*— Computers; computer hardware; computer workstations; notebook and laptop computers; portable computers; microcomputers; servers; computer firmware; semiconductors; microprocessors; integrated circuits; computer chipsets; computer motherboards and daughterboards; computer graphics boards; networking hardware; computer network adapters, switches, routers and hubs; computer peripherals and electronic apparatus for use with computers; keyboards; trackballs; computer mouse devices; computer input devices; monitors, video apparatus; video circuit boards; video systems products; apparatus and equipment for recording, processing, receiving, reproducing, transmitting, modifying, compressing, decompressing, broadcasting, merging and/or enhancing sound, video images, graphics, and data; algorithms for the compression and decompression of data, computer component testing and calibrating apparatus; set-top boxes; computer programs for network management; computer utility programs; computer operating system software; computer programs for recording, processing, receiving, reproducing, transmitting, modifying, compressing, decompressing, broadcasting, merging, and/or enhancing sound, video, images, graphics, and data; computer programs for web page design; computer programs for accessing and using the internet; telecommunications apparatus and instruments; apparatus and equipment for use in video-conferencing, teleconferencing, document exchange and editing; cameras; headsets; parts, fittings, and testing apparatus for all the aforesaid goods; and user manuals for use with, and sold as a unit with, all the aforesaid goods, in International Class 9.

- (73) *Name of applicant*— Intel Corporation.  
 (77) *Address*—2200 Mission College Boulevard, Santa Clara, California 95052-8119m USA.  
 (74) C/o M/s Hunter & Greig Advocates, P.O. Box 7026, Kampala.  
 (22) *Date of filing application*— 2nd April, 2002.

- (21) APPLICATION No. 24753 IN PART "A".  
 (52) Class 9.  
 (54)

## XEON

- (53)  
 (59)  
 (64)  
 (57) *Nature of goods*— Computers; computer hardware; computer workstations; notebook and laptop computers; portable computers; microcomputers; servers; computer firmware; semiconductors; microprocessors; integrated circuits; computer chipsets; computer motherboards and daughterboards; computer graphics boards; networking hardware; computer network adapters, switches, routers and hubs; computer peripherals and electronic apparatus for use with computers; keyboards; trackballs; computer mouse devices; computer input devices; monitors, video apparatus; video circuit boards; video systems products; apparatus and equipment for recording, processing, receiving, reproducing, transmitting, modifying, compressing, decompressing, broadcasting, merging and/or enhancing sound, video images, graphics, and data; algorithms for the compression and decompression of data, computer component testing and calibrating apparatus; set-top boxes; computer programs for network management; computer utility programs; computer operating system software; computer programs for recording, processing, receiving, reproducing, transmitting, modifying, compressing, decompressing, broadcasting, merging, and/or enhancing sound, video, images, graphics, and data; computer programs for web page design; computer programs for accessing and using the internet; telecommunications apparatus and instruments; apparatus and equipment for use in video-conferencing, teleconferencing, document exchange and editing; cameras; headsets; parts, fittings, and testing apparatus for all the aforesaid goods; and user manuals for use with, and sold as a unit with, all the aforesaid goods, in International Class 9.

- (73) *Name of applicant*— Intel Corporation.  
 (77) *Address*—2200 Mission College Boulevard, Santa Clara, California 95052-8119m USA.  
 (74) C/o M/s Hunter & Greig Advocates, P.O. Box 7026, Kampala.  
 (22) *Date of filing application*— 2nd April, 2002.

- (21) APPLICATION No. 25350 IN PART "A".  
 (52) Class 32.  
 (54)

## VITINGO

- (59)  
 (64)  
 (57) *Nature of goods*— All goods in class 32.  
 (73) *Name of applicant*— The Coca-Cola Company.

(77) Address—P.O. Box 1734, Atlanta, Georgia 30301, U.S.A.

(74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.

(22) Date of filing application— 11th November, 2002.

(21) APPLICATION NO. 25257 IN PART "A".  
(52) Class 32.

(54)

## PLANET COLA

(53)

(59)

(64)

(57) *Nature of goods*— Mineral and aerated waters and other non alcoholic drinks; fruit drinks and fruit juices; carbonated soft drinks; syrups and other preparations for making beverages.

(73) *Name of applicant*— The Monarch Beverage Company Inc.

(77) *Address*—The Monarch Tower, Suite 1450 3424 Peachtree Road, N.E Atlanta GA 30326, U.S.A.

(74) C/o Ms. Magezi, Ibale & Co. Advocates, P.O. Box 10969, Kampala.

(22) Date of filing application— 4th October, 2002.

(21) APPLICATION NO. 25464 IN PART "A".  
(52) Class 3.

(54)



(53) *Disclaimer*— Registration of this Trade mark shall give no right to the exclusive use of the word "BLUE", the phrases "EXTRA FOAM" and "SMART WASH" except as represented.

(59)

(64)

(57) *Nature of goods*— Soaps/detergents.

(73) *Name of applicant*— Ecotech (U) Limited.

(77) *Address*—P.O. Box 11049, Kampala.

(74)

(22) Date of filing application— 14th January, 2003.

(21) APPLICATION NO. 25465 IN PART "A".  
(52) Class 34.

(54)



(53) *Disclaimer*— Registration of this Trade mark shall give no right to the exclusive use of the words "PREMIUM QUALITY" and "SAFETY MATCH" except as represented.

(59)

(64)

(57) *Nature of goods*— Safety matches.

(73) *Name of applicant*— Royal commodities Ltd.

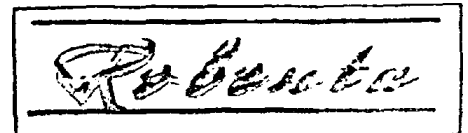
(77) *Address*—P.O. Box 27280, Kampala.

(74)

(22) Date of filing application— 14th January, 2003.

((21) APPLICATION NO. 25462 IN PART "A".  
(52) Class 3.

(54)



(53)

(59)

(64)

(57) *Nature of goods*— Cosmetics, detergents and all goods included in class 3.

(73) *Name of applicant*— Roberta Enterprises.

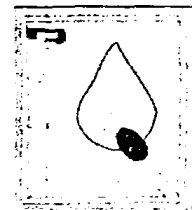
(77) *Address*—P.O. Box 5304, Kampala.

(74)

(22) Date of filing application— 8th January, 2003.

(21) APPLICATION NO. B761 IN PART "B".  
(52) Class 34.

(54)



(53) *Disclaimer*— Registration of this Trade mark shall give no right to the exclusive use of the word "FIRE" or of the word "WAX" each separately and apart from the mark.

(59)

(64)

(57) *Nature of goods*— Wax matches.

(73) *Name of applicant*— Synergy International Ltd.

(77) *Address*—P.O. Box 24544, Kampala, Uganda.

(74)

(22) Date of filing application— 10th January, 2003.

(21) APPLICATION NO. 25283 IN PART "A".  
(52) Class 16.

(54)



MAKERERE UNIVERSITY

(53) *Disclaimer*— Registration of this Trade mark shall have no right to the exclusive use of the phrase "We build for the future" except as represented.

(59)

(64)

(57) *Nature of goods*— All goods included in class 16.

- (73) *Name of applicant*— Makerere University.  
 (77) *Address*—P.O. Box 7062, Kampala, Uganda.  
 (74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7062, Kampala.  
 (22) *Date of filing application*— 16th October, 2002.

- (21) APPLICATION NO. 25248 IN PART "A".  
 (52) Class 9.  
 (54)

## BEARINGPOINT

- (59)  
 (64)  
 (57) *Nature of goods*— Computer software for designing, installing and executing mainframe and client/server application programs; for integrating the financial functions and functions for production and sales functions of a business; computer software for the management of services supporting a business; computer software for customer service.  
 (73) *Name of applicant*— Dallas Project Holdings Limited.  
 (77) *Address*—Whitepark House, White Park Road, Bridgetown, Barbados.  
 (74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.  
 (22) *Date of filing application*— 4th October, 2002.

- (21) APPLICATION NO. 25249 IN PART "A".  
 (52) Class 16.  
 (54)

## BEARINGPOINT

- (59)  
 (64)  
 (57) *Nature of goods*— Pamphlets, books, newsletters, brochures, magazines, reports, journals, manuals and guides in the field of business management, information technology and computerised information processing.  
 (73) *Name of applicant*— Dallas Project Holdings Limited.  
 (77) *Address*—Whitepark House, White Park Road, Bridgetown, Barbados.  
 (74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.  
 (22) *Date of filing application*— 4th October, 2002.

- (21) APPLICATION NO. 25256 IN PART "A".  
 (52) Class 12.  
 (54)

## PICKFORDS

- (59)  
 (64)  
 (57) *Nature of goods*— Vehicles, apparatus for locotion by land, air and water, parts and fittings.  
 (73) *Name of applicant*— Pickfords Limited.  
 (77) *Address*—Heritage House, 345 Southbury Road, Enfield, Middlesex EN1 1UP, England.  
 (74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.  
 (22) *Date of filing application*— 4th October, 2002.

- (21) APPLICATION NO. 25250 IN PART "A".  
 (52) Class 5.  
 (54)

## ARTAQ

- (59)  
 (64)  
 (57) *Nature of goods*— Pharmaceutical products, namely anti-malarials.  
 (73) *Name of applicant*— Sanofi-Synthelabo.  
 (77) *Address*—174, Avenue De France, 75013, Paris, France.  
 (74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.  
 (22) *Date of filing application*— 4th October, 2002.

- (21) APPLICATION NO. 25348 IN PART "A".  
 (52) Class 12.  
 (54)

## MATRIX

- (59)  
 (64)  
 (57) *Nature of goods*— Apparatus for locomotion by land, vehicles, including passenger cars, trucks, buses, trailers, tractors, vehicle, wheels, tires, parts and fittings for all aforesaid goods included in international class 12.  
 (73) *Name of applicant*— Hyundai Motor Company.  
 (77) *Address*—231, Yangjae-Dong, Seocho-Gu, Seoul, Coree Du Sud, Korea.  
 (74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.  
 (22) *Date of filing application*— 11th November, 2002.

- (21) APPLICATION NO. 25349 IN PART "A".  
 (52) Class 5.  
 (54)

## SPART

- (59)  
 (64)  
 (57) *Nature of goods*— Pharmaceutical products, namely anti-malarials.  
 (73) *Name of applicant*— Sanofi-Synthelabo.  
 (77) *Address*—Avenue De France, 75013, Paris, France.  
 (74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.  
 (22) *Date of filing application*— 11th November, 2002.

- (21) APPLICATION NO. 22963 IN PART "A".  
 (52) Class 17.  
 (54)

# ExxonMobil

- (59)  
 (64)  
 (57) *Nature of goods*— All goods included in this class.  
 (73) *Name of applicant*— Exxon Corporation.  
 (77) *Address*—5959 Las Colinas Boulevard, Irving, Texas 75039, 2298, U.S.A.

(74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.

(22) *Date of filing application*— 12th January, 2000.

(21) APPLICATION NO. 22965 IN PART "A".

(52) Class 4.

(54)

# ExxonMobil

(59)

(64)

(57) *Nature of goods*— All goods included in this class.

(73) *Name of applicant*— Exxon Corporation.

(77) *Address*—5959 Las Colinas Boulevard, Irving, Texas 75039, 2298, U.S.A.

(74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.

(22) *Date of filing application*— 12th January, 2000.

(21) APPLICATION NO. 22964 IN PART "A".

(52) Class 16.

(54)

# ExxonMobil

(59)

(64)

(57) *Nature of goods*— All goods included in this class.

(73) *Name of applicant*— Exxon Corporation.

(77) *Address*—5959 Las Colinas Boulevard, Irving, Texas 75039, 2298, U.S.A.

(74) C/o Ms. Hunter & Greig Advocates, P.O. Box 7026, Kampala.

(22) *Date of filing application*— 12th January, 2000.

Kampala, RITA BBANGA-BUKENYA (MRS.),  
14th January, 2003. *Assistant Registrar of Trade Marks.*

## ADVERTISEMENTS

### THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).

#### NOTICE.

#### ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Kyaggwe Block 198 Plot 40, Area 10.00 Acres at Nangwa Estate.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Temutewo Kidugavu, a special Certificate of Title under the above Block and Plot, the Certificate of Title which was originally issued having been lost.

Mukono,  
9th December, 2002.

SARAH KULATA BASANGWA,  
*for Chief Registrar of Titles.*

### THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).

#### NOTICE.

#### ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Kyaggwe Block 221 Plot 15, Area 5.26 Hectares at Nakosi.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Yozefu Mugerwa, a special Certificate of Title under the above Block and Plot, the Certificate of Title which was originally issued having been lost.

Mukono,  
29th November, 2002.

SARAH KULATA BASANGWA,  
*for Chief Registrar of Titles.*

### THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).

#### NOTICE.

#### ISSUE OF SPECIAL CERTIFICATE OF TITLE.

*Leasehold Register*—Volume 838 Folio 5, Plot No. 285, at Nsambya.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of James Oundo of P.O. Box 3641, Kampala, a special Certificate of Title under the above Volume and Folio, the Certificate of Title which was originally issued having been lost.

Kampala,  
8th October, 2002.

EDWARD KARIBWENDE,  
*for Chief Registrar of Titles.*

### THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).

#### NOTICE.

#### ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Kyadondo Block 212 Plot 406, Area 0.20 Hectares at Bukoto.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Janet Nkabidwa Mboe of P.O. Box 246, Kampala, a special Certificate of Title under the above Block and Plot, the Certificate of Title which was originally issued having been lost.

Kampala,  
13th December, 2002.

OPIO ROBERT,  
*for Chief Registrar of Titles.*

### THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).

#### NOTICE.

#### ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Kyadondo Block 244 Plot 4259, Area 1.055 Acres at Kisugu.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Intraship A.G. of P.O. Box 3954, Kampala and P.O. Box 260 CH 4106 Therwil Switzerland, a special Certificate of Title under Sections 68 of RTA and 49(3) of the CPA the Judgement Debtor having wilfully regused or neglected to deliver up the duplicate Certificate when ordered by High Court in Civil Suit No. 394 of 1999.

Kampala,  
7th January, 2003.

OPIO ROBERT,  
*for Chief Registrar of Titles.*

THE REGISTRATION OF TITLES ACT, 1964.  
(Cap. 205).

NOTICE.

ISSUE OF SPECIAL CERTIFICATE OF TITLE.

*Leasehold Register*—Volume 373 Folio 23, Plot No. 8, Walker Hill, Mbale.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Chanan Singh s/o Man Singh of P.O. Box 231, Mbale, a special Certificate of Title under the above Volume and Folio, the Certificate of Title which was originally issued having been lost.

Kampala, ROBERT V. NYOMBI,  
27th November, 2002. *for Chief Registrar of Titles.*

THE REGISTRATION OF TITLES ACT, 1964.  
(Cap. 205).

NOTICE.

ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Kibuga Block 32 Plot 182, Area 0.07 Hectares at Mutundwe.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Eddy M. Nsamba of Ntinda, Kampala Box 5734, Kampala, Uganda, a special Certificate of Title under the above Block and Plot, the Certificate of Title which was originally issued having been lost.

Kampala, OPIO ROBERT,  
28th November, 2002. *for Chief Registrar of Titles.*

THE REGISTRATION OF TITLES ACT, 1964.  
(Cap. 205).

NOTICE.

ISSUE OF SPECIAL CERTIFICATE OF TITLE.

*Leasehold Register*—Volume 291 Folio 23, Plots 16-24, Bwala Hill Road, Masaka.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of The Registered Trustees of the Indian Education Society of P.O. Box 9, Masaka, a special Certificate of Title under the above Volume and Folio, the Certificate of Title which was originally issued having been lost.

Kampala, EDWARD KARIBWENDE,  
16th January, 2003. *for Chief Registrar of Titles.*

THE REGISTRATION OF TITLES ACT, 1964.  
(Cap. 205).

NOTICE.

ISSUE OF SPECIAL CERTIFICATE OF TITLE.

*Leasehold Register*—Volume 788 Folio 12, Plots 35 and 9, Republic Way and Miro Road, Jinja.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Nile Concrete Products Limited of P.O. Box 734, Jinja, a special Certificate of Title under the above Volume and Folio, the Certificate of Title which was originally issued having been lost.

Kampala, ROBERT V. NYOMBI,  
9th January, 2003. *for Chief Registrar of Titles.*

THE BIRTHS AND DEATHS REGISTRATION ACT  
(ACT NO. 28 OF 1970)

DEED POLL-NOTICE OF CHANGE OF NAME

KNOW YE ALL PERSON by this Deed Poll, that I NSENGE PROSCOVIA JUDITH of P. O. Box 14299, Kampala, a Ugandan Citizen by birth formerly and lately known as PROSCOVIA NSENGE do hereby formally and absolutely renounce, abandon and relinquish the name of or the use of the name of PROSCOVIA NSENGE and in lieu thereof I hereby adopt and assume as from the 3rd day of December, 2002 the name of NSENGE PROSCOVIA JUDITH as my proper full name.

AND in pursuance of such change of name as aforesaid, I hereby declare that as from the said 3rd day of December 2002 and all times hereinafter in all actions, deeds, records and proceedings as well as in all dealings, transactions and matters and all occasion whatsoever the said name of NSENGE PROSCOVIA JUDITH shall be used and subscribed in lieu of my former name of PROSCOVIA NSENGE.

AND I HEREBY authorize and require all persons whoever so describe me, designate me and address me at all times by such assumed and adopted name of NSENGE PROSCOVIA JUDITH.

IN WITNESS whereof I have hereto subscribed and signed my adopted and assumed name of NSENGE PROSCOVIA JUDITH.

Declared at Kampala this 4th day of December, 2002 by the said

NSENGE PROSCOVIA JUDITH  
*Renouncer.*

IN THE CHIEF MAGISTRATE'S COURT OF  
MUBENDE AT KAWERI  
PROBATE/LETTERS OF ADMINISTRATION WITH/  
WITHOUT A WILL ANNEXED  
(The Administration of Estates (Small Estates) Probate and  
Administration Rules, 1972)

ADMINISTRATION CAUSE No. 02 OF 2003.

In the Matter of the Estate of the Late Dick Wittington  
Kyewalabye formerly of Masiriba, Bukomero, Kiboga District.  
and

In the Matter of an application for Letters of Administration  
by Fred Kiwalabye (Son of the deceased) of both Masiriba  
Bukomero, Kiboga District and Kiyudaya, Mityana Town  
Council, Mubende District.

NOTICE OF APPLICATION

TO WHOM IT MAY CONCERN

TAKE NOTICE that an application for Letters of Administration for the property of the late Dick Wittington Kyewalabye has been lodged to this Court by Fred Kiwalabye (son) of the deceased.

This court will proceed to grant the application, if within 14 days from the date of publication of this notice, no caveat to the contrary thereof is lodged with this Court.

Signed and Sealed at Mityana this 17th day of January, 2003.

JOHN AGABA,  
*Acting Chief Magistrate.*



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**STATUTORY INSTRUMENTS  
SUPPLEMENT No. 2**

**17th January, 2003**

**STATUTORY INSTRUMENTS SUPPLEMENT**

*to The Uganda Gazette No. 3 Volume XCVI dated 17th January, 2003.*

Printed by UPPC, Entebbe, by Order of the Government.

**STATUTORY INSTRUMENTS .**

**2003 No. 2.**

**The External Trade (Importation Licence) Order, 2003.**

*(Made under section 5A of the External Trade Act, Cap. 103)*

IN EXERCISE of the powers conferred upon the Minister by section 5A of the External Trade Act, this Order is made this 18th day of November, 2002. Cap. 103.

1. This Order may be cited as the External Trade (Importation Licence) Order, 2003. Citation.

2. (1) The person listed in column 1 of the Schedule to this Order is granted exclusive licence to import used tyres of different sizes in the quantities listed in column 2 of the Schedule. Grant of exclusive licence.

(2) The exclusive licence referred to in sub-paragraph (1) shall be valid for the one year only and if the licence expires before a person has imported the number of used tyres authorised by the licence, that person shall forfeit the balance of the tyres not imported.

**SCHEDULE.**

Column 1	Column 2
<i>Name of person</i>	<i>Quantity of used tyres</i>
1. M/s Monica Bossa P. O. Box 25589, Kampala.	350 pcs.

**PROF. EDWARD B. RUGUMAYO,**  
*Minister of Tourism, Trade and Industry*



STATUTORY INSTRUMENTS SUPPLEMENT

to The Uganda Gazette No. 3 Volume XCVI dated 17th January, 2003.

Printed by UPPC, Entebbe, by Order of the Government.

STATUTORY INSTRUMENTS.

2003 No. 3.

**The Amnesty Act (Extension of Expiry Period)  
Instrument, 2003.**

*(Under section 17 of the Amnesty Act, 2000, Act No. 2 of 2000).*

IN EXERCISE of the powers conferred upon the Minister by section 17 of the Amnesty Act, this Instrument is made this 15th day of January, 2003.

1. (1) This Instrument may be cited as the Amnesty Act (Extension of Expiry Period) Instrument, 2003.

Citation and  
commence-  
ment.

(2) This Instrument shall come into force on the 18th day of January, 2003.

2. The expiry period of the Amnesty Act, 2000 is extended for a period of six months.

Extension  
of expiry  
period.

ERIYA KATEGAYA,  
*1st Deputy Prime Minister/Minister of Internal Affairs.*

ACTS SUPPLEMENT

to The Uganda Gazette No. 3 Volume XCV dated 17th January, 2003.

Printed by UPPC, Entebbe, by Order of the Government.

Act 1

*Public Procurement and Disposal  
of Public Assets Act*

2003

THE PUBLIC PROCUREMENT AND DISPOSAL OF  
PUBLIC ASSETS ACT, 2003

ARRANGEMENT OF SECTIONS.

PART I—PRELIMINARY

*Section.*

1. Short title and date of commencement.
2. Application of the Act.
3. Interpretation.
4. International obligations.

PART II—THE PUBLIC PROCUREMENT AND DISPOSAL  
OF PUBLIC ASSETS AUTHORITY.

5. Establishment of the Authority.
6. Objectives of the Authority.
7. Functions of the Authority.
8. Powers of the Authority.
9. Action on recommendations of the Authority.
10. Establishment of the Board of Directors.
11. Composition of the Board.
12. Conditions of service of the Board members.
13. Tenure of Board members.
14. Meetings of the Board.
15. Committees of the Board.
16. Termination of office of Board members.
17. Appointment and functions of the Executive Director of the Authority.
18. Other staff of the Authority.



## Section.

19. Funds of the Authority.
20. Management plan and budget.
21. Accounts and audit.
22. Reporting.
23. Internal audits and periodic audit reports.

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24. Composition of procuring and disposing entities.
25. Powers of a procuring and disposing entity.
26. Accounting Officer.
27. Composition of a Contracts Committee.
28. Functions of a Contracts Committee.
29. Powers of a Contracts Committee.
30. Composition of a Procurement and Disposal Unit.
31. Functions of a Procurement and Disposal Unit.
32. Powers of a Procurement and Disposal Unit.
33. Disagreement between a Contracts Committee and a Procurement and Disposal Unit.
34. Functions of the User Department.
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36. Disagreement between Procurement and Disposal Unit and User Department.
37. Evaluation Committee.
38. Independence of functions and powers.
39. Delegation of powers by the Accounting Officer.
40. Third party procurement and disposal.
41. Records of a procuring and disposing entity.
42. Defence and National Security Organs.

## PART IV—BASIC PROCUREMENT AND DISPOSAL PRINCIPLES.

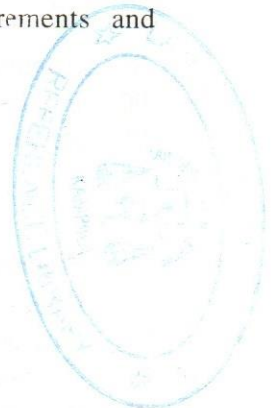
43. Application of the basic principles of public procurement and disposal.
44. Non-discrimination.
45. Transparency, accountability and fairness.
46. Competition.

*Section.*

47. Confidentiality.
48. Economy and efficiency.
49. Ethics.
50. Preference and reservation.
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54. Publication of opportunities and information.

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58. Procurement and disposal planning.
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60. Statements of requirements.
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*Section.*

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1. First Schedule—Currency point.
2. Second Schedule—Standard Declaration Form.
3. Third Schedule—Composition of a Contracts Committee.
4. Fourth Schedule—Conditions for use of procurement methods.
5. Fifth Schedule—Code of Ethical Conduct in Business.

**THE PUBLIC PROCUREMENT AND DISPOSAL OF  
PUBLIC ASSETS ACT, 2003.**

**An Act to establish the Public Procurement And Disposal of Public Assets Authority to formulate policies and regulate practices in respect of public procurement and disposal activities and other connected matters.**

DATE OF ASSENT: 19th December, 2002.

*Date of commencement:* (See Section 1(2)).

BE IT ENACTED by Parliament as follows:

**PART I—PRELIMINARY.**

**1. (1) This Act may be cited as the Public Procurement And Disposal of Public Assets Act, 2003.**

Short title  
and  
commence-  
ment.

**(2) This Act shall commence on a day appointed by the Minister by statutory instrument.**

**2. (1) This Act shall apply to all public procurement and disposal activities and in particular shall apply to—**

Application  
of the Act.



(a) all public finances—

(i) originating from the Consolidated Fund and related special finances expended through the capital or recurrent budgets, whatever form these may take;

(ii) that may be earmarked for external obligation purposes, except those resources that may be earmarked for payments of membership subscriptions and contributions; and

(iii) of a procuring and disposing entity;

(b) resources in the form of counterpart transfers or co-financing or any finances of a similar nature within the context of development co-operation agreements for the implementation of national programmes; and

(c) procurement or disposal of works, services, supplies or any combination however classified by—

(i) entities of Government within and outside Uganda; and

(ii) entities, not of Government, but which benefit from any type of specific public funds specified in paragraph (a) of this sub-section.

(2) Any dispute arising from the application of this Act shall be referred to the Authority for its decision following procedures to be prescribed by regulations made under this Act.

3. In this Act, unless the context otherwise requires—

“Accounting Officer” means the Accounting Officer of a procuring and disposing entity so appointed by the Secretary to the Treasury, and for the avoidance of doubt includes the Accounting Officer of a Local Government or a statutory body;

“Authority” means the Public Procurement and Disposal of Public Assets Authority established in section 5 of this Act;

“award” means a decision by a Tender Board established under the Local Governments Act, 1997 or Contracts Committee provided for in paragraph (b) of section 24, or any other subsidiary body of a procuring and disposing entity to which a Contracts Committee or a Tender Board may delegate powers of adjudication and award within a specified financial threshold, to determine the successful bidder;

“best practices” means the industry standards defined in this Act;

“bid” means an offer to provide or to acquire works, services or supplies or any combination thereof, and shall include pre-qualification where applicable;

“bidder” means a physical or artificial person intending to participate or participating in public procurement or disposal proceedings;

“bidding documents” means solicitation documents;

“Bid Notice” means any advertisement by which eligible providers are invited to submit written offers to provide or acquire works, services and supplies, or any combination of them in case of procurement and disposal respectively;

“contract” means an agreement between a procuring and disposing entity and a provider, resulting from the application of the appropriate and approved procurement or disposal procedures and proceedings as the case may be, concluded in pursuance of a bid award decision of a Contracts Committee or any other appropriate authority;

“Contracts Committee” is the committee provided for under Part III of this Act;

“Contractor” means a provider as defined in this Act;

“corrupt practice” includes the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

“currency point” has the meaning assigned to it in the First Schedule;

“Defence and National Security organs” means Uganda Peoples’ Defence Forces, Uganda Police Force, Uganda Prisons Service, Intelligence Services and National Security Council;

“disposal” means the divestiture of public assets, including intellectual and proprietary rights and goodwill, and any other rights of a procuring and disposing entity by any means, including sale, rental, lease, franchise, auction, or any combination however classified other than those regulated by the Public Enterprise Reform and Divestiture Statute, 1993;

“disposal process” means the successive stages in the disposal cycle, including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers and award of contract;

“emergency” means circumstances which are urgent, unforeseeable and not caused by dilatory conduct;

“foreign provider” means a provider whose business is not registered in Uganda;



“fraudulent practice” includes a misrepresentation of facts in order to influence a procurement or disposal process or the execution of a contract to the detriment of the procuring or disposing entity, and includes collusive practices among bidders prior to or after bid submission designed to establish bid prices at artificial non-competitive levels and to deprive the procuring and disposing entity of the benefits of free and open competition;

“guidelines” means directives issued by the Authority under section 97 of this Act;

“industry standards” means those standards defined and codified by internationally recognized providers’ associations and professional bodies in the respective fields and includes best practices;

“listed provider” means a provider registered by the Authority in accordance with this Act;

“Minister” means the Minister responsible for Finance;

“national provider” means a provider registered in Uganda and wholly owned and controlled by Ugandans;

“pre-qualification” means a screening process designed to ensure that invitations to bid are confined to capable providers;

“procurement” means acquisition by purchase, rental, lease, hire purchase, licence, tenancy, franchise, or any other contractual means, of any type of works, services or supplies or any combination;

“Procurement and Disposal Unit” means a division in each procuring and disposing entity responsible for the execution of the procurement and disposal function;

“procurement process” means the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award of contract, and contract management;



“procuring and disposing entity” means a statutory body, department of the central government, local government and any other body or unit established and mandated by government to carry out public functions;

“provider” means a natural person or an incorporated body including a consultant, contractor or supplier licensed by a competent authority to undertake business activities;

“public funds” means monetary resources appropriated to procuring and disposing entities through budgetary processes, including the Consolidated Fund, grants and credits put at the disposal of the procuring and disposing entities by foreign donors; and revenues generated by the procuring and disposing entities;

“resident provider” means a provider registered in Uganda who is not a national provider;

“services” means any object of procurement or disposal other than works and supplies, and includes professional, non professional and commercial types of services as well as supplies and works which are incidental to, but not exceeding the value of those services;

“specifications” means the description of an object of procurement or disposal in accordance with national and international standards adopted and approved by the Authority, after consultation with the National Bureau of Standards, or other appropriate trade associations and professions, the use of which shall be mandatory in all bidding documents;

“solicitation documents” means bidding documents or any other documents inviting bidders to participate in procurement or disposal proceedings; and includes documents inviting potential bidders to pre-qualify, and standard bidding documents;

“supplies” means goods, raw materials, products, equipment or objects of any kind and description in solid, liquid or gaseous form, or in the form of electricity, or intellectual and proprietary rights as well as works or services incidental to the provision of those supplies where the value of the works or services does not exceed the value of the supplies;

“tender” means “bid”;

“User Department” means any department, division, branch or section of the procuring and disposing entity, including any project unit working under the authority of the procuring and disposing entity, which initiates procurement and disposal requirements and is the user of the requirements; and

“works” means any work associated with the construction, reconstruction, demolition, repair, or renovation of a building or structure, on the surface or underground, on and underwater, and includes the preparation, excavation, erection, assembly, installation, testing and commissioning of any plant, equipment or materials, decoration and finishing, turnkey projects, build own and operate projects, build operate and transfer projects or any arrangement of this nature, or any other form of private and public partnerships or joint development activities, all or any of which may include management, maintenance, testing, commissioning and training; as well as supplies or services incidental to those works where the value of the incidental supplies or services does not exceed the value of the works.

International  
obligations.

4. (1) Where this Act conflicts with an obligation of the Republic of Uganda arising out of an agreement with one or more states, or with an international organization, the provisions of the agreement shall prevail over this Act.

(2) Where an agreement referred to in this section contains a preference or preferences in favour of national and resident providers, a procuring and disposing entity shall ensure that the applicable preference or preferences are clearly stated in the bidding documents.

PART II—THE PUBLIC PROCUREMENT AND DISPOSAL  
OF PUBLIC ASSETS AUTHORITY.

Establish-  
ment of the  
Authority.

5. (1) There is established an autonomous body to be known as the “Public Procurement and Disposal of Public Assets Authority”, in this Act referred to as the “Authority”.

(2) The Authority shall be a body corporate with perpetual succession and a common seal, and shall be capable of suing and being sued in its corporate name and, subject to this Act, may borrow money, acquire and dispose of property, and do all other things a body corporate may lawfully do.

(3) The application of the seal of the Authority on any document shall be authenticated by the signatures of the Chairperson and the Executive Director, and in the absence of the Chairperson, by any two members of the Board, and the Executive Director.

(4) Every document purporting to be an instrument issued by the Authority, sealed with the seal of the Authority and authenticated in accordance with subsection (3), shall be deemed to be an instrument of the Authority and shall be received in evidence without further proof.

Objectives  
of the  
Authority.

6. The objectives of the Authority are to—



- (a) ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement and disposal standards and practices;
- (b) harmonize the procurement and disposal policies, systems and practices of the Central Government, Local Governments and statutory bodies;
- (c) set standards for the public procurement and disposal systems in Uganda;
- (d) monitor compliance of procuring and disposing entities; and
- (e) build procurement and disposal capacity in Uganda.

7. The functions of the Authority are to—

- (a) advise Central Government, Local Governments and statutory bodies on all public procurement and disposal policies, principles and practices;
- (b) monitor and report on the performance of the public procurement and disposal systems in Uganda and advise on desirable changes;
- (c) set training standards, competence levels, certification requirements and professional development paths in consultation with competent authorities;
- (d) prepare, update and issue authorized versions of the standardized bidding documents, procedural forms and any other attendant documents to procuring and disposing entities;
- (e) ensure that any deviation from the use of the standardized bidding documents, procedural forms and any other attendant documents is effected only after the prior, written approval of the Authority;
- (f) issue guidelines under section 97 of this Act;

Functions of  
the  
Authority.

- (g) organize and maintain a system for the publication of data on public procurement and disposal opportunities, awards and any other information of public interest as may be determined by the Authority;
- (h) maintain a register of providers of works, services and supplies;
- (i) conduct periodic inspections of the records and proceedings of the procuring and disposing entities to ensure full and correct application of this Act;
- (j) institute—
  - (i) procurement or disposal audits during the bid preparatory process;
  - (ii) contract audits in the course of the execution of an awarded bid; and
  - (iii) performance audit after the completion of the contract in respect of any procurement or disposal, as may be required;
- (k) adopt, adapt and update common specifications standards, the use of which shall be mandatory for all procuring and disposing entities;
- (l) determine, develop, introduce, maintain and update related system-wide data-bases and technology;
- (m) develop policies and maintain an operational plan on capacity building, both for institutional and human resource development;
- (n) agree on a list, which shall be reviewed annually, of works, services and supplies in common use by more than one procuring and disposing entity which may be subject to common procurement or disposal;

- (o) establish and maintain institutional linkages with entities with professional and related interest in public procurement and disposal;
- (p) undertake procurement and disposal research and surveys nationally and internationally;
- (q) undertake any activity that may be necessary for the execution of its functions; and
- (r) administer and enforce compliance with all the provisions of this Act, regulations and guidelines issued under this Act.

8. In the exercise of its regulatory functions, the Authority shall have the power to---

Powers of  
the  
Authority.

- (a) require any information, documents, records and reports in respect of any aspect of the public procurement and disposal process where a breach, wrongdoing, mismanagement or collusion has been alleged, reported or proven against any procuring and disposing entity or provider;
- (b) summon witnesses, call for the production of books of accounts, plans, documents, and examine witnesses and parties concerned on oath;
- (c) commission or undertake investigations and institute procurement or disposal contract and performance audits;
- (d) cause to be inspected any procurement or disposal transaction to ensure compliance with a bid award by a procuring and disposing entity;
- (e) act upon complaints by procuring and disposing entities, providers and any other entity or person in respect of any party to a procurement or disposal activity in accordance with the procedure set out in Part VII of this Act.



Action on  
recommend  
ations of the  
Authority.

9. (1) The Authority may recommend to the competent authority, where there are persistent or serious breaches of this Act or regulations or guidelines made under this Act—

(a) the suspension of officers concerned with the procurement or disposal process in issue;

(b) the replacement of the head of a Procurement and Disposal Unit or the Chairperson of a Contracts Committee as the case may be;

(c) the disciplining of the Accounting Officer; or

(d) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency.

(2) A competent authority shall respond in writing to the Authority's recommendations under subsection (1) within a period prescribed by regulations made under this Act.

(3) Where the competent authority rejects the Authority's recommendations under subsection (1), the Authority shall—

(a) communicate its recommendations and all related supporting documentation to the relevant law enforcement and oversight agencies for their action; and

(b) request for any other appropriate action within the power of the competent authority.

(4) The competent authority shall respond in writing to the Authority's recommendations within a period to be specified in regulations made under this Act, on the precise action taken on the Authority's recommendation, or give an explanation if no action is deemed necessary.

(5) The Authority shall, in its Annual Performance Evaluation Report include—

- (a) its audited findings and complaints investigated;
- (b) its recommended corrective measures in each case;
- (c) the response of the—
  - (i) respective competent authority;
  - (ii) relevant law enforcement and oversight agencies.
- (d) any remedial measures taken.

**10.** (1) There is established a Board of Directors of the Authority, in this Act referred to as the “Board” which shall execute the functions and powers of the Authority specified in sections 7 and 8 of this Act.

Establishment of the Board of Directors.

(2) Notwithstanding the provisions of subsection (1), the Board shall be responsible for—

- (a) the formulation of policy of the Authority; and
- (b) the approval of the budget of the Authority.

**11.** (1) The Board shall be composed of—

- (a) a non - executive chairperson;
- (b) not less than four and not more than six non-executive members; and
- (c) the Executive Director of the Authority.

Composition of the Board.

(2) The Chairperson and the non-executive members mentioned in paragraphs (a) and (b) respectively, of subsection (1), shall be appointed by the Minister, in consultation with Cabinet from a multi-sectoral professional background.

(3) Members of the Board shall be appointed from among persons in good standing in society and recognized for their high levels of professional competence and integrity.



Conditions  
of service of  
the Board  
members.

12. The Minister, in consultation with Cabinet, shall determine the terms and conditions of service of the members of the Board save for the Executive Director.

Tenure of  
Board  
members.

13. The tenure of the Board members save for the Executive Director shall be four years and they may be reappointed for only one further term.

Meetings of  
the Board.

14. (1) The Board shall meet as often as is necessary for the proper discharge of its functions but, in any event, not less than once in two months.

(2) In the absence of the Chairperson, the Executive Director shall call the meetings and the members present shall elect, from among their number, an acting Chairperson.

(3) The quorum of the Board shall be four members; except that when a member has declared an interest in an agenda item, or in a matter before the Board, the member in question shall not be counted for the purpose of forming a quorum in relation to the item or matter in question.

(4) A member, on receiving the agenda of the meeting of the Board, or on notification of a matter being brought to the attention of the Board shall—

(a) sign a declaration form in the Second Schedule, indicating whether he or she has, or intends to acquire, a direct or indirect personal interest in any agenda item or specific matter requiring the Board's consideration and decision; and

(b) where such an interest exists, not participate in the deliberations or decision-making process of the Board in relation to the agenda item or the matter in question.

(5) The decision of the Board shall be by a majority of votes, and where there is an equality of votes, the Chairperson shall have a casting vote.

(6) The proceedings of each meeting of the Board shall be confirmed at the next meeting of the Board.

(7) Subject to this Act and regulations made under this Act, the Board shall regulate its procedure in the conduct of its business.

15. (1) The Board may establish—

Committees  
of the  
Board.

(a) a Complaints Review Committee which shall handle complaints from providers and any other interested parties arising out of the execution of the procurement or disposal function by the procuring and disposing entities;

(b) an Advisory Committee which shall review the performance of the Authority, the procuring and disposing entities and the Complaints Review Committee; and

(c) any other committee that may be necessary for the better carrying out of the functions of the Authority.

(2) The Board shall determine the terms of reference of the committees, their composition and, in consultation with the Minister, their terms and conditions of service.

16. (1) The Minister may, at any time, terminate the appointment of a member of the Board other than the Executive Director for—

Termination  
of office of  
Board  
members.

(a) abuse of office;

(b) corruption;

(c) incompetence;

- (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
- (e) failure to attend three consecutive scheduled Board meetings without reasonable grounds;
- (f) conviction of an offence involving moral turpitude;
- (g) being adjudged bankrupt by a court of law; and
- (h) any other reasonable ground.

(2) Any member of the Board other than the Executive may resign from the Board by giving not less than one month's prior notice in writing.

Appoint-  
ment and  
functions of  
the  
Executive  
Director of  
the  
Authority.

17. (1) The Board shall appoint an Executive Director on contract for three years, renewable for only one further term, and on terms and conditions to be specified in his or her instrument of appointment.

(2) Subject to the general supervision and direction of the Board, the Executive Director, who shall be the Accounting Officer of the Authority, shall be responsible for the—

- (a) management and operations of the Authority;
- (b) management of the funds, property and business of the Authority;
- (c) administration, organization and control of the officers and staff of the Authority; and
- (d) promoting, training and disciplining of the officers and staff of the Authority in accordance with their terms and conditions of appointment.

(3) The Executive Director shall not engage in any business, profession, occupation or paid employment elsewhere.



(4) The Board may terminate the appointment of the Executive Director for—

- (a) abuse of office;
- (b) corruption;
- (c) incompetence;
- (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
- (e) failure to attend three consecutive board meetings without reasonable grounds;
- (f) conviction of an offence involving moral turpitude;
- (g) being adjudged bankrupt by a court of law; or
- (h) any other reasonable ground.

**18.** (1) The Board shall appoint a Secretary to the Board, to perform such functions as shall be determined by the Board on terms and conditions to be specified in his or her instrument of appointment.

Other staff  
of the  
Authority.

(2) The Executive Director, on directive by the Board, shall appoint other staff as may be required for the performance of the functions of the Authority on terms and conditions of service determined by the Authority.

**19.** (1) The funds of the Authority shall consist of—

Funds of the  
Authority.

- (a) money appropriated by Parliament for the purposes of the Authority;
- (b) loans or grants received by the Authority for its activities; and
- (c) revenues collected from services that are rendered by the Authority.

(2) The Authority shall open and maintain bank accounts in banks approved by the Board.

Manage-  
ment plan  
and budget.

20. (1) The Executive Director shall, not later than three months before the end of each financial year, prepare and submit to the Board an Annual Management Plan which shall include a budget for its approval for the next financial year.

(2) The Executive Director may, at any time before the end of a financial year, prepare and submit to the Board for approval any estimates supplementary to the budget of the current financial year.

(3) No expenditure shall be made out of the funds of the Authority unless that expenditure is part of the expenditure approved by the Board under the estimates for the fiscal year in which the expenditure is to be incurred, or in the supplementary budget for that year.

Accounts  
and audit.

21. (1) The Authority shall keep proper books of accounts and records of all its transactions.

(2) The annual accounts of the Authority shall be audited by the Auditor-General.

Reporting.

22. (1) The Authority shall, within three months after the end of each financial year, submit to—

(a) the Minister an Annual Performance Evaluation Report in respect of that year's activities consisting of—

(i) financial statements and the Annual Management Plan;

(ii) an evaluation of the operations of the Authority and the procuring and disposing entities; and

(iii) any other information the Board may direct; and

(b) the Auditor-General—

- (i) the accounts of the Authority for the financial year; and
- (ii) the Annual Performance Evaluation Report referred to in paragraph (a).

(2) The Minister shall lay before Parliament the Annual Performance Evaluation Report within two months from the date of his or her receiving the report, or at the next sitting of Parliament, whichever comes first.

(3) The Auditor-General shall submit the Audited Report to Parliament within four months from the date of receiving the accounts.

**23.** (1) In addition to any other functions assigned to him or her by the Board or the Executive Director, the Head of Internal Audit shall be responsible for the internal auditing of the Authority's accounts and shall submit to the Executive Director a report in respect of every three months' period of a financial year.

Internal  
audits and  
periodic  
audit  
reports.

(2) The Executive Director shall submit every report referred to in sub-section (1) to the Board for its consideration at the next meeting of the Board after the Executive Director received the report.

### PART III—PROCURING AND DISPOSING ENTITIES.

**24.** For the purpose of this Act, a procuring and disposing entity shall be composed of—

- (a) an Accounting Officer defined in section 3;
- (b) the Tender Boards in the case of Local Governments mentioned in sections 92 to 95 of the Local Governments Act of 1997, and a Contracts Committee in all other cases;
- (c) a Procurement and Disposal Unit;

Composition  
of procuring  
and  
disposing  
entities.



- (d) a User Department as defined in section 3; and
- (e) an Evaluation Committee.

Powers of a  
procuring  
and  
disposing  
entity.

**25.** (1) A procuring and disposing entity shall be responsible for the management of all procurement and disposal activities within its jurisdiction in accordance with this Act, regulations and guidelines made under this Act.

(2) Notwithstanding the provisions of subsection (1) the Authority shall contract out its procurement and disposal activities, except micro procurement or disposal activities.

Accounting  
Officer.

**26.** The Accounting Officer of a procuring and disposing entity shall have overall responsibility for the execution of the procurement and disposal process in the procuring and disposing entity, and in particular, shall be responsible for—

- (a) establishing a Contracts Committee in accordance with this Act;
- (b) appointing the members of a Contracts Committee specified in the Third Schedule;
- (c) causing to be established a Procurement and Disposal Unit staffed at an appropriate level;
- (d) advertising bid opportunities;
- (e) communicating award decisions;
- (f) certifying the availability of funds to support the procurement or disposal activities;
- (g) signing contracts for procurement or disposal activities on behalf of the procuring and disposing entity;
- (h) investigating complaints by providers;
- (i) submitting a copy of any complaints and reports of the findings to the Authority; and

- (j) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award.

27. (1) Subject to sub-section (2), a Contracts Committee shall be composed of the members specified in the Third Schedule.

Composition  
of a  
Contracts  
Committee.

(2) The Members of the Contracts Committee shall be nominated by the Accounting Officer and approved by the Secretary to the Treasury.

(3) A Contracts Committee may co-opt advisers to assist it in the discharge of its functions.

(4) The Accounting Officer shall inform the Authority of the composition of the Contracts Committee and the qualifications of its members not later than fourteen days from the date of its appointment.

(5) Members of the Contracts Committee shall be appointed with regard to their technical competence and skills required for the discharge of the functions of the Contracts Committee.

(6) The tenure of the members of the Contracts Committee shall be three years and a member may be re-appointed for only one further term.

28. A Contracts Committee shall be responsible for—

Functions of  
a Contracts  
Committee.

- (a) adjudication of recommendations from the Procurement and Disposal Unit and award of contracts;
- (b) approving the Evaluation Committee;
- (c) approving bidding and contract documents;
- (d) approving procurement and disposal procedures;



- (e) ensuring that best practices in relation to procurement and disposal are strictly adhered to by procuring and disposing entities;
- (f) ensuring compliance with this Act; and
- (g) liaising directly with the Authority on matters within its jurisdiction.

Powers of a  
Contracts  
Committee.

**29. A Contracts Committee shall—**

- (a) authorize—
  - (i) the choice of a procurement and disposal procedure;
  - (ii) solicitation documents before issue;
  - (iii) technical, financial or combined evaluation reports;
  - (iv) contract documentation in line with the authorised Evaluation Report; and
  - (v) any amendment to an awarded contract;
- (b) recommend for the delegation of a procurement or disposal function by the Accounting Officer whenever the necessity arises; and
- (c) award contracts in accordance with applicable procurement or disposal procedures as the case may be.

Composition  
of a  
Procurement  
and  
Disposal  
Unit.

**30. A procuring and disposing entity shall cause to be established a Procurement and Disposal Unit staffed at an appropriate level.**

Functions of  
a Procure-  
ment and  
Disposal  
Unit.

**31. A Procurement and Disposal Unit shall—**

- (a) manage all procurement or disposal activities of the procuring and disposing entity except adjudication and the award of contracts;

- (b) support the functioning of the Contracts Committee;
- (c) implement the decisions of the Contracts Committee;
- (d) liaise directly with the Authority on matters within its jurisdiction;
- (e) act as a secretariat to the Contracts Committee;
- (f) plan the procurement and disposal activities of the procuring and disposing entity;
- (g) recommend procurement and disposal procedures;
- (h) check and prepare statements of requirements;
- (i) prepare bid documents;
- (j) prepare advertisements of bid opportunities;
- (k) issue bidding documents;
- (l) maintain a providers list;
- (m) prepare contract documents;
- (n) issue approved contract documents;
- (o) maintain and archive records of the procurement and disposal process;
- (p) prepare monthly reports for the Contracts Committee;
- (q) co-ordinate the procurement and disposal activities of all the departments of the procuring and disposing entity;
- (r) prepare any other such reports as may be required from time to time.

32. A Procurement and Disposal Unit shall have the powers  
to—

Powers of a  
Procurement  
and  
Disposal  
Unit.

- (a) recommend the composition of evaluation committees for the approval of the Contracts Committee;
- (b) contract independent advice as may be necessary in the discharge of its functions;
- (c) ensure compliance with this Act, regulations and guidelines made under this Act, and best practices;
- (d) manage bid proposals and pre-qualification submissions and make recommendations on them to the Contracts Committee;
- (e) provide bid clarifications; and
- (f) receive bids.

Disagree-  
ment  
between a  
Contracts  
Committee  
and a  
Procurement  
and Disposal  
Unit.

**33.** (1) Where a Contracts Committee disagrees with the recommendations of a Procurement and Disposal Unit, it may—

- (a) return the submission to the Procurement and Disposal Unit for review giving written reasons for its disagreement; or
- (b) request for independent advice from the Authority.

(2) Where a Procurement and Disposal Unit disagrees with the views of the Contracts Committee on its recommendations under subsection (1), it may request for independent advice from the Authority.

(3) A party seeking for advice from the Authority under subsections (1) and (2) shall state in writing the reasons for its disagreement.

Functions of  
the User  
Department.

**34.** (1) The User Department of a Procuring and Disposing Entity shall perform the following functions—

- (a) liaise with and assist the Procurement and Disposal Unit throughout the procurement or disposal process to the point of contract placement;



- (b) initiate procurement and disposal requirements and forward them to the Procurement and Disposal Unit;
- (c) propose technical inputs to statements of requirements for procurement requirements to the Procurement and Disposal Unit;
- (d) propose technical specifications to the Procurement and Disposal Unit when necessary;
- (e) input with technical evaluation of Bids received as required by the Procurement and Disposal Unit;
- (f) arrange for payments to providers;
- (g) report any departure from the terms and conditions of an awarded contract to the Procurement and Disposal Unit;
- (h) forward details of any required contract amendments to the Procurement and Disposal Unit for action;
- (i) maintain and archive records of contracts management; and
- (j) prepare any reports required for submission to the Procurement and Disposal Unit, the Committee or the Accounting Officer.

(2) The User Department shall prepare a work plan for procurement based on the approved budget, which shall be submitted to the Procurement and Disposal Unit for implementation when required.

**35.** In the exercise of its functions a User Department shall—

Powers of  
the User  
Department

- (a) initiate procurement and disposal requirements;
- (b) recommend Statements of Requirements to the Procurement and Disposal Unit;

- (c) undertake conformity assessments;
- (d) issue change orders in accordance with the terms and conditions of the contract; and
- (e) certify invoices for payments to providers.

Disagree-  
ment  
between a  
Procure-  
ment and  
Disposal  
Unit and a  
User  
Department.

**36.** (1) Where a Procurement and Disposal Unit disagrees with a User Department concerning any decision pertaining to the application or interpretation of any procurement method, process or practice, the two parties may jointly consult with any two members of the Contracts Committee for a review and guidance in resolving the disagreement.

(2) Where such review fails to resolve the disagreement, either party may forward the cause of the disagreement as a submission to the Contracts Committee for a formal decision by the Contracts Committee.

Evaluation  
Committee.

**37.** (1) All evaluations shall be conducted by an Evaluation Committee, which shall report to the Procurement and Disposal Unit.

(2) The membership of the Evaluation Committee shall be recommended by Procurement and Disposal Unit, in accordance with Regulations made under this Act, and approved by the Contracts Committee.

(3) The number of the members of the Evaluation Committee shall depend on the value and complexity of the procurement requirement, but shall in all cases be a minimum of three members.

(4) The members shall be of an appropriate level of seniority and experience, depending on the value and complexity of the procurement requirement.

(5) Members of the Evaluation Committee may be external to the Procuring and Disposing Entity, where the required skills or experience are not available within the Procuring and Disposing Entity or where members are indisposed or have a conflict of interest.

(6) All members of the Evaluation Committee shall sign the Code of Ethics provided under the regulation made under this Act, declaring that they do not have a conflict of interest in the procurement requirement.

(7) The meetings of the Evaluation Committee, the conduct of the evaluation and the evaluation methodologies shall be executed in accordance with the regulation made under this Act.

38. Subject to the provisions of this Act, the Accounting Officer, the Contracts Committee, the Procurement and Disposal Unit, the User Department and the Evaluation Committee shall act independently in relation to their respective functions and powers.

Inde-  
pendence of  
functions  
and powers.

39. An Accounting Officer may delegate the procurement or disposal function of the procuring and disposing entity to—

Delegation  
of powers  
by the  
Accounting  
Officer.

- (a) a sub-division of that entity; or
- (b) another procuring and disposing entity; or
- (c) a third party procurement agency,

in accordance with the terms and conditions specified in regulations made under this Act.

40. (1) Where it is deemed that there is lack of technical capacity, and subject to guidelines and prior approval of the Authority, a procuring and disposing entity may engage third party procurement and disposal services.

Third party  
procurement  
and  
disposal.

(2) On deciding to invite third party procurement services, a procuring and disposing entity shall—

- (a) secure prior written assurance of the Accounting Officer that funds are available to pay in full and on time for those services;
- (b) obtain those services from among firms pre-qualified by the Authority; and



(c) follow the procedure laid down by the Authority in its guidelines.

Records of  
a procuring  
and  
disposing  
entity.

41. (1) A procuring and disposing entity shall maintain records on its procurement and disposal proceedings for a period of seven years from the date of a decision to terminate the procurement or disposal action, or the date of the contract completion, whichever comes later, except where a contract is on going or is challenged, in which case, the records shall be kept for an additional year after the completion of the contract or the settlement of the dispute, whichever comes earlier.

(2) The records of the procurement and disposal process shall be open to inspection by the Authority during working hours.

Defence and  
National  
Security  
Organs.

42. (1) For the avoidance of doubt, the Defence and National Security organs shall comply with this Act subject to subsections (2) and (3).

(2) The Defence and National Security Organs shall manage their procurement and disposal on the basis of a dual list, covering items subject to open and restricted procurement or disposal methods respectively.

(3) The Defence and National Security Organs shall agree annually with the Authority on the category of restricted items to be included on the restricted list and on which restricted procurement or disposal methods, set out in Part VI, shall apply to each category of item on the restricted list.

(4) The restricted list of items shall be subjected to classified audit and laid before Parliament in the Annual Performance Evaluation Report.

PART IV—BASIC PUBLIC PROCUREMENT AND DISPOSAL  
PRINCIPLES.

**43.** All public procurement and disposal shall be conducted in accordance with the basic principles set out in sections 44 to 54 of this Act.

Application of the basic principles of public procurement and disposal.

**44.** A bidder shall not be excluded from participating in public procurement and disposal on the basis of nationality, race, religion, gender or any other criterion not related to qualification, except to the extent provided for in this Act.

Non-discrimination.

**45.** All procurement and disposal shall be conducted in a manner which promotes transparency, accountability and fairness.

Transparency, accountability and fairness.

**46.** Subject to this Act, all procurement and disposal shall be conducted in a manner to maximize competition and achieve value for money.

Competition.

**47.** A procuring and disposing entity shall not, except when required to do so by an order of court, disclose any information where the disclosure would—

Confidentiality.

(a) amount to a breach of the law;

(b) impede law enforcement;

(c) prejudice legitimate commercial interests of the parties;

(d) inhibit fair competition; or

(e) in any way not be in the public interest,

until the successful bidder is notified of the award.

Economy  
and  
efficiency.

**48.** All procurement and disposal shall be conducted in a manner which promotes economy, efficiency and value for money.

Ethics.

**49.** All procurement and disposal shall be carried out in accordance with the Codes of Ethics that may be specified from time to time by the Authority.

Preference  
and  
reservation.

**50.** (1) A procuring and disposing entity shall permit providers to participate in the procuring process without regard to nationality, except in cases in which the procuring and disposing entity decides to limit the participation on the basis of nationality on grounds specified either in regulations made under this Act or by any other competent authority.

(2) A procuring and disposing entity that limits participation on the basis of nationality on grounds set out in sub-section (1) shall—

(a) obtain prior written approval of the Authority; and

(b) include the exception to nationality and the grounds relied on in the bidding documents as well as in the record of that procurement or disposal process.

Open  
competitive  
bidding.

**51.** A procuring and disposing entity shall use open bidding as the preferred method of procurement and disposal.

Best  
evaluated  
bids.

**52.** A contract shall be awarded to the bidder with the best evaluated offer ascertained on the basis of the methodology and criteria detailed in the bidding documents.

Public  
accessibility.

**53.** Copies of the Act, regulations, Guidelines, and forms made under this Act, standard bidding documents and decisions of the Authority shall be made accessible to the public by the Authority.



**54.** The Authority shall organize and maintain a system for the publication of data on public procurement and disposal opportunities, awards and any other information of public interest that may be determined by the Authority.

Publication of opportunities and information.

**PART V—PUBLIC PROCUREMENT AND DISPOSAL RULES.**

**55.** All public procurement and disposal shall be carried out in accordance with the rules set out in this Part of the Act, any regulations and guidelines made under this Act.

Application of public procurement and disposal rules.

**56.** (1) A procuring and disposing entity shall—

Records.

- (a) maintain detailed records of all its proceedings; and
- (b) preserve, maintain and safeguard all relevant documents it issues and receives.

(2) A procuring and disposing entity shall use the standard forms issued by the Authority to record all details of the procurement or disposal process, except where it obtains the consent of the Authority to use forms other than those provided by the Authority.

(3) Where a document or form does not exist for a given circumstance, a procuring and disposing entity may apply to the Authority for permission to use an alternative document or form until the time the Authority issues the standard document or form.

(4) The application mentioned in sub-section (3), shall state the circumstances giving rise to the need for the Authority to produce a particular standard form or document.

**57.** (1) All communication between a procuring and disposing entity, bidder, or provider, shall be in writing and communication in any other form shall be referred to and confirmed in writing.

Communication.

(2) English shall be the language of communication unless otherwise specified by the Authority.

(3) Forms of communication shall be specified in the solicitation documents.

Procurement  
and disposal  
planning.

**58.** A procuring and disposing entity shall plan its procurement and disposal in a rational manner and in particular shall—

- (a) avoid emergency procurement and disposal wherever possible;
- (b) aggregate its requirements wherever possible, both within the procuring and disposing entity and between procuring and disposing entities, to obtain value for money and reduce procurement costs;
- (c) make use of framework contracts wherever appropriate to provide an efficient, cost effective and flexible means to procure works, services or supplies that are required continuously or repeatedly over a set period of time;
- (d) avoid splitting of procurements or disposals to defeat the use of appropriate procurement or disposal methods;
- (e) integrate its procurement budget with its expenditure programme; and
- (f) integrate the disposal of assets both listed and unlisted in its Asset Register as well as in its income and expenditure budget.

Initiation of  
procurement  
or disposal  
requirements  
and  
confirmation  
of funding.

**59.** (1) All procurement or disposal requirements shall be documented prior to the commencement of any procurement or disposal proceedings.

(2) Procurement or disposal shall only be initiated or continued on the confirmation that funding, in the full amount over the required period, is available or will be made available at the time the contract commitment is made.

(3) All procurement or disposal requirements shall be approved by the Accounting Officer prior to the commencement of any procurement or disposal process.

**60.** All statements of requirements—

- (a) specifications;
- (b) terms of reference;
- (c) scope of works;
- (d) drawings;
- (e) bills of quantities; or
- (f) their equivalent as may be appropriate;

Statements  
of require-  
ments.

giving a correct and complete description of the object of the procurement or disposal activity for the purpose of creating fair and open competition.

**61.** Procuring and disposing entities shall at all times use industry standards defined and codified by internationally recognised trade associations and professional bodies in the appropriate fields.

Best  
practice and  
industry  
standards.

**62.** (1) A procuring and disposing entity shall use the standard documents provided by the Authority as models for drafting all solicitation documents for each individual procurement or disposal requirement.

Solicitation  
documents.

(2) All solicitation documents shall—

- (a) detail the terms and conditions, which shall apply to any resulting contract; and



(b) contain the General Conditions of Contract, or a statement of the General Conditions of Contract which shall apply.

(3) The General Conditions of Contract shall not be modified except through Special Conditions inserted into the solicitation documents or contract.

(4) A procuring and disposing entity shall obtain the prior consent of the Authority to place a contract against the General Conditions of Contract other than those contained in the standard solicitation documents provided by the Authority.

Selection of  
bidders.

**63.** All methods for the selection of bidders to be invited to bid shall allow for fair and equitable selection and ensure maximum competition.

Bidding  
period.

**64.** The bidding period shall be sufficient to allow bidders to prepare and submit their bids and shall not be reduced with the aim of limiting competition.

Clarification  
of  
solicitation  
document-  
ation.

**65.** (1) At any time prior to the deadline for bid submission, a procuring and disposing entity may, on its own initiative, or in response to a request for clarification by a bidder, modify the solicitation documents by issuing an addendum.

(2) Where a procuring and disposing entity considers it necessary, it may extend the closing date to enable bidders to take the addendum fully into account while preparing their bids.

Form of  
bids.

**66.** A procuring and disposing entity shall require bidders to submit sealed written bids unless otherwise provided for in this Act or regulations made under this Act.

Bid  
submission  
methods.

**67.** The method for bid submission shall be prescribed by regulations made under this Act and shall be determined in the regulations by the type, complexity and evaluation method of the procurement or disposal being handled by the procuring and disposing entity.

**68.** A bidder may withdraw his or her bid at any time before the deadline for bid submission unless otherwise prescribed by the Minister by regulations made under this Act.

Withdrawal  
of bids.

**69.** All bidding processes shall include a formal bid receipt and a bid opening.

Bid receipt  
and  
openings.

**70.** A procuring and disposing entity shall require all bidders participating in public procurement or disposal to meet the qualification criteria set out in the bidding documents which in all cases shall include the following basic qualifications—

Basic  
qualification  
of bidders.

(a) that the bidder has the legal capacity to enter into the contract;

(b) that the bidder is not—

- (i) insolvent; or
- (ii) in receivership; or
- (ii) bankrupt; or
- (iv) being wound up;

(c) that the bidder's business activities have not been suspended;

(d) that the bidder is not the subject of legal proceedings for any of the circumstances mentioned in paragraph (b); and

(e) that the bidder has fulfilled his or her obligations to pay taxes and social security contributions.

**71.** (1) The choice of an evaluation methodology shall be determined by the type, value and complexity of the procurement or disposal.

Evaluation.

(2) All solicitation documents shall fully and comprehensively detail the evaluation methodology and criteria which shall apply.

(3) No evaluation criteria other than that stated in the bidding documents shall be taken into account.

Change in  
bid details.

**72.** There shall not be any alterations or any changes in the substance of bids, including changes in price, after the date and time of bid closing, except as may be otherwise prescribed by regulations made under this Act.

Clarification  
of bids  
received.

**73.** A procuring and disposing entity may ask bidders for clarification of their bids in order to assist in an evaluation and to clarify details that were not apparent or could not be finalised at the time of bidding, in accordance with procedures prescribed by regulations made under this Act.

Negotiations  
in  
accordance  
with  
regulations.

**74.** Negotiations shall not be permitted except as prescribed by the regulations.

Rejection of  
bids.

**75.** A procuring and disposing entity may reject any or all the bids at any time prior to the award of a contract.

Contracts.

**76.** (1) For the purposes of this Act, an award decision is not a contract.

(2) An award shall not be confirmed by a procuring and disposing entity until—

(a) the period specified by regulations made under this Act has lapsed; and

(b) funding has been committed in the full amount over the required period.

(3) An award shall be confirmed by a written contract signed by both the provider and the procuring and disposing entity only after the conditions set out in subsection (2) have been fully satisfied.



(4) The award decision shall be posted in a manner prescribed by regulations during the period specified in paragraph (a) of sub-section (2).

77. Any change in the circumstances of a bidder during the procurement or disposal process that could materially affect the bidder's capacity to execute the contract shall be immediately drawn to the attention of the Contracts Committee by the bidder.

Change in  
bidders  
circum-  
stances.

78. Public Officers shall not participate in the disposal process as bidders except where specific items are offered to the Public Officials of a procuring and disposing entity subject to—

Prohibition  
of Public  
Officers.

- (a) internal advertisement and competition;
- (b) the sale price being no less than the authorized valuation of the items to be offered;
- (c) the concurrence of the Head of the Procurement Unit, the Contracts Committees and the Accounting Officer; and
- (d) the complete record of each offer being kept by the procuring and disposing entity for inspection and record, a copy of which documentation shall be forwarded by the Accounting Officer to the Authority within seven working days.

#### PART VI—METHODS OF PROCUREMENT AND DISPOSAL.

79. (1) A procuring and disposing entity in respect of—

- (a) each procurement activity shall use any of the methods in sections 80 to 86; and
- (b) each disposal activity shall, in addition to the methods in sections 80 to 86, use any of the disposal methods in section 87 whenever the circumstances demand it,

Choice of  
procurement  
or disposal  
method.

and their conditions for use specified in the Fourth Schedule.

(2) The choice of a procurement or disposal method shall first be approved by the Contracts Committee.

(3) A procuring and disposing entity shall first obtain the consent of the Authority before it uses any other method than the ones set out in this Part of the Act.

Open  
Domestic  
Bidding.

**80.** (1) Except as provided for in this Act or regulations made under this Act, a procuring and disposing entity shall use the open domestic bidding method.

(2) Open domestic bidding is a procurement or disposal method which is open to participation on equal terms by all providers through advertisement of the procurement or disposal opportunity.

(3) Open domestic bidding shall be used to obtain maximum possible competition and value for money.

(4) Nothing shall prevent a foreign or international bidder from participating in open domestic bidding.

Open  
International  
Bidding.

**81.** (1) Open international bidding is the procurement or disposal method which is open to participation on equal terms by all providers, through advertisement of the procurement or disposal opportunity and which specifically seeks to attract foreign providers.

(2) Open international bidding is used to obtain the maximum possible competition and value for money, where national providers may not necessarily make this achievable.

Restricted  
Domestic  
Bidding.

**82.** (1) Restricted domestic bidding is the procurement or disposal method where bids are obtained by direct invitation without open advertisement.

(2) Restricted domestic bidding is used to obtain competition and value for money to the extent possible, where the value or circumstances do not justify or permit the open bidding procedure.

**83.** (1) Restricted international bidding is the procurement or disposal procedure where bids are obtained by direct invitation without open advertisement and the invited bidders include foreign providers.

Restricted  
International  
bidding.

(2) Restricted international bidding shall be used to obtain competition and value for money to the extent possible where the value or circumstances do not justify or permit an open bidding method and the short listed bidders include foreign providers.

**84.** (1) Quotation and Proposals are simplified procurement and disposal methods which compare price quotations obtained from a number of providers.

Quotations  
and  
Proposals.

(2) The Quotation and Proposal method shall be used to obtain competition and value for money to the extent possible, where the value or circumstances do not justify or permit open or restricted bidding procedures.

(3) Quotations shall be used in works and supplies while Proposals shall be used for services.

**85.** (1) Direct procurement or disposal is a sole source procurement or disposal method for procurement or disposal requirements where exceptional circumstances prevent the use of competition.

Direct  
Procurement  
or disposal

(2) Direct procurement or disposal shall be used to achieve efficient and timely procurement or disposal, where the circumstances do not permit a competitive method.

**86.** (1) Micro procurement or disposal is a simple direct procurement or disposal method which shall be used for very low value procurement requirements.

Micro-  
Procurement  
or disposal

(2) Micro procurement or disposal shall be used to achieve efficient and timely procurement where the value does not justify a competitive procedure.



Other  
methods of  
disposal of  
public  
assets.

**87.** (1) Disposal of public assets may also be by way of the following methods—

- (a) public auction where the professional valuation of an individual asset or lot does not exceed the value stated in the guidelines;
- (b) direct negotiation where disposal on the open-market would raise legal or human rights issues and the consideration received is not less than the professional valuation;
- (c) destruction of assets where there is no residual value or no grounds of national security or public interest;
- (d) conversion or classification of assets into another form for disposal by sale such as scrap metal or land fill;
- (e) trade-in; and
- (f) transfer to another procuring and disposing entity.

(2) The procedures for the methods in subsection (1) shall be prescribed by regulations made under this Act.

Selection of  
Providers.

**88.** The detailed procedures for selection of providers shall be prescribed by regulations.

#### PART VII—ADMINISTRATIVE REVIEW.

Admini-  
strative  
review.

**89.** A bidder may seek administrative review for any omission or breach by a procuring and disposing entity of this Act, or any regulations or guidelines made under this Act or of the provisions of bidding documents, including best practices.

Review by  
the  
Accounting  
Officer.

**90.** (1) A complaint by a bidder against a procuring and disposing entity shall first be submitted in writing to the Accounting Officer within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint.

(2) On receiving a complaint, the Accounting Officer shall make a decision in writing within fifteen working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he or she deems it necessary and giving reasons for his or her decision.

(3) Where —

(a) the Accounting Officer does not make a decision within the period specified in sub-section (2); or

(b) the bidder is not satisfied with the decision of the Accounting Officer

the bidder may make a complaint to the Authority within ten working days from the date of communication of the decision by the Accounting Officer.

**91.** (1) Upon receipt of a complaint, the Authority shall promptly give notice of the complaint to the respective procuring and disposing entity, suspending any further action thereon by the procuring and disposing entity until the Authority has settled the matter.

Review by  
the  
Authority.

(2) The Authority shall, unless it dismisses the complaint—

(a) prohibit a procuring and disposing entity from taking any further action; or

(b) annul in whole or in part an unlawful act or decision made by the procuring and disposing entity.

(3) Before taking any decision on a complaint, the Authority shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring and disposing entity.

(4) The Authority shall issue its decision within twenty-one working days after receiving the complaint, stating the reasons for its decision and remedies granted, if any.

## PART VIII—MISCELLANEOUS.

Protection  
from  
prosecution.

92. No action shall lie against any member or staff of the Authority or a procuring and disposing entity for any act or omission done in good faith.

Codes of  
conduct.

93. (1) Public Officers as well as experts engaged to deliver specific services shall sign the Code of Ethical Conduct specified in the Fifth Schedule.

(2) All providers of works, services or supplies shall be required to sign a declaration of compliance with those codes of conduct determined by the Authority from time to time.

Suspension  
of  
providers.

94. A provider who does not comply with this Act, regulations or guidelines made under this Act, shall be suspended by the Authority from engaging in any public procurement or disposal function for a period to be determined by the Authority on a case by case basis.

Offences  
and  
penalties.

95. (1) A person commits an offence who—

- (a) without reasonable excuse fails or refuses to give information, or produce any document, records or reports required under paragraph(a) of sub-section (1) of section 8;
- (b) without reasonable excuse refuses to answer summons or refuses to produce any books of accounts, plans or give evidence as required by paragraph (b) of sub-section (1) of section 8; and
- (c) contrary to this Act, interferes with or exerts undue influence on any officer or employee of the Authority or a procuring and disposing entity in the performance of his or her functions or in the exercise of his or her power under this Act;



(d) connives or colludes to commit a fraudulent act or a corrupt act defined in section 3,

and on conviction is liable to a fine of not less than two hundred and fifty currency points but not exceeding one thousand currency points or to a term of imprisonment not exceeding three years or both.

(2) Where a procuring and disposing entity consistently contravenes this Act, it shall, on the recommendation of the Authority and on the approval of the Minister, have its procurement and disposal function transferred to a third party procurement agency until the Authority is satisfied that the causes of the contravention have been rectified.

96. (1) The Minister may, on the recommendation of the Authority, issue regulations for the better carrying out of the objectives and functions of this Act. Regulations.

(2) Regulations made under this section may prescribe for a contravention of any of the provisions of the regulations or any guidelines issued under this Act, a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.

97. The Authority may issue guidelines from time to time which shall be laid before Parliament and shall be *Gazetted* for the better carrying out of the objectives of and functions under this Act. Guidelines.

98. (1) All property, except that property the Minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Central Tender Board, on the date of the commencement of this Act shall immediately vest in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting that property. Transitional provisions.

(2) All legal obligations, proceedings and claims pending in respect of the Central Tender Board shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this Act had been in force at the time when the cause of action arose.

(3) Except as provided for under this Act, this Act shall take precedence over all other enactments establishing Tender Boards or like mechanisms, and the responsible procuring and disposing entities shall within twelve months after this Act comes into force, bring their practices in conformity with this Act.

Repeal of  
S.I. No. 64  
of 2000.

**99.** The Public Finance Procurement Regulations are repealed.

SECTION 3

FIRST SCHEDULE.

CURRENCY POINT.

A currency point is equivalent to twenty thousand Uganda shillings.



## SECTION 14 (4) (a)

## SECOND SCHEDULE

## STANDARD DECLARATION FORM.

I, ..... do solemnly swear to abide by the rules of the Public Procurement and Disposal Public Assets Authority including the principles of natural justice, equity, the Code of Ethical Conduct and best practices in the performance of my duties as a member of the Board of Directors of the Public Procurement and Disposal of Public Assets Authority.

I also confirm that I do not have any direct or indirect interests of whatsoever nature in any item on the Agenda that may give rise to the principles of conflict of interest or cause unfair advantage to any party that is directly or indirectly involved in the particular agenda item.

I shall also, at all times, maintain the required level of confidentiality and professional standards in the performance of my duties as a member of the Board of Directors.

Subscribed and solemnly declared by me at .....  
on the ..... day of ..... 200...

Signed by .....

*Board Member*

## SECTION 27 (1).

## THIRD SCHEDULE.

## COMPOSITION OF A CONTRACTS COMMITTEE.

A Contracts Committee shall be composed of the following members—

- (a) a chairperson;
- (b) a secretary; and
- (c) a maximum of three other members appointed by the Accounting Officer one of whom shall be a lawyer.

## SECTION 79 (1).

## FOURTH SCHEDULE.

CONDITIONS FOR USE OF PROCUREMENT AND DISPOSAL  
METHODS.Open  
domestic  
bidding.

1. (1) Open domestic bidding shall be open to all bidders following a public advertisement of a Bid Notice in at least one widely read national newspaper.

(2) Bidding documents may be issued to prospective bidders at a fee, the cost of which shall be agreed upon by the respective Contracts Committees.

(3) A public bid opening shall be held in accordance with procedures prescribed by regulations.

Open  
international  
bidding.

2. (1) Open international bidding may be used instead of open domestic bidding where competition will not be effective without foreign bidders or where foreign bids will increase value for money.

(2) Nothing shall prevent a domestic bidder from participating in open international bidding.

(3) The procurement or disposal process under open international bidding shall follow the procurement or disposal process to be set out in regulations.

(4) Open international bidding shall be open to all bidders following the public advertisement of a Bid Notice in a publication of wide international circulation.

(5) Bidding documents may be issued to prospective bidders at a fee, the cost of which shall be agreed upon by the Contracts Committee but, in all cases shall be in line with guidelines.

(6) A public bid opening shall be held in accordance with the procedure prescribed by regulations.

Restricted  
domestic  
bidding.

3. (1) Restricted domestic bidding may be used where—

(a) the supplies, works or services are available only from a limited number of providers; or



- (b) there is insufficient time for an open bidding procedure in an emergency situation; or
- (c) the estimated value of the procurement or disposal does not exceed the threshold stated in the procurement guidelines issued under this Act.

(2) The procurement or disposal process under restricted domestic bidding shall follow the procurement or disposal procedures prescribed by regulations and as follows—

- (a) the invitation to bid shall be addressed to a limited number of potential bidders without advertising the opportunity in a Bid Notice.
- (b) the selection of bidders shall be in accordance with the procedure prescribed by regulations, and
- (c) a public bid opening shall be held in accordance with the procedure prescribed by regulations.

4. (1) Restricted international bidding may be used where the supplies, works or services are available only from a limited number of providers and—

Restricted  
international  
bidding.

- (a) there is insufficient time for an open bidding procedure in an emergency situation; or
- (b) the estimated value of the procurement does not exceed the threshold stated in the procurement guidelines.

(2) The procurement and disposal process under restricted international bidding shall follow the procedure prescribed by regulations and made under this Act as follows—

- (a) the invitation to bid shall be addressed to a limited number of potential bidders without advertising the opportunity in a Bid Notice;

- (b) the selection of bidders shall be in accordance with the procedure prescribed by regulations; and
- (c) a public bid opening shall be held in accordance with the procedure to be prescribed by regulations.

Quotations  
and  
proposal.

5. (1) Quotations or proposal procurement or disposal may be used where—

- (a) there is insufficient time for an open or restricted bidding procedure such as in an emergency situation; or
- (b) where the estimated value of the procurement or disposal does not exceed the threshold stated in the procurement guidelines.

(2) The process under quotations procurement or disposal shall be as follows—

- (a) the solicitation document shall be addressed to a limited number of potential bidders without advertising the opportunity;
- (b) the selection of the bidders shall be in accordance with regulations made under this Act;
- (c) a procuring and disposing entity shall obtain at least three bids; and
- (d) an internal bid opening shall be held in accordance with procedures to be prescribed by regulations.

Direct  
procurement.

6. (1) Direct procurement or disposal may be used—

- (a) where—
  - (i) there is insufficient time for any other procedure such as in an emergency situation; or
  - (ii) the works, services or supplies are available from only one provider; or

- (iii) an existing contract could be extended for additional works, services or supplies of a similar nature and no advantage could be obtained by further competition, if the prices on the extended contract are reasonable; or
  - (iv) additional works, services or supplies are required to be compatible with existing supplies, works or services and it is advantageous or necessary to purchase the additional works, services or supplies from the original supplier, provided the prices on the additional contract are reasonable; or
  - (v) it is essential or preferable to purchase additional works, services or supplies from the original supplier to ensure continuity for downstream work, including continuity in technical approach, use of experience acquired or continued professional liability, if the prices on the additional contract are reasonable;
- (b) in the circumstances set out in paragraph (a) where the value of the new works, services or supplies does not exceed 15% of the value of the original or existing contract and the original or existing contract has been awarded through a competitive process; and

(2) A procuring and disposing entity may engage in micro procurement or disposal where the goods or services are below the threshold stated in regulations.

(3) Where a procuring and disposing entity engages in micro procurement—

- (a) the original invoice or receipt evidencing the supplies procured and the price paid shall be obtained and signed by the official procuring the supplies; and
- (b) it shall be responsible for ensuring that value for money is obtained to the extent practical under the procurement procedure.



## SECTION 93 (1)

## FIFTH SCHEDULE

## CODE OF ETHICAL CONDUCT IN BUSINESS.

Ethical  
principles.

1. (1) Employees shall not use their authority or office for personal gain and shall seek to uphold and enhance the reputation of the Ugandan Government at home and abroad by—

- (a) maintaining an impeccable standard of integrity in all business relationships both inside and outside the organisations in which they are employed;
- (b) fostering the highest possible standards of competence;
- (c) optimising the use of resources for which they are responsible to provide the maximum benefit to Uganda; and
- (d) complying both with the letter and the spirit of—
  - (i) the laws of Uganda and regulatory guidance;
  - (ii) accepted business practices in commercial markets; and
  - (iii) contractual conditions.

Conflict of  
interest.

2. Employees shall reveal any personal interest that may impinge or might reasonably be deemed by others to impinge on an employee's business dealings with an industry.

Confident-  
iality and  
accuracy of  
information.

3. (1) Employees shall respect the confidentiality of information received in the course of business dealings and shall never use such information for personal gain.

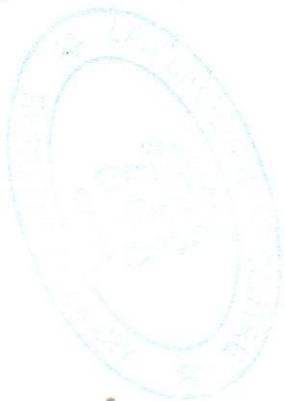
(2) Information given by employees in the course of business dealings shall be true and fair and not **designed** to mislead.

4. Employees shall avoid any business arrangement that might prevent the effective operation of fair competition. Competition.

5. Employees shall not accept business gifts from current or potential Government suppliers unless such gifts are of very small intrinsic value such as a calendar or a pen. Business gifts.

6. Employees shall refrain from any business hospitality that might be viewed by others as having an influence in making a government business decision as a result of accepting that hospitality. Hospitality.

7. A member of the Authority, a procuring and disposing entity or expert contracted to deliver specific services shall not use to his or her personal or organizational advantage, information acquired by him or her by virtue of his or her association with the Authority or a procuring and disposing entity for a period of one year after vacating office or ceasing to render the specific services. Restrictiveness.



ACTS SUPPLEMENT

*to The Uganda Gazette No. 3 Volume XCVI dated 17th January, 2003.*

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Act 2

*National Library Act*

2003

THE NATIONAL LIBRARY ACT, 2003.

ARRANGEMENT OF SECTIONS.

*Sections.*

PART I—PRELIMINARY.

1. Short title.
2. Interpretation.

PART II—ESTABLISHMENT AND FUNCTIONS OF THE  
NATIONAL LIBRARY AND NATIONAL LIBRARY BOARD.

3. Establishment of the National Library.
4. Functions of National Library.
5. Special powers of the National Library.
6. National Library Board.
7. Functions of the Board.
8. Meetings of the Board.
9. Director and other staff of the Library.

PART III—FINANCIAL PROVISIONS.

10. Funds of the National Library.
11. Investment.
12. Estimates.
13. Accounts.
14. Audit.

PART IV—MISCELLANEOUS.

15. Common Seal and other instruments of National Library.
16. Annual report.
17. Minister to submit statement of accounts and annual report to Parliament.



*Sections.*

18. Ministerial guidelines.
19. Duty of publishers to deposit with National Library.
20. Regulations.
21. Power of Minister to amend Schedules.
22. Vesting of assets and liabilities.
23. Repeal.

**SCHEDULES.**

**THE NATIONAL LIBRARY ACT, 2003.**

**AN ACT to provide for the establishment of the National Library of Uganda, the depositing and preservation of publications, the setting up of an information referral service and library co-ordination and to provide for other related matters.**

DATE OF ASSENT: 23rd December, 2002.

*Date of Commencement:* 17th January, 2003.

BE IT ENACTED by Parliament as follows:

**PART I—PRELIMINARY.**

1. This Act may be cited as the National Library Act, 2003. Short title.

2. In this Act unless the context otherwise requires— Inter-  
pretation.

“Board” means the National Library Board;

“book” includes every part or division of a book, braille, talking book, newspaper, periodical, magazine, review, gazette, pamphlet, sheet of letter press, sheet of music, map, plan, chart or table separately published;



“braille” means the form of print or writing with raised round dots or marks which blind persons read by touching;

“braille book” means a book transcribed into braille;

“Chairperson” means the Chairperson of the Board;

“currency point” means the value of a currency point specified in the First Schedule;

“Director” means the Director appointed under section 9;

“document” means one or more identical copies of a medium by which information is stored for subsequent reading, listening, showing and transmission;

“legal deposit right” means the right of the National Library to receive free of charge of a book or document produced or published in Uganda or published outside Uganda by a Ugandan publisher and imported into Uganda subject to the Third Schedule;

“medium” means any means of storing information;

“member” means a member of the Board;

“Minister” means the Minister responsible for the National Library;

“national bibliography” means a publication containing a list of books and documents published or produced in Uganda, for Uganda and by Ugandans;

“National Library” means the National Library of Uganda established under section 3;

“producer” means a person who produces copies of a document for a publisher;



“publisher” means a person who at his or her expense produces or arranges for the production of a document in order to make it available to the public;

“talking book” means a book read and recorded into cassette tapes or compact disc and arranged in order of sequency for blind persons to listen to and get information in the book;

“union catalogue” means a file or catalogue of holdings of major libraries.

## PART II—ESTABLISHMENT AND FUNCTIONS OF THE NATIONAL LIBRARY AND NATIONAL LIBRARY BOARD.

3. (1) There is established a National Library to be known as the National Library of Uganda.

Establishment of the National Library.

(2) The National Library shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.

(3) The National Library may hold, acquire or dispose of any property, movable or immovable.

4. The functions of the National Library are—

Functions of National Library.

(a) to develop national policies on public libraries;

(b) to provide to local governments standards, advice, norms, work manuals and guidelines in respect of public library buildings, staffing, stock and information processing, storage and retrieval;

(c) to inspect and ensure that public libraries conform to national policies, guidelines and standards;

(d) to provide technical, professional and advisory services in the field of librarianship to Government departments, local governments and the public sector;

- (e) to carry out research in the field of library and information provision and disseminate results to Government, local governments and the public;
- (f) to design and carry out pilot projects in new areas of library and information provision and disseminate results to local governments and other organisations;
- (g) to carry out and co-ordinate staff development programmes for people working in libraries and information services;
- (h) to support and promote adult literacy and education through identification and stocking post-literacy reading materials;
- (i) to support the setting up of rural community libraries;
- (j) to promote the habit and culture of reading through reading campaigns and book exhibitions;
- (k) to carry out advocacy at the local and international level in matters relating to libraries;
- (l) to acquire and organise for use, a comprehensive collection of library material published in Uganda, by Ugandans, and on Uganda;
- (m) to act as a depository for the national and foreign governments' publications as well as for United Nations and other international organisations for purposes of promoting research and scholarship and for the preservation of published national culture and intellectual output;
- (n) to compile and publish a national bibliography of books published in Uganda as a means of promoting the awareness of the availability of these books and encouraging the sale of these books in the country and abroad;



- (o) in collaboration with publishers in Uganda to carry out the cataloguing of books before they are published so as to ease the processing of these books by various libraries;
- (p) to establish and maintain a National Union Catalogue of holdings of major libraries in the country and to provide information and referral services, including specialised information services, at the national and international level;
- (q) to allocate International Standard Book Numbers and International Standard Serial Numbers to publishers in Uganda;
- (r) to act as the agency for national and international lending and exchange of library materials;
- (s) to act as a national agency for national, regional and international information system;
- (t) to create electronic databases in areas of national interest;
- (u) to acquire at a fee, from any person or institution, any manuscript or literature that may be considered to be of interest to the country;
- (v) to carry out any other function that may promote the above objectives.

5. The National Library has the following powers—

- (a) legal deposit namely the right of the National Library to require every publisher of a book or document in Uganda at his or her cost to deposit three copies of the book or document or one copy of the videogram or film and ten copies in the case of any Government department with the National Library;

Special  
powers of  
the National  
Library.



(b) the power to inspect, issue standards, guidelines and regulations in the case of public libraries;

(c) the power to allocate International Standard Book Numbers and International Standard Serial Numbers and other International Numbers to publishers in Uganda.

National  
Library  
Board.

6. (1) The governing body of the National Library shall be a Board.

(2) The Board shall consist of a Chairperson and eight other members appointed by the Minister.

(3) Members of the Board shall be persons of high moral character and proven integrity and shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(4) A member of the Board may be removed from office by the Minister for—

(a) absence from four consecutive meetings of the Board without the approval of the Chairperson;

(b) inability to perform the functions of his or her office arising out of physical or mental incapacity;

(c) conviction for fraud;

(d) misbehaviour or misconduct; or

(e) incompetence.

(5) Members of the Board shall include—

(a) the Chairperson;

(b) a person from the Urban Authorities Association of Uganda;

(c) a person from the Uganda Local Authorities Association;

- (d) a senior officer from an institution dealing with adult literacy or education;
- (e) a person with a track record in research;
- (f) a person qualified in library and information science;
- (g) a person involved in the book industry and publishing;
- (h) a person involved in the management of cultural institutions or an expert in the field of culture; and
- (i) a specialist in education.

7. The functions of the Board are—

Functions of  
the Board.

- (a) to establish, manage and maintain the National Library of Uganda;
- (b) to implement the functions of the National Library;  
and
- (c) to put in place procedures for the collection, preservation and use of the National Library collections.

8. The Second Schedule to this Act shall have effect in relation to meetings of the Board.

Meetings of  
the Board.

9. (1) The National Library shall have a Director who shall be appointed by the Board with the approval of the Minister.

Director and  
other staff  
of the  
Library.

(2) The Director shall be a person of high moral character and proven integrity, possessing the relevant qualifications and proven ability in the field of library or information science.

(3) The Director shall be—

- (a) the Secretary to the Board;
- (b) the Chief Executive and accounting officer of the Board;



(c) the Chief inspector and co-ordinator of public libraries under local governments on matters relating to library and information services.

(4) The Director may be removed by the Board for—

(a) inability to perform the functions of his or her office arising out of physical or mental incapacity;

(b) misbehaviour or misconduct; or

(c) incompetence.

(5) The Board shall have such other officers and employees as may be necessary for the efficient discharge of its functions.

(6) The officers and employees referred to in subsection (5) shall be appointed by the Board and shall hold office upon such terms and conditions as shall be determined by the Board.

(7) The Board may grant pensions, gratuities or retirement benefits to employees of the Board and may require them to contribute to any pension, provident fund or superannuation scheme.

### PART III—FINANCIAL PROVISIONS.

**10.** (1) The funds of the National Library shall consist of—

(a) money appropriated by Parliament for the purposes of the National Library;

(b) loans from government or any other person which shall in each case be subject to the approval of the Minister;

(c) grants, gifts and donations that may be received by the National Library from any source within or outside Uganda;

(d) money which may become payable to the National Library in the performance of its functions; or



- (e) any other monies received or made available to the National Library for the purpose of performing its functions under this Act.

(2) The National Library shall operate a bank account in a bank determined by the Board with the approval of the Minister and operated in a manner prescribed by the Board.

**11.** The National Library may invest its monies in any securities issued or guaranteed by the Government or in any other securities approved by the Board. Investment.

**12.** (1) The Director shall, not later than three months before the end of each financial year, prepare and submit to the Board for its approval estimates of income and expenditure of the National Library for the next ensuing financial year, and may, at any time before the end of that financial year, prepare and submit to the Board for approval any estimates supplementary to the estimates of the current financial year. Estimates.

(2) No expenditure shall be made out of funds of the National Library unless that expenditure is part of the expenditure approved by the Board under subsection (1) of this section.

**13.** (1) The National Library shall keep proper books of accounts of all its income and expenditure and proper records in relation to them in a form approved by the Auditor General. Accounts.

(2) Subject to any directions given by the Minister, the Board shall cause to be prepared in respect of each financial year, a statement which shall include a report on the performance of the National Library during that financial year and the statement shall comprise of—

- (a) a balance sheet and a statement of income and expenditure of the National Library in respect of that financial year; and

- (b) any other information in respect of the financial affairs of the National Library as the Minister may require.

Audit.

14. (1) The Accounts of the National Library shall, in respect of each financial year, be audited by the Auditor-General or an auditor appointed by the Auditor General.

(2) The Board shall ensure that within two months after the close of each financial year, the statement of accounts described in section 13 of this Act is submitted for auditing.

(3) The Auditor General or an auditor appointed by the Auditor General shall have access to all books of accounts, vouchers and other financial records of the National Library and be entitled to have any information and explanation required by him or her in relation to them as he or she may think fit.

#### PART IV—MISCELLANEOUS.

Common  
Seal and  
other  
instruments  
of National  
Library.

15. (1) The Common Seal of the National Library shall—

- (a) be in a form to be determined by the Board;  
(b) be kept in the custody of the Director; and  
(c) not be affixed to any document except by order of the Board.

(2) The Common Seal of the National Library shall be authenticated by the signatures of the Director, the Chairperson and one other member of the Board.

(3) An instrument or contract which if executed or entered into by a person other than a body corporate would not require to be under seal may be executed or entered into on behalf of the National Library by the Director, or by any member of the Board or other person if that member of the Board or other person has been duly authorized by resolution of the Board to execute or enter into the instrument or contract as the case may be.

(4) Every document purporting to be an instrument or contract executed or issued by or on behalf of the National Library in accordance with this section shall be deemed to be so executed or issued until the contrary is proved.



16. The Board shall, not later than three months after the beginning of each financial year, submit to the Minister, a statement of its activities in the preceding financial year, indicating any particular problems experienced by it in that year in carrying out its functions and making recommendations for solving those problems and containing such other information as the Minister may request.

Annual  
report.

17. (1) The Minister shall as soon as practicable after receiving it lay before Parliament the statement of accounts referred to in section 13 of this Act together with the Auditor-General's report on it.

Minister to  
submit  
statement c  
accounts  
and annual  
report to  
Parliament.

(2) The Minister shall as soon as practicable after receiving it lay before Parliament the annual report referred to in section 15 of this Act.

18. The Minister may from time to time give guidelines to the Board and the Board shall ensure effective implementation of such guidelines.

Ministerial  
guidelines.

19. (1) Every publisher of a book or document in Uganda shall at his or her cost deposit three copies of the book or document or one copy of the videogram or film and ten copies in the case of any Government publication with the National Library subject to the provisions of the Third Schedule.

Duty of  
publishers  
to deposit  
with  
National  
Library.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten currency points or to imprisonment not exceeding six months or both.

20. The Minister may and on the advice of the Board make regulations for giving full effect to the provisions of this Act.

Regulations

21. The Minister may, with the consent of the Cabinet, amend the Schedules to this Act by statutory instrument.

Power of  
Minister to  
amend  
Schedules.



Vesting of  
assets and  
liabilities.

22. (1) All rights and property vested in the Public Libraries Board immediately before the commencement of this Act shall upon the commencement of this Act vest in the National Library.

(2) All obligations and liabilities subsisting against the Public Libraries Board immediately before the commencement of this Act shall upon the commencement of this Act subsist against the National Library.

Repeal.

23. (1) The Public Libraries Act is repealed.

Cap. 121.

(2) Any statutory instrument made under the Public Libraries Act repealed by subsection (1) which is in force immediately before the commencement of this Act shall remain in force until revoked under this Act.

(3) All staff employed by the Public Libraries Board immediately before the commencement of this Act shall automatically be transferred to and become employees of the National Library.

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## SCHEDULES.

## FIRST SCHEDULE.

S. 19

## Currency Point

A currency point is equivalent to twenty thousand shillings.



## SECOND SCHEDULE.

S. 8

## MEETINGS OF THE BOARD AND OTHER MATTERS.

Meetings of  
the Board.

1. (1) The Board shall meet for the discharge of business at least four times every year or upon a request in writing to the Chairperson by at least three members of the Board.

(2) The Board shall meet at such time and place as the Chairperson may appoint.

(3) The Chairperson may also call a special meeting of the Board.

(4) A meeting of the Board shall be convened by a notice to each member issued and signed by the Director, at least fourteen days before the meeting except that a shorter notice may be given for a special meeting.

(5) The Chairperson shall preside at all meetings of the Board and in his or her absence a member elected by the members present shall preside.

Quorum.

2. The quorum at a meeting of the Board shall be five members for the transaction of ordinary business, and all the members for the review of a previous decision of the Board.

Minutes of  
meetings of  
the Board.

3. (1) The Director shall cause to be recorded and kept, minutes of all meetings of the Board in a form approved by the Board.

(2) The minutes recorded under this paragraph shall be submitted to the Board for confirmation at its next meeting following that to which the minutes relate and when so confirmed, shall be signed by the Chairperson and the Director in the presence of the members present at the latter meeting.

Decision of  
the Board.

4. (1) The decisions of the Board shall be by majority vote.

(2) Each member shall have one vote and the Chairperson shall not have a casting vote except in circumstance where for whatever reason the constitution of the Board amounts to an even number.

(3) The Director shall have no voting powers.



Decision I  
circulation  
of papers.

5. (1) Subject to subparagraph (2), a decision of the Board may be made by circulation of the relevant papers among members of the Board and the expression of their views in writing, except that any member is entitled to require that the decision be deferred until the subject matter has been considered at a meeting of the Board.

(2) A decision made by circulation of papers under this paragraph is not valid unless supported by five members of the Board.

6. The validity of any proceedings of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any of them.

Validity of  
meetings  
not affected  
by vacancy  
etc.

7. (1) If a person is present at a meeting of the Board at which a matter is the subject of consideration and in which that person or his or her spouse or nominee is interested in a private capacity, he or she shall, as soon as practicable after the commencement of the meeting disclose that interest and shall not, unless the Board directs otherwise, take part in any consideration or discussion or vote on any question relating to the matter.

Disclosure  
of interest

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

8. A notice or other document may be served on the Board by delivering it to the office of the Director or by sending it by prepaid registered post addressed to the Director.

Service of  
documents  
and other  
notices.

9. Except as otherwise provided under this Act, the Board may regulate its own procedure.

Board may  
regulate  
procedure.

## THIRD SCHEDULE.

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## DEPOSIT OF BOOKS AND DOCUMENTS

Items to be deposited.

1. The items to be deposited with the National Library are—

(a) books and documents that are published in Uganda and made available to the public as—

(i) documents of paper or a paper-like medium, micro forms and photographs;

(ii) sound fixations, films, video grams, electronic documents and a combination of them; and

(b) books and documents produced outside Uganda for a Ugandan publisher or specially adapted to the public in Uganda and imported into Uganda.

Persons obliged to deposit etc.

2. (1) The persons obliged to deposit are—

(a) a publisher or producer of a document in Uganda;

(b) a Ugandan producer or publisher who publishes or produces a book or document outside Uganda, but imports it into Uganda.

(2) A book or document shall be deposited without remuneration to the depositor.

(3) The costs of sending a book or document to the depository at the National Library shall be borne by the person depositing that book or document.

(4) In the event of bankruptcy or death of a publisher or producer, the estate of that publisher or producer shall have the obligation to deposit.

Exemptions.

3. The following documents are exempted from being deposited—

(a) Forms *etc.*, to be filled in;

(b) labels, embossed writing paper, envelopes, visiting cards, address cards;



- (c) printed packaging in trade;
- (d) documents which essentially contain information that is directly extracted from other generally available documents;
- (e) games, cut out pictures with no text other than dates;
- (f) invitations and menus;
- (g) tickets, lottery tickets and other tokens of value;
- (h) works of art such as paintings, prints; and
- (i) microforms which have been made by a public institution in order to protect the original document in its own collections.



**ACTS SUPPLEMENT**

*to The Uganda Gazette No. 3 Volume XCVI dated 17th January, 2003.*

Printed by UPPC, Entebbe, by Order of the Government.

**Act 3**                      *Income Tax (Amendment) Act*                      **2003**

**THE INCOME TAX (AMENDMENT) ACT, 2003.**

**ARRANGEMENT OF SECTIONS**

*Section.*

1. Short title and commencement.
2. Amendment of section 22 of the principal Act.
3. Amendment of section 112 of the principal Act.
4. Amendment of section 155 of the principal Act.
5. Amendment of paragraph 1 of the Second Schedule.
6. Amendment of paragraph 1 of the Third Schedule.

**THE INCOME TAX (AMENDMENT) ACT, 2003.**

**n Act to exempt the income of the Bank of Uganda from taxation; to exempt a tax payer who is in the business of agricultural, plantation or horticultural farming from paying a penal tax, and to generally amend the Income Tax Act, 1997.**

DATE OF ASSENT: 4th December, 2002.

*Date of commencement:* (See section 1(2) and 1(3)).

BE IT ENACTED by Parliament as follows:

**1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2003.**

Short title  
and  
commence-  
ment.

**(2) This Act, other than section 2, shall be deemed to have come into force on 1st July, 2002.**

**(3) Section 2 of this Act shall be deemed to have come into force on 1st July, 1997.**

**2. The Income Tax Act, 1997, in this Act referred to as the principal Act is amended in section 22 by inserting immediately after paragraph (r) of subsection (1) the following new paragraph—**

Amendment  
of section  
22 of the  
principal  
Act.

**“(s) the income of the Bank of Uganda”.**

**3. The principal Act is amended in section 112 (5) by substituting for the formula, the following new formula—**

Amendment  
of section  
112 of the  
principal  
Act.

**“(25% x A)-B.”**



Amendment  
of section  
155 of the  
principal  
Act.

4. Section 155 of the principal Act is amended by inserting immediately after subsection (2) the following new subsection—

“(3) This section does not apply to a tax payer who is in the business of agricultural, plantation or horticultural farming”

Amendment  
of  
paragraph 1  
of the  
Second  
Schedule.

5. The Second Schedule to the principal Act is amended in paragraph 1, by substituting for the words—

“Where the gross turnover of the tax  
payer does not exceed Shs. 20 million  
per annum ..... Shs 100, 000.”

the words—

“Where the gross turnover of the tax  
payer exceeds Shs. 5 million but does  
not exceed Shs. 20 million per annum ..... Shs 100, 000.”

Amendment  
of  
paragraph 1  
of the Third  
Schedule.

6. Part I of the Third Schedule to the principal Act is amended in paragraph 1, by substituting for the words—

“Shs. 126,000 plus 20% of the amount  
by which chargeable income exceeds Shs 1,360, 000.”

the words—

“Shs. 126,000 plus 20% of the amount  
by which chargeable income exceeds Shs 2,820, 000.”



ACTS SUPPLEMENT

to The Uganda Gazette No. 3 Volume XCVI dated 17th January, 2003.

Printed by UPPC, Entebbe, by Order of the Government.

Act 4                      *Collective Investment Schemes Act*                      2003

THE COLLECTIVE INVESTMENT SCHEMES ACT, 2003.

ARRANGEMENT OF SECTIONS.

Section.

PART I—PRELIMINARY.

1. Short title and commencement.
2. Interpretation.
3. Meaning of collective investment scheme.

PART II—UNLICENSED PERSONS AND SCHEMES.

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

PART III—LICENSED PERSONS.

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

PART IV—LICENSED SCHEMES.

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

PART V—ESTABLISHMENT OF INVESTMENT COMPANIES  
WITH VARIABLE CAPITAL.

19. Incorporation of investment company with variable capital.
20. Registration.

AW DEVELOPMENT CENTRAL  
REFERENCE LIBRARY



*Section.*

21. Notifications to Registrar of Companies.
22. Safekeeping of scheme property by depositary.
23. Corporate code.

## PART VI—RECOGNITION OF FOREIGN SCHEMES.

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48. Rescission and variation.
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51. Revocation of licence.



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- 52. Representations against revocation.
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- 73. Directions restricting disclosure of information overseas.
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## PART XVI—MISCELLANEOUS AND SUPPLEMENTARY.

- 76. Exemption from liability for damages.
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82. Jurisdiction and procedure in respect of certain offences.
83. Service of notices.
84. Regulations.
85. Publication of information and advice.
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Part II—Prospectus.

Part III—Trust Deed.

Part IV—Scheme Particulars.

**SCHEDULE 2****APPLICATION OF COMPANIES ACT.****SCHEDULE 3****DEPOSITARIES.****SCHEDULE 4****CORPORATE CODE.**

Part I—Organs.

Part II—Shares.

Part III—Register of Shareholders.

Part IV—Share Transfers.

Part V—Operation.

Part VI—Reports.

Part VII—Auditors.

Part VIII—Mergers and Divisions.

**SCHEDULE 5****CURRENCY POINT.****SCHEDULE 6****CRITERIA FOR DETERMINING FIT AND PROPER PERSONS.**



**THE COLLECTIVE INVESTMENT SCHEMES ACT, 2003.**

**An Act to provide for the licensing and control of collective investment schemes and for connected purposes.**

DATE OF ASSENT: 23rd December, 2002.

*Date of commencement:* (See section 1(2)).

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. (1) This Act may be cited as the Collective Investment Schemes Act, 2003.

Short title  
and  
commence-  
ment.

(2) This Act shall come into force on a date to be appointed by the Minister by statutory instrument; and different dates may be appointed for the commencement of different provisions.

2. (1) In this Act, unless the context otherwise requires—

Interpre-  
tation.

“authorised corporate director” or “ACD”, 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;



Statute No.  
of 1996.

“Authority” means the Capital Markets Authority established by section 5 of the Capital Markets Authority Statute 1996;

“body corporate” includes a body corporate constituted under the law of a country or territory outside Uganda;

“collective investment scheme” has the meaning in section 3;

“Court” means the High Court and includes any division of the High Court designated for the hearing of commercial cases;

“currency point” means the value of a currency point specified in Schedule 5;

“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 advisor” means a person who is retained by an open ended investment company, its directors or its ACD or, in relation to a unit trust 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 given in section 19(2);

“licensed person” has the meaning given in section 8;

“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 60 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 given in section 3(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 I;

“recognised scheme” means a scheme recognised under Part VI;

“Registrar of Companies” means the Registrar of Companies under the Companies Act;

“scheme particulars” means a document containing information about a unit trust scheme as specified in Part IV of Schedule I;

“scheme regulations” means regulations made under section 30 or section 31;

“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 the person holding title to the property of a unit trust scheme on 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 3(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) Any 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 4; 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 that Act.

Cap. 85.

3. (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.

Meaning of  
collective  
investment  
scheme.



(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 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 benefit 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) any other arrangement as may be determined by order of the Authority.

(6) No body corporate other than an open-ended investment company shall be regarded as constituting a collective investment scheme: except that the Minister may, on reasonable grounds, by statutory order, specify the activities of any body corporate other than an open-ended investment company, to be subject to regulation under this Act as a collective investment scheme.

#### PART II—UNLICENSED PERSONS AND SCHEMES.

Restrictions  
on  
unlicensed  
persons.

4. (1) No person other than a licensed person shall—
- (a) establish or operate a collective investment scheme in Uganda, including acting as a depositary or trustee, or purport to establish or operate such a scheme, unless that person is a licensed person and the scheme is a licensed scheme or a 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 persons doing so.

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

5. Any person who contravenes section 4 commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment for a term not exceeding five years or both. Offences.

(2) In proceedings brought against any person for an offence under section (4)(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 4(1)(b), it shall be a defence for that person to prove that he or she acted to the order of another person and that he or she believed, on reasonable grounds, that—

(a) the person to 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 4(3).

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



Agreements  
made by or  
through  
unlicensed  
persons.

6. (1) Subject to subsection (3), any agreement which is entered into by a person in the course of, or in consequence of a contravention by that person of section 4 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 Court may, on the application of either party, determine.

(3) A 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 4.

(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 4 shall not make an agreement illegal or invalid to any greater extent than is provided in this section.

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

Injunctions  
and  
restitution  
orders.



(a) there is a reasonable likelihood that a person will contravene section 4; or

(b) any person has contravened section 4 and that there is a reasonable prospect that the contravention will continue or be repeated.

(2) If, on the application of the Authority, the Court is satisfied that a person has entered into any transaction in contravention of section 4, 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 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 4 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 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 (3) (b), to the profits and to the extent of the loss or other adverse effect.



(5) The 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 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 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.

#### 8. 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 in, or are carried out by the company in connection with or for the purposes of, operating the collective investment scheme constituted by the company.

Types of  
licensed  
persons.



9. (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 depositary, may only be made by a bank as defined in the Financial Institutions Statute 1993 or an insurance company as defined in the Insurance Statute 1996 or such other financial institution as the Authority may prescribe.

Application  
for licence

Statute No.  
4 of 1993.  
Statute No.  
7 of 1996.

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



Grant and  
refusal of  
licence

**10.** (1) The Authority may, on an application duly made in accordance with section 9 and after being furnished with the information required under that section, grant or refuse 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 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 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.

Notice of  
proposed  
refusal.

**11.** (1) Where the Authority proposes to refuse an application under section 10, 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 Court under Part XII.

(4) Where a case is not required to be referred to the 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.

**12.** (1) An application under section 9 may be withdrawn before it is granted or refused 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.

Withdrawal  
of  
applications  
and licences  
by consent.

(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 60 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, 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.

Types of  
licensed  
schemes.

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

Application  
for scheme  
licence.

**14.** (1) An application for a licence in respect of a collective investment scheme—

(a) shall be made in such manner as the Authority may direct;

(b) shall be accompanied by the scheme's formation documents prescribed in Schedule 1;

(c) shall 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) shall 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) shall 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, his or her usual residential address, his or her nationality, his or her 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 subsection (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.

**15.** (1) The Authority may, on an application duly made in accordance with section 14 and after being furnished with all information it may require under that section, grant a licence in respect of a collective investment scheme if—

Licences.

(a) it appears to the Authority that the criteria mentioned in section 17 are satisfied in relation to the scheme and the scheme complies with the requirements of any regulations made by the Authority under section 30 or 31 as apply to the scheme; and



- (b) in the case of an investment company with variable capital, it has received a notification under section 16 from the Registrar of Companies.
- (2) In determining whether the criterion of fitness and propriety mentioned in section 17(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) if 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) if the proposed director is a partnership, to any of the partners; and
  - (d) if 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.
- (5) In subsection (2)(b), “shadow director”, in relation to a body corporate, means 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.



Registrar of  
Companies  
to approve  
names.

16. (1) Where, in respect of a proposed investment company with variable capital, it appears to the Authority that the requirements of section 15(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 14(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 14(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 depositary.

(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 Registrar of Companies index of company names.

(5) In determining, for the purposes 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, accounts, spaces between letters and punctuation marks; and “and” and “&” are to be taken as the same.

Criteria for  
licensing.

17. (1) The criteria referred to in section 15(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 1;
- (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) if the company has only one director, that director is the authorised corporate director;
- (d) if 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 the 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 purposes of this Act, the Authority shall, in addition to the criteria prescribed by section 15(2), have particular regard to the criteria prescribed in Schedule 6.

Representa-  
tion against  
refusal.

18. (1) Where the Authority proposes to refuse an application under section 15, it shall give the applicant written notice of its intention to do so, stating the reasons for which it proposes to refuse 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 twentyone 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 the application.

#### PART V—ESTABLISHMENT OF INVESTMENT COMPANIES WITH VARIABLE CAPITAL.

Incorporation  
of  
investment  
company  
with  
variable  
capital.

19. (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) Any 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 1.



(5) Subject to paragraph 3(3) of Part I of Schedule 1 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 1 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 depository of the company and on each of its shareholders; and those persons shall be taken to have notice of the provisions of the instrument.

(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.

20. (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.

Registration.

(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 depository which are contained in the papers retained by him or her under section 16(3).

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

(4) Schedule 2 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 14(1)(b).



Notifications  
to Registrar  
of  
Companies.

21. (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 4 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 14(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 4, 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 4, 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 4, a company shall, not later than 14 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 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.

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

Safekeeping  
of scheme  
property by  
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 safekeeping; or

(ii) in a case falling within paragraph (i), authorising the third party to entrust all or some of those assets to other specified persons.

(3) Schedule 3 has effect in relation to the safekeeping of scheme property of an investment company with variable capital by the depositary.

Corporate  
code.

23. Schedule 4, which provides for the Corporate Code, has effect in relation to companies with variable capital.

#### PART VI—RECOGNITION OF FOREIGN SCHEMES.

Schemes  
licensed or  
authorised  
in  
designated  
countries or  
territories.

24. (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 31 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.

Other  
foreign  
schemes.

25. (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 24(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 section 30 and 31, 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 not prohibited from acting as operator or depositary or trustee, as the case may be, by or under regulations made under section 30 or by any prohibition imposed under section 45.

(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 shares or units on an investment exchange at a price not significantly different from that mentioned in this subsection.

(8) Subsections (2) to (5) of section 14 apply to an application under this section.

(9) So much of section 35 as applies 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 31 has effect in relation to a scheme recognised under this section as it has effect in relation to a licensed scheme.



Refusal of  
recognition.

**26.** (1) Where the Authority proposes to notify the operator of a scheme under section 24(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.

Facilities  
and  
information  
in Uganda.

**27.** (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 thinks 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.

Application  
fees.

**28.** (1) Every application made under sections 9, 14 or 25, and every notice given to the Authority under section 24(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.



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

Annual  
fees.

#### PART VIII—GENERAL CONTROLS.

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

General  
regulations.

- (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, depositary 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.

Regulations  
as to  
prospectus  
or scheme  
particulars.

**31.** (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.

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

Statements  
of principle.

(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 40;

(b) giving of a disqualification direction under section 42;



(c) making of a public statement under section 43; or

(d) application by the Authority for an injunction, interdict or other order under section 44;

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

(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.

Modification  
or waiver of  
statements  
of principle.

**33.** (1) The Authority may on the application of any person—

(a) modify a statement of principle issued under section 32 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 32 applies in the case of failure to comply with a condition as in the case of failure to comply with a statement of principle.

**34.** (1) The Authority may issue codes of practice with respect to any matters dealt with by statements of principle issued under section 32 or by rules or regulations made under any provision of this Act.

Codes of  
practice.

(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.

Alterations.

**35.** (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 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 17 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.

**36.** (1) A prohibition under section 45 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.

Restrictions on activities of manager and retirement of trustee.

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

**37.** 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 in so far as it would have the effect of exempting the manager or trustee, in the case of a unit trust scheme, or the ACD 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.

Avoidance of exclusion clauses.

**38.** (1) Without prejudice to section 44, 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.

Actions for damages.

(2) Any person who has a right of action under subsection (1) may refer the claim or dispute for settlement under the Arbitration and Conciliation Act, 2000.

Act No. 7 of 2000.

**39.** (1) No action in respect of a contravention to which section 38 applies shall lie at the suit of a person other than a private investor, except in such circumstances as may be specified by regulations made by the Authority.

Restriction on right of action.



(2) The meaning of "private investor" for the purposes of subsection (1) shall 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.

Withdrawal  
or  
suspension  
of licence.

**40.** (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 10(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).

**41.** (1) Where the Authority proposes—

(a) to withdraw or suspend a licence; or

(b) to refuse an application under section 40(4),

Notice of  
proposed  
withdrawal  
or  
suspension.

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 Court under section 63.

(5) Where a case is not required to be referred to the 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, 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.

Employment of prohibited persons.

42. (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 Court under section 63.

(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.

**43.** (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.

Public  
statement.

(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 Court under section 63.

(5) Where a case is not required to be referred to the Court under section 63 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.

Injunctions  
and  
restitution  
orders.

**44.** (1) Where, on the application of the Authority, the 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 or condition 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 or condition 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 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 or condition 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 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 both subsections (2) (a) and (b), to the profits and to the extent of the loss or other adverse effect.

(4) Any amount paid into 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 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.



Restriction  
of business.

45. (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.

Restriction  
on dealing  
with assets.

46. (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.

Vesting of  
assets in  
trustee.

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

- (a) belong to a licensed person or appointed representative; or
- (b) belong to participants and are held by or to the trustee 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.

48. The Authority may, either of 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.

Rescission  
and  
variation.

49. (1) The power to impose, rescind or vary a prohibition 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.

Notices.

(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 Court under section 63.

(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.

reach of  
prohibition  
requirement.

**50.** (1) Sections 38, 43 and 44 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.

revocation  
of licence.

**51.** (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 24 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 any of paragraphs (a) to (d) of section 15(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 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.

Representations against revocation.

**52.** (1) Where the Authority proposes to revoke a licence or give a direction under section 51 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 twentyone 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.

Directions.

**53.** (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 4, 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 Court to wind up the company; or
- (iv) require that the affairs of the company be wound up otherwise than by the Court.

(3) Subject to subsection (4), the revocation of the licence under section 51 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 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 any of paragraphs (a) to (d) of section 15(2) if that subsection applied in respect of a director of the company as it applied in respect of a proposed director.

(6) Sections 38, 43 and 44 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 24 or 25 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 25 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.

Notice of  
directions.

54. (1) The power to give a direction under section 53 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 53, 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.



55. (1) In any case in which the Authority has power to give a direction under section 53 in relation to a licensed scheme or, under section 53(3), in relation to a scheme which has been such a scheme, it may apply to the 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;

(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 17.

(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 Court for an order removing the manager or trustee, or both the manager and trustee, and appointing a licensed person to wind the scheme up.

(3) On an application under this section, the 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 36 shall not apply to a manager appointed by an order made on an application under subsection (2).



## PART X—WINDING UP.

Winding up  
orders.

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

(2) The 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 50 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 court in favor 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 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.



57. (1) Where an investment company with variable capital is wound up as an unregistered company under Part IX of the Companies Act, that Act shall apply for the purposes of the winding up with the following modifications—

Winding up  
by Court.

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(a) a petition for the winding up of an investment company with variable capital may be presented by the depositary of the company as well as by any person authorised under section 224 of the Companies Act (as those sections apply by virtue of Part IX of that Act) to present a petition for the winding up of the company;

(b) where a petition for the winding up of an investment company with variable capital is presented by a person other than the Authority—

(i) that person shall serve a copy of the petition on the Authority; and

(ii) the Authority is entitled to be heard on the petition.

(c) if, before the presentation of a petition for the winding up by the Court of an investment company with variable capital as an unregistered company under Part IX of the Companies Act, the affairs of the company are being wound up otherwise than by the Court—

(i) section 229(2) of the Companies Act shall not apply; and

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(ii) any winding up of the company by the Court shall be deemed to have commenced—

(aa) at the time at which the Authority gave its approval to a proposal mentioned in section 35 (2) (d); or



(bb) in a case falling within section 35 (5)(b),  
on the day next following the end of  
the three month period mentioned in  
that section.

(d) the Authority may, by statutory instrument, make  
rules for the winding up of a unit trust scheme.

Dissolution  
on winding  
up by  
Court.

**58.** (1) This section applies where, in respect of an  
investment company with variable capital, the Registrar of  
Companies receives—

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(a) a notice served for the purposes of section 298 of the  
Companies Act, as that section applies by virtue  
of Part IX of that Act; or

(b) a notice from the official receiver that the winding  
up by the 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 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) A 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.

59. (1) Where the affairs of an investment company with variable capital have been wound up otherwise than by the 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.

Dissolution  
in other  
circum-  
stances.

(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 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 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 Court in accordance with scheme regulations, be paid into Court.



## PART XI—INVESTIGATIONS.

Investigations.

**60.** (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, or of the operator or depositary or trustee of, any licensed scheme;
- (b) the affairs of, or 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.

Cap. 85.

(3) Section 168 of the Companies Act, shall apply in relation to an inspector appointed under this section as it applies to an inspector appointed under section 165 of that Act but with the modifications specified in subsection (4).

(4) In section 168 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.

Investigations:  
disclosure.

**61.** (1) A person shall not, under section 60, 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 court, except that a lawyer may be required to furnish the name and address of his or her client.



(2) Nothing in section 60 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.

**62.** (1) Where a person claims a lien on a document, its production under section 43 shall be without prejudice to the lien.

Investiga-  
tions:  
supple-  
mentary

(2) An inspector appointed under section 60 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 60(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 60; 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 60 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—THE HIGH COURT.

#### 63. (1) Any person—

- (a) on whom a notice is served under section 11, 41, 42(4) 43(2) or 49; or
- (b) on whom a copy of a notice under section 11, 41, 43(2) or 49 is served, or on whom the Authority considers that copy of such a notice would 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 Court and, subject to this section, the Authority shall refer that matter accordingly.

Reference  
of matters  
to Court.



(2) The Authority need not refer a matter to the Court at the request of the person on whom a notice was served under section 11, 41, 42(4), 43(2) or 49 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 Court at the request of the person on whom a notice is served under section 49 if—

- (a) that matter is the refusal of 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 41 and at any time within the period mentioned in subsection (1), the Authority serves a new notice on that person in substitution



for a 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 if the period mentioned in subsection (1) were twentyeight 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 43.

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

**64.** (1) Where a case is referred to the Court at the request of a person within section 63(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 Court.

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

(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 Court is any action of the Authority other than the refusal of 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, other than that under which the Authority was acting or proposing to act.

(4) Section 41, 43(2), 43(3), 49(2) and 49 (4) shall not apply to any action taken by the Authority in accordance with the report of the Court.

(5) The 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.

**65.** Where a case is referred to the Court at the request of a person under section 63(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.

Decisions  
on  
references  
by third  
parties.

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

Withdrawal  
of  
references.

(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 63(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 Court under this section, the Court shall not further investigate the case or make a report under section 64 or 65; 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 Court, the withdrawal of the case by one or more of them shall not affect the functions of the Court as respects the case so far as relating to a person who has not withdrawn the reference.

(5) Where a person on whom a notice was served under section 11 or 43 withdraws a case from the Court, section 11(5) and section 43(5) of each of those sections shall apply to that person as if he or she had not required the case to be referred.

Reports.

67. (1) In preparing its report on a case, the 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 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 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 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 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.

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

- (a) each licensed person;
- (b) each licensed scheme;
- (c) each recognised scheme; and
- (d) each person in respect of whom a direction under section 42 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.

Inspection  
of register.

**69.** (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.

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

Power to  
call for  
informatio

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

(3) Sections 38, 43 and 44 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.

71. (1) Subject to section 72, restricted information which relates to the business or other affairs of any person shall not be disclosed by—

Restriction  
on  
disclosure  
of  
informatio

(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 60;
- (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) A 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.

ceptions  
in  
trictions  
closure.

72. (1) Section 71 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 71 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 71 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.

73. (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—

Directions  
restricting  
disclosure  
of  
information  
overseas.

- (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 person 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 60, 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).

Offences  
under  
section 73.

74. A person who knowingly discloses information in contravention of a direction under section 73 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.

Establish-  
ment of  
compens-  
ation  
scheme.

75. (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.

76. The Authority, nor any 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.

Exemption  
from  
liability for  
damages.

77. Proceedings arising out of any act or omission, or 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 Court.

Jurisdiction  
of Court.

78. (1) A Judge or a Magistrate not below Grade I may issue a warrant under this section if satisfied on information 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.

Powers of  
entry.

(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 60, that there are reasonable grounds for believing that there are, on any premises, documents whose production has been required under section 60 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 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 imprisonment not exceeding two years, or both.



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

79. A person commits an offence if—

False and misleading statements.

(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 by or under this Act,

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.

80. A person who commits an offence under section 79 is liable on conviction, to a fine not exceeding two hundred penalty points or to imprisonment for a term not exceeding two years, or both.

Offences under section 79.

81. (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—

Offences by bodies corporate, partnerships and unincorporated associations.

(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 functions of management as if he 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.

Jurisdiction  
and  
procedure in  
respect of  
certain  
offences.

**82.** (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 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.

Service of  
notices.

**83.** (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 Decree, 1976 in its application to this section, the proper address of any person is his or her last known address, whether of his residence or of a place where he carries on business or is employed, and also any address applicable in his or her case under the following provisions—

Decree No.  
18 of 1976.

- (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.



Regulations.

**84.** 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.

Publication  
of  
information  
and advice.

**85.** (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 71 in any case in which it could not be disclosed apart from this section.

Amendments  
to  
Companies  
Act Cap. 85.  
and Capital  
Markets  
Authority  
Statute  
1996.

**86.** (1) The Companies Act is amended—

(a) in section 3, by inserting at the end—

“and by the Collective Investment Schemes Act 2002.”;



(b) in section 392, by inserting after “Act”—

“or is an investment company with variable capital within the meaning of the Collective Investment Schemes Act 2002”.

(2) The Capital Markets Authority Statute 1996 is Statute No. 1 of 1996.  
 ded—

(a) in section 48, by repealing “manager or trustee under a unit trust scheme” and substituting—

“operator or depository of a collective investment scheme within the meaning of the Collective Investment Schemes Act 2002”;

(b) in section 2—

(i) in the definition of securities, by inserting after paragraph (d), the following paragraph—

“(e) a unit under a unit trust scheme;”

(ii) by inserting after the definition of “Chief Executive”, the following definition—

“collective investment scheme” has the meaning assigned to it in the Collective Investment Schemes Act 2002”.

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## SCHEDULES.



## SCHEDULE 1

## SECTION 14

## FORMATION DOCUMENTS

## PART I—INSTRUMENT OF INCORPORATION.

Contents of  
instrument.

1. The instrument of incorporation shall contain—

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

Statements.

2. 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 depositary 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.

Specific  
matters

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

Other  
matters.

- (a) the name of the company;
- (b) the category, if any is specified in 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 computerbased 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 (share certificates) of Schedule 4, 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.

Contents of  
prospectus.

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

Prominent  
statement.

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

The  
company  
prospectus.

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

Investment  
objectives  
and policy.

- (a) (i) the investment objectives (e.g. capital growth or income) of the company or of each subfund 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 (e.g. 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 35% of its assets and whether or not it has done so;
- (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 ACD or by an associate of the ACD.



Clarification  
of  
objectives.

9. Where, in accordance with scheme regulations, all or part of the remuneration of the ACD 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.

Other  
matters in  
prospectus.

10. 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 (e.g. 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.

Distribut-  
ions.

11. 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 (e.g. 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. The prospectus shall state—

Characteristics of shares in company.

- (a) where there is more than one class of shares in issue or available for issue, the name of each such class and the rights attached to each class in so far 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. The prospectus shall state the following particulars of the Authorised Corporate Director (ACD)—

Authorised Corporate Director (ACD).

- (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 ACD is in Uganda, the address of the ACD'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 Statute 1996 or this Act, details of that licence;
- (m) in what capacity, if any, the ACD 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 ACD which may be relevant to shareholders, including provisions, if any, relating to termination, compensation on termination and indemnity.

Statute No.  
1 of 1996.

Directors of  
company.

14. (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 ACD.



15. The prospectus shall state the following particulars of the Depository.  
Depository—

- (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 Statute 1996 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.

Statute No.  
1 of 1996.

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

- (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 ACD, or the company to make decisions on behalf of the company or the ACD, 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 ACD 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.

Auditor.

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

Register of shareholders.

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

Payments.

19. (1) The prospectus shall state the payments that may be made to the ACD, 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 ACD'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. 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 (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.

Other  
payments  
out of  
scheme  
property.

21. 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.

Moveable  
and  
immovable  
property.

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

Amortis-  
ation.

23. The prospectus shall state—

(a) the dealing days, and times in the dealing day, on which the ACD 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;

Sale and  
redemption  
of shares.



- (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;
  - (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 ACD 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.

Valuation of  
scheme  
property.

24. 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 ACD 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. The prospectus shall state—

Dilution  
levy.

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

26. The prospectus shall state that the ACD'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 ACD's agreement to sell or, the case may be, to redeem the shares in question.

Forward  
pricing.

27. If the ACD makes a preliminary charge, the prospectus shall

Preliminary  
charge.

- (a) the current rate or amount of preliminary charge; and
- (b) if notice has been given to participants of the ACD'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. If the ACD may make a redemption charge, the prospectus shall state—

Redemption  
charge.

- (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 ACD 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. The prospectus shall state—

- (a) when annual and halfyearly 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 halfyearly 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 halfyearly 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 subfund 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;
- (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. (1) The prospectus shall state, in the case of an umbrella company—

Umbrella  
company.

- (a) that a participant is entitled to exchange shares in one subfund for shares in any other subfund;
- (b) that an exchange of shares in one subfund for shares in any other subfund 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 subfund for shares in any other subfund be given a right by law to withdraw from or cancel the transaction;
- (d) what charges, if any, may be made on exchanging shares in one subfund for shares in any other subfund;
- (e) the policy for allocating between subfunds any assets of, or costs, charges and expenses payable out of the scheme property which are not attributable to any particular subfund;
- (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 subfund;
- (g) in respect of each subfund, 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 subfunds in issue, the effect of scheme regulations upon such shares.

(2) In the application of this Part of this Schedule to an umbrella company, information required—



- (a) shall be stated in relation to each subfund, where the information for any subfund differs from that for any other;
- (b) shall be stated for the company as a whole, but only where the information is relevant to the company as a whole; and
- (c) shall contain a statement to the effect that the subfunds 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 subfund out of the assets attributable to that subfund, the excess liabilities may have to be met out of the assets attributable to the other subfunds.

Additional  
information.

31. 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 judgement 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.

Trust deed.

32. A trust deed—

- (a) shall contain the matters specified in paragraphs 33 to 40, 42, 43, 45 to 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. 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 geographic objectives under paragraph 48.

Name of  
scheme.

34. A statement—

Licensed  
status.

(a) in all cases of the relevant category of licensed unit trust schemes to which the scheme belongs, in so far as categories are specified, under scheme regulations; and

(b) in the case of an umbrella fund, identifying, in the case of each constituent part, to which of the relevant categories in so far as categories are specified, that part would belong if it were itself the subject of a separate licence under section 10.

35. A statement that the deed is made under and governed by the laws of Uganda.

Governing  
law.

36. 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 and requires the trustee and the manager to do the things required or permitted of them by the terms of the deed.

Trust deed  
to be  
binding an  
authoritativ

37. A statement of what currency is the base currency of the scheme.

Base  
currency.

38. 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 purposes of this paragraph.

Investmen  
powers in  
eligible  
markets.



declaration  
trust.

39. 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.

holder's  
ability to  
pay.

40. 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.

duration of  
scheme.

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

manager's  
preliminary  
charge.

42. 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.

Manager's  
periodic  
charge.

43. 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. 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.

Umbrella funds: manager's charge on an exchange of units.

45. A statement authorising the manager to deduct a charge on redemption out of the proceeds of redemption.

Manager's charge on redemption.

46. 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—

Trustee's remuneration.

(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. 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 statement of those narrower descriptions of assets, proportion, transactions or borrowing powers.

Constituent of property, permitted transactions and borrowing powers.

48. 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, a statement of what they are.

Restricted economic geographic objectives.



Accumulation units.

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

Limited categories of holder.

50. 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.

Certificates.

51. 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.

Grouping periods.

52. 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.

Enabling and restricting provisions.

53. Any provision—

- (a) dealing with a matter not referred to in this Part, the Schedule the inclusion of which serves to enable the scheme, the 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.

Restatement of statutory provisions.

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

#### PART IV—SCHEME PARTICULARS.

Particulars.

55. Scheme particulars shall contain the matters specified in this Part of this Schedule 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. (1) The scheme particulars shall state the following particulars of the manager—

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 24 or 25 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 subparagraphs (a) to (d) and (f) to (i).

The trustee.

57. 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.

The investment adviser.

58. If the manager employs the services of an investment adviser, the 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. The particulars shall state whether the trustee is the registrar and, if not, the registrar's name and address. The registrar.
60. The particulars shall state the name and address of the auditor of the scheme. The auditor.
61. The particulars shall state the address in Uganda where the register of holders can be inspected. The register of holders.
62. The particulars shall state— The constitution and objectives of the scheme.
- (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 paragraph (c) to which each constituent party would belong if it were itself the subject of a separate licence under section 15 (licences);



- (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) (aa) what is the objective of the fund;
    - (bb) what is the manager's investment policy for achieving that objective; and
    - (cc) 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 e.g. in an economic sector, geographical area or 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 35 *per cent* 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—
    - (aa) immovables; and
    - (bb) 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—
    - (aa) the fact that the property may be so invested; and
    - (bb) 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 windingup of the scheme can be decided upon, a description of the procedure to be followed in a windingup and what the rights of participants will be in a windingup;
- (j) the accounting reference date; and
- (k) the date of the interim accounting period.

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

List of  
eligible  
markets.



Characteristics of units in the scheme.

64. The 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.

Characteristics of the scheme.

65. (1) The particulars shall state any characteristics of the scheme itself, 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) In particular, 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.



Valuation of  
property.

66. The particulars shall state—

(a) how frequently, and at what times of 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 from 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. If the price at which units may be purchased from the manager may include a preliminary charge by the manager, the particulars shall state—

Preliminary  
charge.

(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; and

(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. If the manager may make a periodic charge out of the property of the scheme, the particulars shall state—

Periodic  
charge.

(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; and



(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.

Charge on redemption.

69. If the manager may make a charge by way of deduction from the proceeds of redemption, the 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.

Other charges and expenses.

70. The 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. The particulars shall state—

Distribution.

- (a) the annual income allocation date and, if any, the interim income allocation dates 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. The particulars shall state—

Issue and redemption of units in the scheme.

- (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;
- (iv) the minimum value of units which may be the subject of any one act of redemption; or
- (e) the circumstances in which the redemption of 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.

Pricing  
basis for  
issue and  
redemption:

73. The 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.

General  
information.

74. The particulars shall state—

- (a) when annual and halfyearly 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 halfyearly reports may be inspected and from which copies of them may be obtained;
- (c) that the cancellation price last notified to the depository 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 halfyearly reports are available for inspection;
- (ii) that a 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;
- (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. The particulars shall state any other material information which—

Additional  
information  
in all cases

- (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 enquiries.

76. (1) The particulars shall state, in the case of an umbrella fund—

Umbrella  
funds.

- (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.

## SCHEDULE 2

## Section 20

## APPLICATION OF COMPANIES ACT.

1. Part XI of the Companies Act (General provisions as to registration) shall, subject to the modifications set out in paragraphs 2 to 5, 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 2(1) of the Companies Act. Cap. 85.

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 388 (Inspection, production and evidence of documents kept by registrar) shall apply as if—

(a) for paragraph (b) of subsection (1) there were 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) the provisos to subsection (1) were omitted; and

(c) subsection (5) were omitted.



## SCHEDULE 3.

Section 22(3)

## DEPOSITARIES.

appointment.

1. 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 9 (application for licence) as depositary of the company shall be deemed to be appointed as its first depositary.

subsequent appointments.

2. Subject to section 35 (Alterations) and 55 (Applications to Court), any subsequent appointment of the depositary of a company shall be made by the directors of the company.

retirement.

3. The depositary of a company may not retire voluntarily except upon the appointment of a new depositary.

entitlements

4. (1) The depositary of a company is entitled—

depositary.

(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 it attends on any part of the business of the meeting which concerns it as depositary;

(d) to convene a general meeting of the company when it sees 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 in so far 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. (1) Where the depositary of a company ceases, for any reason other than by virtue of a Court order made under section 55 (Applications to Court), 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.

Statement  
by  
depositary  
ceasing to  
hold office.

(2) If the statement under subsection (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 (Transfer of registered shares) of Schedule 4, 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 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 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 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 Court's decision, 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 Court is not satisfied under paragraph (4), the company shall not later than fourteen days after the Court's decision, take the steps required by subparagraph (2)(a) and notify the depositary of the Court's decision.

(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 Court's decision, 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.

Application.

6. (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 paragraphs 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 4

## Section 23

## CORPORATE CODE

## PART I—ORGANS

1. (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 9 (Application for licence) as directors of the company shall be deemed to be appointed as its first directors. Directors.

(2) Subject to sections 35 (Alterations) and 55 (Applications to Court), 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 scheme regulations as to the allocation between the directors of responsibilities 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, scheme regulations and the company's instrument of incorporation, the directors of a company may exercise all the powers of the company.



Directors to have regard to interests of employees.

2. (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.

Inspection of directors' service contracts.

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

General  
meetings.

(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. (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.

Capacity  
company.

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

6. (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—

Power of  
directors  
and gener  
meeting t  
bind the  
company.

(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 (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 enquiries in circumstances in which a reasonable and honest person would have done so.

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

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

o duty to  
quire as to  
acity etc.



(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 subparagraph (6) (1)(a) or (b).

8. (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 enquiries as ought reasonably to be made.

Exclusion  
of deemed  
notice.

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

9. (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.

Restraint  
and  
ratification  
by  
shareholders.

(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 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 general meeting.



(6) Nothing in this paragraph shall affect any power or right conferred by or arising under section 38 (Actions for damages) or section 44 (Injunctions and restitution orders).

Invalidity of  
certain  
transactions  
involving  
directors.

10. (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 subsection (1) is voidable at the instance of the company.

(3) Whether or not the transaction is voided, 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 subparagraphs (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 subjectmatter 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 voidance; or

(d) the transaction is ratified by resolution of the company in 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 paragraph (6) in favour of such a person, the 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 the purposes of this paragraph—

(a) “associate”, in relation to any person who is a director of the company, means that person’s wife, husband or minor child or stepchild, 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 general meeting or of a meeting of any class of shareholders.



## PART II—SHARES

Shares.

11. (1) Without prejudice to the generality of section 30 (General regulations), 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, one (the "smaller") denomination shall be such proportion of the other (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. Subject to paragraph 13, an investment company with variable capital shall prepare documentary evidence of title to its shares ("share certificates") as follows—

Share  
certificates.

- (a) in respect of any new shares issued by it;
- (b) where a shareholder has transferred part only of his or her 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 holding 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 subparagraphs (1)(a) to (e) are ready for delivery as soon as reasonably practicable.

(3) Certificates shall be prepared in the circumstances referred to in subparagraphs (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 paragraph (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 any 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. (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) case 1 is any case 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) case 2 is any case where a shareholder has indicated to the company in writing that he or she does not wish to receive a certificate;

(c) case 3 is any case 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

Exceptions  
from  
paragraph  
12.



- (d) case 4 is any case 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.

Bearer  
shares.

14. An investment company with variable capital may, if its instrument of incorporation so provides, issue shares ("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

General.

15. (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 numbers 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.

Register to  
be evidence.

16. 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.

Prohibited  
notice.

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

Register to  
be up to  
date.

18. 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.

Contents of  
register.

19. (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, 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 the purposes of subsubparagraph (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 paragraph (1) (b) shall be updated at least once a day or at such longer interval as may be permitted by the Authority.

20. (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. Exemption

(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 (if it has one) and, where the company has more than one class of shares, by its class.

21. 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.

Statement  
of bearer  
shares.



rights in  
no  
denomin-  
ations.

22. (1) This paragraph applies where the aggregate number of shares referred to in paragraphs 19 to 21 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 paragraphs 19 or 20, or the number of bearer shares of that class referred to in paragraph 21, 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.

ocation.

23. 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.

C  
re  
dex.

24. (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 be at all times 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. (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. Inspection.

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

(a) the company fails to comply with any of the requirements of paragraph 24 or 25; or

(b) the company fails to comply with any of the requirements of paragraph 16(2), (Notification to registrar of companies).

(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) A 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 Court under paragraph 25(3) 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.

Power to  
close  
register.

27. (1) Subject as mentioned in 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 or times not exceeding in the whole 30 days in each year.

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

Power of  
Court to  
rectify  
register.

28. (1) An application to the 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 Court may either refuse the application or may order rectification of the register of shareholders and payment by the company of any damages sustained by any party aggrieved.

(4) On an application under this paragraph, the 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. (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. General.

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

30. (1) Where a transfer of shares is made by the person (if any) who is designated in the company's instrument of incorporation for the purposes of this paragraph, the company may not register the transfer without such evidence as the company may require to prove that the transfer has taken place has been delivered to the company. Transfer of registered shares.

(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 etc.

(b) the company shall make such adjustments to the register as are necessary to reflect that person's change of circumstances.

31. (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. Transfer documents.

(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. S.

(3) In this Act "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 subparagraph (2)(a) or (2)(b) of paragraph 13, a share certificate relating to the shares in question;
- (c) in a case falling within subparagraph (2)(a) of paragraph 13, such other evidence of title to those shares as is required by the instrument of incorporation of the company; and
- (d) such other evidence (if any) as the company may require to prove the right of the transferor to transfer the shares in question.

Registration  
of certain  
transfers.

32. 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.

Refusal of  
registration.

33. (1) A company may, before the end of 21 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 Act 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 (including any law that is for the time being in force in a country or territory outside Uganda).

34. (1) Where, in respect of any transfer of shares, the 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.

Certification

(2) For the 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 sustained by him or her.

35. 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.

Transfer of  
bearer  
shares

36. 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.

Transfer of  
shares less  
than number  
specified.



Miscellaneous.

37. (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

Power incidental to carrying on business.

38. 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.

Name to appear in correspondence etc.

39. (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.

Particulars to appear in correspondence etc.

40. 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. A contract may be made—

Contracts.

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

Execution  
of  
documents.

(a) a document is executed by a company by the affixing of 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;



(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; and

(f) 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.

Execution  
of deeds  
overseas.

43. (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 deeds on its behalf in any place elsewhere than in 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.

Authentic-  
ation of  
documents.

44. 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.

Official seal  
for share  
certificates.

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

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



Personal liability for contracts and deeds.

46. (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 20(2) (Registration) 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) If 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 21 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 him or her by reason of the company's failure to comply with those obligations.

47. (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—

Exemptions from liability to be void.

(a) which exempts any officer of the company or any person (whether or not an officer of the company) employed by the company as auditor, from, or indemnifies him or her against, any liability which by virtue of any rule of 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.

(2) Except as provided by subparagraph (3), any such provision is void.



(3) 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 he or she is acquitted; or
  - (ii) in connection with any application under paragraph 50 in which relief is granted to him or her by the Court.

Power of Court to grant relief in certain cases.

48. (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) If in any proceedings to which this paragraph applies, it appears to the 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, he or she 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 Court may relieve that person, either wholly or partly, from his or her liability on such terms as it may think fit.



(3) If any such officer, auditor or depositary has reason to believe that any claim will or might be made against him or her in connection with the carrying on of the business to which this paragraph applies, he or she may apply to the Court for relief.

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

49. If any business of an investment company with variable capital is carried on with intent to defraud creditors of the company or of 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 not exceeding a term of five years or both.

Punishment  
for  
fraudulent  
trading.

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

etc.

50. (1) The powers of an investment company with variable capital include power to make the following provision for the benefit of persons employed or formerly employed by the company, which may be in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company.

Power to  
provide  
employees  
on cessation  
or transfer  
of business.

(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 authorised—

- (a) in a case not falling within subparagraph (b) or (c), by a resolution of the company in general meeting;
- (b) if 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) if the instrument of incorporation requires the exercise of the power to be sanctioned by a resolution of the company in 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

Reports:  
preparation.

51. (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 general meeting.

(4) Nothing in this paragraph or in paragraph 52 shall prejudice the generality of section 30 (General regulations).

(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.

Reports:  
accounts.

52. (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 as required in its annual report.

(3) A copy of the auditors' report shall form part of the company's annual report.

(1) If 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 issue a revised annual report.

Reports:  
voluntary  
revision.

(2) Where copies of the previous report have been laid before the company in general meeting or delivered to the Registrar of Companies, the revisions 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. No person is eligible for appointment as an auditor of an investment company with variable capital unless he or she is also eligible under section 161 of the Companies Act (Eligibility for appointment as company auditor) for appointment as a company auditor.

Eligibility.

55. (1) A person is not eligible for appointment as auditor of an investment company with variable capital if he or she is—

Disqualifications.

(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.

Ineligibility  
and  
vacation of  
office.

56. (1) No person shall act as auditor of a company if he or she is not eligible for appointment to that office.

(2) If, 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) A person who acts as 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 imprisonment 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.

Appoint-  
ment.

57. (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 auditors of any company may be appointed by the company in general meeting.

58. If, in any case, no auditors are appointed as required in paragraph 57, the Authority may appoint a person to fill the vacancy. Filling of vacancies.

59. (1) The directors of a company, or the company in general meeting, may fill a casual vacancy in the office of auditor. Filling of casual vacancies.

(2) While a casual vacancy continues, any surviving or continuing auditor or auditors may continue to act.

60. (1) Subparagraphs (2) to (5) apply to the appointment as auditor of a company of a partnership constituted under the law of Uganda, or under the law 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 law of any other country or territory in which a partnership is a legal person. Applicability of subparagraphs (2) to (5).

(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 this purpose, 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.

## Rights.

61. (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) A person who commits an offence under subparagraph (2) is liable on conviction to a fine not exceeding two hundred currency points or to imprisonment not exceeding a term of 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.

Entitlements  
of auditors.

62. (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 which concerns 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. (1) The remuneration of auditors of a company who are appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

Remuneration.

(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. (1) A company, may by resolution, remove an auditor from office notwithstanding anything in any agreement between the company and the auditor.

Removal.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall, not later than 14 days after the holding of the meeting, notify the Authority of the passing of the resolution.

tc.

(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. 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;

Rights on removal or non-reappointment.

is not effective unless notice of the intention to move it has been given to the investment company with variable capital at least 28 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 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.



66. (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.

Rights  
conferred  
by  
paragraph  
62.

(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. (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's head office.

Resignation.

(2) A notice under subsection (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.

etc.

(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. (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.

Notice  
accompanied  
by  
statement.

(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 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), 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 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. (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. (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 reappointment, 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) If 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

Preser  
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- (b) apply to the 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 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) If the 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 Court's decision, 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) If the Court is not so satisfied, the company shall, not later than fourteen days after the Court's decision, send to each of the shareholders a copy of the auditor's statement and notify the auditor of the Court's decision.

(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 Court's decision, 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. (1) If 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.

Offence under paragraph 70.

(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. 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.

Application of this Part.

73. An investment company with variable capital may apply to the Court under section 207 of the Companies Act (Power of company to compromise with creditors or members) for an order sanctioning a scheme falling within any of paragraphs (a) to (c) of paragraph 75(1) where—

Application to Court by company with variable capital.

(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 shareholders 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. A public company may apply to the Court under section 207 of the Companies Act for an order sanctioning a scheme falling within paragraph (b) or (c) of paragraph 75(1) where—

Application to Court by public company.



- (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 (as the case may be); in each case with or without any cash payment to shareholders.

Schemes.

75. (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;
- (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 the 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 an investment company with variable capital.

on etc.

seas.



SCHEDULE 5

*Section 2*

CURRENCY POINT

One currency point is equivalent to twenty thousand Uganda Shillings.



## SCHEDULE 6

Section 17(4).

## CRITERIA FOR DETERMINING FIT AND PROPER PERSONS.

1. In order to determine, for the 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, in so far as 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 fulfillment of the responsibilities of the office in question; and
- (c) the diligence with which he or she is likely to fulfill those responsibilities.

2. For the 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 willfully 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.