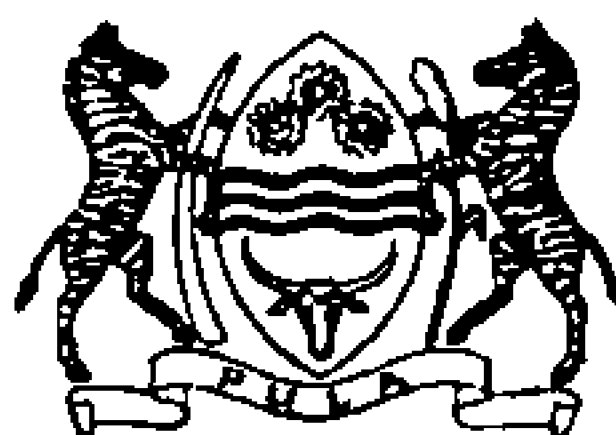


COLLECTIVE INVESTMENT UNDERTAKINGS ACT, 1996

No. 20



of 1996

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An Act for the regulation and control of the establishment and carrying on of collective investment undertakings; and for matters related thereto.

Date of Assent: 30.12.96

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and
commencement

1. This Act may be cited as the Collective Investment Act, 1996 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation

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

“collective investment undertaking” means an undertaking in whatever form established by law or by contract having the following characteristics —

- (a) two or more persons hold a participatory interest in the capital of the undertaking through shares, units or otherwise;
- (b) the object of the undertaking is the collective investment of the participants’ capital contributions through the spreading of risk;
- (c) the participants share the risk and the benefit of investment *pro rata* to their participatory interest; and
- (d) the participatory interest may be repurchased or redeemed directly or indirectly out of the assets of the undertaking or the undertaking has established a mechanism through a recognised stock exchange or other organised market which ensures that a participatory interest may be sold at a price which approximates its attributable net asset value;

“company” means a body corporate constituted under the laws of Botswana or of any other jurisdiction;

“Committee” means the Investment Supervisory Committee established under section 23;

“constitution” in relation to a collective investment undertaking means the constitutive documents in whatever form establishing the collective investment undertaking and pursuant to which the rights of the participants are determined and the participatory interests are defined;

- “depository” means a company which meets the criteria which the Minister may, by regulation, determine for the purposes of this Act, and which holds the assets of a collective investment undertaking subject to the constitution of that collective investment undertaking;
- “domestic collective investment undertaking” means a collective investment undertaking which has been established in, and is subject to, the laws of Botswana, and in which participatory interests are marketed in Botswana;
- “exempt domestic collective investment undertaking” means an undertaking which, even though established in Botswana, is exempted, under this Act, from any condition imposed by this Act;
- “exempt foreign collective investment undertaking” means a collective domestic undertaking which has not been established in Botswana and which provides only administrative services in Botswana;
- “foreign collective investment undertaking” means a collective investment undertaking which has not been established in Botswana but in which participatory interests are marketed in Botswana;
- “fund administration” means the provision of administration and accounting services to collective investment undertakings in the manner provided for in section 10;
- “fund administrator’s licence” means a licence granted by the Registrar under section 11;
- “licensed fund administrator” means the holder of a fund administrator’s licence and includes a person exempted from obtaining a fund administrator’s licence pursuant to this Act;
- “liquid assets” means the aggregate amount of such approved securities, deposits and other assets (including cash) as the Registrar may, by notice in the Gazette, prescribe for purposes of this Act;
- “Minister” means the Minister responsible for finance;
- “marketing” in relation to participatory interests in a collective investment undertaking means an act or series of actions done with the intention of promoting the purchase by investors of participatory interests in a collective investment undertaking;
- “offering document” means a document, including a prospectus, or a series of documents, on the basis of which persons are invited to take up participatory interests in a collective investment undertaking through subscription or through purchase;
- “organised market” means a market for the trade of financial securities which is recognised by the Committee as meeting adequate standards of organisation to protect the interests of investors;
- “participant” in relation to a collective investment undertaking means the person who is recognised by its constitution as the legal owner of a participatory interest in the collective investment undertaking;
- “principal officer” means a principal officer to be appointed by a collective investment undertaking in terms of section 20;

- “promoter” means a person who causes the preparation or distribution of an offering document or prospectus in respect of a collective investment undertaking;
- “recognised stock exchange” means, for the purposes of this Act, a stock exchange registered under the Stock Exchange Act (No. 11 of 1994), or such stock exchange outside Botswana as the Minister may, by notice in the Gazette, prescribe for the purposes of this Act;
- “Registrar” means the Registrar of Collective Investment Undertakings appointed under section 21;
- “Secretary” means the secretary of the Committee appointed in terms of section 25;
- “securities” means shares, stock, units in a unit trust scheme in property shares, units in a collective investment undertaking, debentures, debenture stock and debenture bonds, and includes unsecured notes, whether or not they have inherent option rights or are convertible.

PART II — Collective Investment Undertakings

Restrictions
on collective
investment
undertakings

3. (1) No person shall in or from Botswana —
- (a) carry on the business of a collective investment undertaking;
 - (b) represent in any way that he is carrying on business as a collective investment undertaking; or
 - (c) market a participatory interest in a collective investment undertaking or issue an offering document in respect of one
- unless he has been granted a licence to carry on business as such under this Act.

(2) For the purposes of this Act, a domestic collective investment undertaking which is a body corporate shall not carry on business as a collective investment undertaking unless it has been registered under the Companies Act and has satisfied the requirements of a company under that Act.

Cap. 42:01

Licensing of
collective
investment
undertakings

4. (1) Every person who wishes to operate as a collective investment undertaking shall apply to the Committee for a licence to do so.

(2) An application for a collective investment undertaking licence shall be made on such form as may be prescribed by the Minister and forwarded to the Registrar, and shall be accompanied by —

- (a) the constitution of the collective investment undertaking;
- (b) such supporting documents relating to the collective investment undertakings as may be prescribed by the Minister;
- (c) such details relating to the promoter as may be prescribed by the Minister;
- (d) such details relating to the depositary as may be prescribed by the Minister;
- (e) such details relating to the fund administrator as may be prescribed by the Minister; and
- (f) such licensing fee as may be prescribed by the Committee.

(3) The Secretary of the Committee shall examine the application to determine whether it satisfies the requirements of subsection (2) and shall, if he is so satisfied, forward the application to the Committee.

(4) The Committee shall examine every application forwarded to it by the Secretary of the Committee to determine whether the collective investment undertaking in respect thereof satisfies the requirements for the grant of a licence as specified in subsection (7).

(5) (a) The Committee shall, if it is satisfied that a collective investment undertaking satisfies such requirements, forward the application to the Registrar and recommend to him, in writing, to grant a collective investment undertaking licence.

(b) The Committee shall, if it is not satisfied that the collective investment undertaking satisfies the said requirements, return the application to the applicant with a request, in writing, for such further information as it may require, for specific compliance with regard to a specific aspect of the application, or forward the application to the Registrar with such recommendation as it considers appropriate in the circumstances.

(6) The documents and details referred to in subsection (2) shall be in the English language.

(7) The Registrar shall not grant a collective investment undertaking licence unless he is satisfied that —

- (a) the promoter of that undertaking is of sound reputation and meets such requirements as may be prescribed by the Minister;
- (b) the individuals connected with the collective investment undertaking which shall include directors of the collective investment undertaking or directors of the company charged with the management of the collective investment undertaking meet such requirements as may be prescribed by the Minister;
- (c) if the collective investment undertaking conducted business prior to its becoming subject to the provisions of this Act, it meets the requirements prescribed by the Minister in respect of its past business; and
- (d) the business of the collective investment undertaking will be conducted in a proper and arms length manner with the bona fide intention of conducting such a business.

(8) The Registrar may grant a collective investment undertaking licence subject to such conditions as he considers necessary, which conditions shall be endorsed on such licence.

(9) The promoter, management and the administrator of a collective investment undertaking shall ensure that when carrying on or attempting to carry on the business of a collective investment undertaking in or from Botswana, the collective investment undertaking complies with any conditions in its licence.

(10) The Registrar may, on the written application of a licensed collective investment undertaking, waive or vary any condition contained in its collective investment undertaking licence.

Validity of
licence

5. (1) A licence issued under section 4 shall be valid for a year from the date on which it was issued and shall be renewed each year thereafter.

(2) An application for the renewal of a licence shall be made on such form as may be prescribed and shall be accompanied by such renewal fee as may be prescribed by the Committee.

Transfer of
licence

6. (1) No licence shall be transferred from one collective investment undertaking to another without the prior approval of the Committee.

(2) An application for the transfer of a licence shall be made to the Committee in such manner and in such form as the Minister may prescribe and shall be accompanied by such transfer fee as may be prescribed by the Committee.

(3) The Committee shall not transfer a licence to any undertaking which does not satisfy the requirements of paragraphs (a)-(d) of section 4(7).

Categories
of collective
investment
undertakings

7. There may be licensed to operate, in Botswana, the following categories of collective investment undertakings —

- (a) a domestic collective investment undertaking;
- (b) an exempt domestic collective investment undertaking;
- (c) a foreign collective investment undertaking; and
- (d) an exempt foreign collective investment undertaking.

Revocation,
suspension
or endorsement
of licence

8. Where any person contravenes any provision of this Act or fails to comply with any lawful direction or requirement of the Registrar or of the Committee under any provision of this Act, or where the Registrar is satisfied that the conditions of any licence are not being adhered to, the Registrar may revoke, suspend or impose further conditions upon such licence, and shall publish a notice of such revocation, suspension or imposition in two consecutive issues of the Gazette and two newspapers circulating in Botswana.

Naming of
collective
investment
undertakings

9. (1) The Registrar shall not grant a collective investment undertaking licence in respect of a collective investment undertaking with a name which is —

- (a) identical to that of any company, firm, business or other entity, whether or not within Botswana, or which so nearly resembles the name of such a company, firm, business or entity as to be likely to deceive;
- (b) likely to suggest, falsely, the patronage of or connexion with some person or authority, whether within Botswana or elsewhere; or
- (c) likely to suggest, falsely, that the collective investment undertaking has a special status in relation to, or derived from, the Government of Botswana.

(2) If, in the Registrar's opinion, a collective investment undertaking is carrying on, or attempting to carry on business in or from Botswana in a name that the Registrar would have refused by virtue of subsection (1), the Registrar may direct the collective investment undertaking to change its name to a name approved by him.

(3) The promoter, management and the administrator of a collective investment undertaking shall ensure that the collective investment undertaking complies with a direction given to it under subsection (2).

10. The administration of a collective investment undertaking shall be conducted only by persons who —

- (a) have proven expertise in fund administration;
- (b) are of sound reputation;
- (c) have such financial resources as may be prescribed by the Minister; and
- (d) have been granted a licence to practice as fund administrators under this Act.

Administration
of collective
investment
undertakings

11. (1) No person shall provide fund administration services to a collective investment undertaking in or from Botswana unless that person has been granted a licence to operate as a fund administrator under this Act.

Licensing
of Fund
Administrators

(2) Every person who wishes to operate as a fund administrator shall apply to Registrar for a fund administrator's licence.

(3) An application for a fund administrator's licence, accompanied by the prescribed licensing fee, shall be made to the Registrar in the form approved or prescribed by the Minister and shall be accompanied by documentary evidence establishing that —

- (a) the applicant is a company established under the law of Botswana;
- (b) the applicant meets the prescribed minimum capital requirements;
- (c) the staff of the applicant has proven expertise in the provision of accounting and administration services to collective investment undertakings; and
- (d) the directors and shareholders of the applicant are of sound reputation.

(4) The Secretary of the Committee shall examine the application to determine whether it satisfies the requirements of subsection (3) and shall, if he is so satisfied, forward the application to the Committee.

(5) The Committee shall examine every application forwarded to it by the Secretary of the Committee to determine whether the fund administrator in respect thereof satisfies the requirements for the grant of a licence as specified in section 10.

(6) (1) The Committee shall, if it is satisfied that a fund administrator satisfies such requirements, forward the application to the Registrar and recommend to him, in writing, to grant a fund administrator's licence;

(2) The Committee shall, if it is not satisfied that the fund administrator satisfies the said requirements, return the application to the applicant with a request, in writing, for such further information as it may require, for specific compliance with regard to a specific aspect of the application, or forward the application to the Registrar with such recommendation as it considers appropriate in the circumstances.

(7) A licence issued under this section shall be valid for a year from the date on which it was issued and shall be renewed each year thereafter.

(8) An application for the renewal of a licence under this section shall be made on such form as may be prescribed by the Minister and shall be accompanied by such renewal fee as may be prescribed by the Committee.

(9) No licence shall be transferred from one fund administrator to another without the prior approval of the Committee, and the Committee shall not transfer a licence to any fund administrator who does not satisfy the requirements of subsection (3).

(10) An application for the transfer of a fund administrator's licence shall be made to the Committee in such manner and in such form as the Minister may prescribe.

Conduct of fund administrators

12. The Minister may by regulation prescribe such minimum standards of conduct of fund administrators as he may deem appropriate.

Changes to constitution or conduct of business

13. (1) The Minister may prescribe which changes to the constitution of, or to any aspect of the conduct or business of a collective investment undertaking require prior notification to, or prior approval of, the Minister.

(2) No changes referred to in subsection (1) which require the prior approval of the Minister shall be implemented without the Minister having given such approval in writing.

Contents of offering document

14. The Minister may prescribe the information which shall be contained in the offering documents of a collective investment undertaking.

Investment or borrowing restrictions and minimum participation level

15. The Minister may prescribe investment or borrowing restrictions which shall be imposed on any category of collective investment undertaking; and the minimum level of participation by a single investor in any category of collective investment undertakings.

Fees

16. (1) Every collective investment undertaking to which a licence has been granted shall pay, to the Secretary of the Committee on the due date, such licence and renewal fee as may be prescribed by the Committee.

(2) Every fund administrator to whom a licence has been granted shall pay, to the Secretary of the Committee on the due date, such licence and renewal fees as may be prescribed by the Committee.

(3) If any fee referred to in subsection (1) or (2) is not paid on or before the prescribed date the Committee may —

(a) impose an additional fee equal to that fee for each month or part of a month during which the fee and any additional fee imposed by virtue of this subsection remains unpaid; or

(b) revoke the licence by giving written notice of the revocation to the collective investment undertaking or fund administrator as the case may be and by publishing the notice of revocation twice in the Gazette and in two newspapers circulating in Botswana

(4) The Committee may, for good cause, waive any additional fee imposed by virtue of subsection (3).

17. (1) A collective investment undertaking shall cause its accounts to be audited by an independent auditor approved by the Registrar for such periods and with such frequency as the Minister may prescribe.

Audit of
collective
investment
undertakings

(2) A collective investment undertaking shall cause the report of its auditor to be furnished to such persons, including the Registrar and the Committee, in such form, with such content, for such periods and with such frequency, as the Minister may prescribe.

(3) The Minister may by regulation prescribe the form and the content of the audit reports and accounts published pursuant to the provisions of subsections (1), (2) and (3).

(4) The auditor of a collective investment undertaking shall, where that undertaking does not comply with the provisions of its constitution or of this Act, any regulation or rule in respect of the accounts or the form or contents of such accounts, notify the undertaking in writing of this fact, and the undertaking shall, within fourteen days of such notification, comply.

(5) The auditor of the collective investment undertaking shall send a copy of the notification referred to in subsection (4) to the Registrar as well as to the Committee.

(6) Notwithstanding the provisions of this section, the Registrar may, where he considers it necessary to do so, instruct a collective investment undertaking to cause a supplementary audit of its accounts to be carried out, and to submit such supplementary audit to him within such time as he may specify.

(7) The audit report and accounts which are published pursuant to the provisions of this section shall be in the English language.

18. (1) The Registrar may, where he has reason to believe that a collective investment undertaking or its promoter, trustee, manager, fund administrator, advisor, depositary or other person who is contracted to perform services for the collective investment undertaking has failed to comply with any provision of this Act or of any regulation or rule made thereunder, carry out an investigation of such default.

Investigations
by Registrar

(2) The Registrar may, in carrying out an investigation under this section, request such information as he considers necessary from the collective investment under-taking, promoter, trustee, manager, fund administrator or other person referred to in subsection (1).

(3) If so requested by the Registrar —

(a) a collective investment undertaking shall give the Registrar access to or provide him with such records, information or explanation in respect of itself as the Registrar may require; and

(b) a promoter, trustee, manager, administrator, advisor, depositary or any person who is contracted to perform services for a collective investment undertaking shall also give the Registrar access to or provide the Registrar with such records, information or explanation in respect of himself, or in respect of the collective investment undertaking he is contracted to perform services for,

and the Registrar shall be entitled to make copies or take extracts from any such records.

(4) A person who gives any information, explanation or access to any records pursuant to this section shall not give information, or an explanation or access to records which he knows to be false or misleading.

(5) The Registrar shall, for the purposes of carrying out an investigation pursuant to this section, have the same powers, rights and privileges as are normally conferred upon a Commissioner under the Commissions of Inquiry Act, and the provisions of that Act shall, *mutatis mutandis*, apply in relation to the investigation and to any person summoned to give evidence or giving evidence at the investigation.

(6) (a) The Registrar may, if he considers it necessary, submit interim reports of any investigation carried out by him to the Minister; but shall, if so directed by the Minister, submit such interim reports to him;

(b) The Registrar shall, on the conclusion of the investigation carried out by him, submit a final report to the Minister on that investigation.

(7) The Minister shall cause any report made to him under subsection (6) to be printed and published, and shall send copies of every such report to the Attorney General, the Registrar of Companies and to the Governor of the Bank of Botswana.

(8) If, after the conclusion of an investigation under this section, the Registrar is of the opinion that there are reasonable grounds for suspecting that any person has committed an offence, he shall refer the matter to the Attorney-General.

(9) Subject to the provisions of subsections (10) and (11), any expenses incurred in connexion with an investigation shall, in the first instance, be defrayed by the Registrar.

(10) The Registrar may direct a collective investment undertaking or person referred to in subsection (1) to defray the whole or any part of the expenses referred to in subsection (9):

Provided that before making any such direction, the Registrar shall —

(a) where he has referred a matter to the Attorney-General in terms of subsection (8), await the outcome of any criminal proceedings instituted as a result of that reference, and shall thereafter take into account any order of the court made in terms of subsection (11) when making that direction;

(b) notify that collective investment undertaking or person in writing that he intends to make that direction; and

(c) afford that collective investment undertaking or person an opportunity to show cause, in writing, why that direction should not be made.

(11) A person who is found guilty of an offence prosecuted as a result of an investigation may be ordered by the court which convicted him to pay, to the Registrar, the whole or any part of the expenses referred to in subsection (9).

(12) The expenses to be defrayed by the Registrar in terms of subsection (9) shall be paid out of monies appropriated for the purpose by the National Assembly, and any sums directed or ordered to be paid to the Registrar in terms of subsections (10) or (11) shall be recoverable by the Registrar by action in a competent court, and paid to the State.

19. (1) The custody of the assets of a collective investment undertaking shall be entrusted to a depositary.

Custody of
assets

(2) The Registrar may by regulation determine the criteria for a depositary for the purposes of this Act.

(3) The depositary's liability shall not be affected by the fact that it has entrusted all or some of the assets in its custody to a third party.

(4) The depositary shall ensure that —

(a) any sale, issue, re-purchase or cancellation of investments effected by or on behalf of the collective investment undertaking is carried out in accordance with the constitution of that undertaking, and with the laws of Botswana;

(b) in transactions involving the assets of the collective investment undertaking, the consideration is remitted to it within the settlement periods applicable to the assets concerned;

(c) the income of the collective investment undertaking is applied in accordance with its constitution.

(5) The Registrar may by regulation exempt one or more categories of collective investment undertakings from the requirements of this section.

20. (1) Every collective investment undertaking shall at all times be represented for the purposes of this Act by a principal officer, duly appointed by itself, who resides in Botswana.

Principal
officer
and address
for service

(2) Every collective investment undertaking shall, in writing, notify the Registrar and the Committee of an address for service of notices made in terms of this Act.

(3) Every change of principal officer or of the address for service of notices on the collective investment undertaking shall be notified in writing to the Registrar and the Committee by the principal officer within 15 days of such change occurring.

(4) A collective investment undertaking which fails to comply with the provisions of subsections (1) and (2) shall be guilty of an offence and shall be liable to a fine of P500.00 for every day during which the offence continues.

(5) The appointment of a principal officer shall be subject to the approval of the Registrar and Committee, each of whom may decline to approve such appointment or may subsequently withdraw its approval of a person who has been appointed.

(6) The principal officer shall be responsible for the doing of all such things as are required under this Act to be done in respect of the collective investment undertaking of which he is the representative and in case of default both he and the collective investment undertaking shall be liable to the penalty prescribed.

(7) Everything done by the principal officer which he is required to do in his representative capacity shall be deemed to have been done by the collective investment undertaking and any notice given to, or request made upon, the principal officer by the Minister, the Registrar or the Committee, shall be deemed to have been given to or made upon the collective investment undertaking.

(8) The absence of or failure to appoint a principal officer shall not excuse a collective investment undertaking from the necessity of complying with any of the provisions of this Act and the collective investment undertaking shall be subject to and liable to comply with its provisions as if there were no requirement to appoint a principal officer.

(9) Every notice, process or proceeding which, under this Act, may be given to, served on or taken against any collective investment undertaking may be given to, served on or taken against the principal officer and if at any time there is no principal officer any such notice, process or proceeding may be given to, served on or taken against any officer or person acting in the management of the collective investment undertaking or as agent for the collective investment undertaking and such person shall have the same liability in respect of that notice, process or proceeding as the collective investment undertaking or the principal officer would have had if it had been given to, served on or taken against the collective investment undertaking or principal officer.

PART III — *Regulatory Authority*

Appointment and functions of Registrar of collective investment undertakings

21. (1) The Minister shall, subject to the laws governing the public service, appoint —

- (a) an officer, to be called the Registrar of Collective Investment Undertakings, who shall exercise the powers and perform the duties assigned to the Registrar under this Act; and
- (b) an officer, to be called the Deputy Registrar of Collective Investment Undertakings who may, subject to the control and directions of the Registrar, do anything which may lawfully be done by the Registrar.

(2) Any reference in this Act to the Registrar shall be construed as including a reference to the Deputy Registrar of collective investment undertakings appointed under subsection (1) (b).

(3) The Registrar may, subject to such conditions as he may determine, delegate or assign any power or duty assigned to him under this Act to an officer or employee in the public service, but shall not thereby be divested or relieved of a power or duty so delegated or assigned.

(4) The Minister, Registrar or any officer or contract worker in the employ of the Ministry of Finance, shall not be liable in respect of any bona fide exercise of any discretion in the performance of any duty imposed upon him under this Act.

22. The Registrar shall, once in every calendar year, submit, to the Minister, a report concerning the activities of all collective investment undertakings and concerning all matters relating to the promotion or management of collective investment undertakings or analogous schemes, and the Minister shall table such report in the National Assembly within 60 days after the commencement of its next ensuing session.

Annual report
by Registrar

23. (1) There is hereby established an interim committee to be known as the Interim Investment Supervisory Committee (referred to in this section as “the Interim Committee”).

Investment
Supervisory
Committee
and Interim
Committee

(2) The Interim Committee shall consist of —

- (a) two persons appointed by the Minister from such sector or sectors as he deems appropriate; and
- (b) not less than two or more than six persons appointed by the Minister from the private sector, which persons shall hold office for two years from the commencement of this Act.

(3) There shall be established, on the expiration of the 2 year interim period referred to in subsection (2), a permanent committee to be known as the Investment Supervisory Committee which shall consist of —

- (a) two persons appointed by the Minister from such sector or sectors as he deems appropriate; and
- (b) not less than two or more than six persons who shall be elected by collective investment undertakings and fund administrators licensed under this Act, as well as by depositaries:

Provided that not more than two of such persons shall be members or employees of any one partnership or company.

(4) The members of the Committee shall hold office for two years and shall be eligible for re-appointment at the conclusion of their term of office.

(5) No person shall be appointed or elected as a Committee member and no person shall be qualified to hold office as a Committee member if he —

- (a) is not resident in Botswana;
- (b) has in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged, or
 - (ii) made an assignment to, or arrangement or composition with, his creditors, which has not been rescinded or set aside; or
- (c) has within the period of 10 years immediately preceding the date of his proposed appointment or election, been convicted —
 - (i) in Botswana of a criminal offence, or
 - (ii) outside Botswana of an offence by whatever name called which, if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction, to imprisonment for a term of not less than six months, with or without the option of a fine, whether or not the sentence has been suspended, and for which he has not received a free pardon.

(6) The Minister may appoint any person, other than the Registrar to the Committee as an alternate to a member appointed thereto by the Minister and that person —

- (a) shall act as a committee member only when the appointed committee member to whom he is alternate is unable to exercise his functions on the Committee by reason of ill health, absence from Botswana or other reasonable cause; and
- (b) when acting as a committee member, shall —
 - (i) exercise the functions and powers and perform the duties of the appointed committee member to whom he is alternate, and
 - (ii) for the purposes of this Act, be deemed to have been duly appointed to the Committee in terms of subsection (2)(a).

(7) The Committee shall elect from amongst its members a Chairman and a Vice Chairman at the first Committee meeting after the appointments and the elections referred to in subsection (3); and the Interim Committee shall also elect from amongst its members a Chairman and a Vice Chairman at its first meeting after the appointments and elections referred to in subsection (2).

(8) If there is at any time, a vacancy in the office of Chairman, Vice Chairman or Secretary, the Committee members may elect an elected Committee member to fill that vacancy.

(9) A Committee member shall be paid out of the funds of the Committee, such remuneration and allowances, if any, as the Committee may from time to time determine, which remuneration and allowances shall be subject to approval by the Registrar.

(10) Subject to the provisions of this Act, the Committee shall regulate its own procedure.

Functions of
Committee

24. The functions of the Committee shall be —

- (a) to do all things required to be done by it in terms of this Act, and such other things not being inconsistent with the terms of this Act as, in the opinion of the Committee, are necessary for ensuring compliance with its provisions including —
 - (i) the protection of participants,
 - (ii) ensuring the transparency of operation of collective investment undertakings,
 - (iii) ensuring the competency of all persons employed by and connected with a collective investment undertaking is of a standard sufficiently high for the protection of participants, and
 - (iv) ensuring that all persons employed by and connected with a collective investment undertaking are fit and proper persons to be involved with such an undertaking;
- (b) to promote the collective investment undertaking industry in Botswana;

- (c) to make rules for,
 - (i) the conduct of collective investment undertakings —
 - (ii) the conduct of promoters, depositaries, administrators, managers, auditors, advisors and officers of collective investments undertakings,
 - (iii) the content and frequency of information to be supplied by collective investment undertakings to the Registrar, the Committee and participants,
 - (iv) the creation, cancellation and issue and redemption of participatory interests by a collective investment undertaking, and
 - (v) the frequency and method of valuation of participatory interests in and by a collective investment undertaking;
- (d) to administer the funds of the Committee and to borrow moneys for the purposes of the Committee;
- (e) to make recommendations to and advise the Registrar in respect of regulations and notices to be issued in terms of this Act, licences sought and to be issued in terms of this Act, or any action to be taken by the Registrar in terms of this Act;
- (f) to prescribe the minimum requirements for and contents for, a constitution or a prospectus or offering document and any advertisements issued by a collective investment undertaking.

25. (1) The Committee shall appoint a Secretary and such other officers of the Committee as the Committee considers necessary or desirable which Secretary and officers shall —

Appointment
and functions
of Secretary

- (a) hold office on such terms and conditions as may be fixed by the Committee; and
- (b) carry out such functions as may be assigned to them by or under this Act or by the Committee.
- (2) The Secretary shall keep —
 - (a) a register of all collective investment undertakings registered in terms of this Act;
 - (b) a list of units that are available for subscription or purchase by potential participants;
 - (c) a register of all licensed administrators; and
 - (d) a list of depositaries; and shall, at such intervals as may be prescribed by the Minister, supply copies thereof to the Registrar.
- (3) The Secretary shall notify the Registrar in writing of any change in the membership of the Committee within a period of 14 days of the date of such change.

26. (1) A committee member shall vacate his office and his office shall become vacant —

- (a) after a period of 30 days from the date upon which he —
 - (i) gives notice in writing to the Chairman, or in his absence, to the Vice-Chairman, of his intention to resign his office, unless it is agreed between himself and the Chairman, or the Vice-Chairman, as the case may be, that such vacation of office shall take place after such shorter period as they may jointly agree, or
 - (ii) is sentenced by a court of competent jurisdiction to such imprisonment as is referred to in section 23(5) after conviction for an offence referred to in that section:

Provided that if, during that period of 30 days, an application for a free pardon is made or an appeal is filed, the question of whether or not the member is to vacate his office shall not be determined until the final disposal of that application or appeal, whereupon that member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside, his sentence is reduced to a term of imprisonment of less than 6 months or a punishment other than imprisonment is substituted;

- (b) if he becomes disqualified in terms of section 23(5) to hold office as a Committee member;
- (c) if he is required in terms of subsection (2) to vacate his office;
- (d) if he is absent without the permission of the Committee from 3 consecutive Committee meetings of which he has had notice to attend;
- (e) if being an elected member he is expelled from membership of the Committee by a resolution —
 - (i) of the Committee passed by a majority of not less than two thirds of the Committee members present and voting at a Committee meeting of which notice has been given, or
 - (ii) of the Collective Investment Undertakings licensed in terms of this Act passed by a majority of not less than two thirds of such undertakings present and voting at a special meeting convened for the purpose.

(2) The Registrar may, after consultation with the Committee, require a Committee member to vacate his office, if the Registrar is satisfied that the Committee member —

- (a) has been adjudged guilty of having acted improperly as a Committee member; or
- (b) is mentally or physically incapable of performing his duties efficiently.

(3) The Registrar shall suspend from office a Committee member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that Committee member is so suspended he shall not carry out any duties or be entitled to any remuneration or allowances as a Committee member.

(4) If at any Committee meeting a Committee member is aware that any matter which, directly or indirectly, beneficially affects —

- (a) himself or his spouse or child;
 - (b) any person who is a debtor, creditor, partner, employee or agent of the Committee member or is closely connected to that member;
 - (c) any person who is a debtor under a mortgage bond of any body corporate or person of which the Committee member is a director or officer or under which he holds any office or position other than that of auditor; or
 - (d) any company of which he is a director,
- is to be discussed or is under discussion, that Committee member shall forthwith declare to the Committee meeting his interest in that matter and the Committee may, if it deems it appropriate, require him to recuse himself from the discussion.

(5) A Committee member who fails to comply with the provisions of subsection (4) shall be guilty of an offence and shall be liable to a fine not exceeding P20 000.00.

(6) On the death of, or the vacating of office by, a Committee member —

- (a) the Minister shall, in the case of an appointed Committee member, appoint another person; or
- (b) the Committee shall, in the case of an elected Committee member, co-opt a member to take the place of the member who has died or vacated office until the expiry of the period during which such member would otherwise have continued in office.

(7) If the members of the Committee, as the case may be, for any reason fail, neglect or refuse —

- (i) to elect any of the Committee members as envisaged in section 23(3)(b), 23(7) and section 27(4), or
- (ii) to co-opt a member in terms of subsection (6)(b), the Minister may appoint a person or persons, as the case may be, to fill the vacancy or vacancies left unfilled by reason of such failure, neglect or refusal.

(8) A Committee member appointed by the Minister in terms of subsection (6)(b) shall, for the purposes of this Act, and as the case may be, be deemed to have been elected by or to the Committee, or co-opted, as the case may be, in terms of the provisions of this Act.

(9) If an elected Committee member is granted leave of absence by the Committee, the Committee may co-opt any person to fill the vacancy during the absence of that elected committee member.

Committee
meetings

27. (1) The Committee may, at any time, at the request of the Registrar, the Secretary or any member of the Committee, issue a notice in writing convening a meeting to deal with any matter which it is obliged, under this Act, to deal with.

(2) The notice referred to in subsection (1) shall —

(a) be sent by the Secretary to the Registrar and to every Committee member not less than seven days before the date of the meeting concerned; and

(b) set out the agenda of that meeting.

(3) A simple majority of the members of the Committee present at any meeting shall form a quorum thereat.

(4) At a meeting of the Committee, the Chairman, or in his absence the Vice Chairman, shall preside, or, in the absence of both the Chairman and the Vice Chairman, the Committee members present shall elect from amongst themselves, a Chairman to preside at that meeting.

(5) At a Committee meeting, each Committee member present shall have one vote on each question before the Committee and, in the event of an equality of votes, the person presiding at the Committee meeting shall have a casting vote, in addition to his deliberate vote.

(6) No decision or act of the Committee, or act done under the authority of the Committee, shall be invalid by reason only of the fact that, at the time the decision was taken, or the act was done or authorised —

(a) the Committee did not consist of the full number of Committee members for which provision is made in section 23(3); or

(b) a disqualified person acted as a Committee member:

Provided that the number of Committee members entitled to vote was at the time not less than half of all the Committee members for which provision is made in subsection (1).

(7) If it is not practicable to hold a Committee meeting for the transaction of business of an urgent nature, the Chairman may, after consulting such of the other Committee members as are available in the circumstances, deal with the business himself and, as soon as may be thereafter, give to the Committee for ratification full particulars of the nature and extent of the urgency of the business, the circumstances in which that urgency arose and the action taken by him in the matter:

Provided that where the Chairman has obtained the prior approval of not less than half of the Committee members for which provision is made in section 23(3), ratification of the action taken by him shall not be refused.

Annual General
meeting

28. (1) The Committee shall, at least once in every year, issue a notice, in writing, convening an annual general meeting of collective investment undertakings and Committee members at such place, date and time as may be specified in that notice.

- (2) The notice referred to in subsection (1) shall —
 - (a) be sent by the Secretary to every collective investment undertaking, the Registrar, Committee members and Committee auditor not less than twenty one days before the date of the meeting concerned; and
 - (b) set out the agenda of that meeting.
- (3) The Committee may itself at any time, and shall, at the request in writing of —
 - (a) the Registrar;
 - (b) the Secretary; or
 - (c) not less than two collective investment undertakings issue a notice in writing convening a special meeting of all collective investment undertakings, the Registrar, the Secretary, Committee members and the Committee auditor at such place, date and time as may be specified in that notice.
- (4) The notice referred to in subsection (3) shall —
 - (a) be sent by the Secretary to every collective investment undertaking, the Registrar, Committee members and Committee auditor; and
 - (b) state the purpose for which the special meeting concerned is being convened.
- (5) At each meeting referred to in this section the Chairman, or in his absence, the Vice Chairman, shall preside, or, in the absence of both the Committee members present shall elect, from amongst themselves, a Chairman to preside at that meeting.
- (6) Each collective investment undertaking shall have one vote on each question before a meeting convened under this section and, in the event of an equality of votes, the person presiding at the Committee meeting shall have a casting vote in addition to his deliberative vote.
- (7) A simple majority of collective investment undertakings present at the meeting shall form a quorum thereat.
- (8) The Secretary shall send, to every collective investment undertaking, the Registrar and the auditor of the Committee, a copy of the Minutes of each meeting convened under this section within fourteen days of the meeting being held.

29. No liability shall attach to any Committee member employee or agent of the Committee for any loss or damage sustained by any person as a result of the bona fide exercise or performance by any such Committee member, any employee, or agent of the Committee, of any power or duty conferred or imposed upon the Committee by this Act.

Liability of
Committee
members

- 30.** (1) The funds of the Committee shall consist of —
- (a) the licensing fees payable by collective investment undertakings in terms of section 4;
 - (b) the licence renewal fee payable by collective investment undertakings in terms of section 5;
 - (c) any other licences and other fees, charges and other monies payable to the Secretary in terms of this Act other than those payable under section 18(12).
- (2) The Secretary shall keep proper accounts and other records relating to the affairs of the Committee including such particular records as the Registrar may prescribe, and shall preserve such records for a period of not less than six years from the date of the last entry therein.
- (3) The records referred to in subsection (2) shall be kept by the Secretary at the principal office of the Committee and shall at all reasonable times be open to inspection by —
- (a) any Committee member;
 - (b) the Registrar; and
 - (c) the Committee auditor.
- (4) The Secretary shall, after the end of every financial year of the Committee, prepare —
- (a) an account of all revenue and expenditure of the Committee;
 - (b) a balance sheet;
 - (c) a report setting out the activities of the Committee; and
 - (d) such accounts, statements and reports other than those referred to in paragraphs (a) to (c) as may be prescribed by the Minister in respect of that financial year.
- (5) All documents prepared in terms of subsection (4) shall be audited and shall be signed by the Chairman and not less than two other Committee members, and copies thereof shall then be —
- (a) sent by the Secretary to the Registrar; and
 - (b) laid by the Secretary before the annual meeting at which members of the Committee are elected, following the end of the financial year in respect of which they were prepared.

PART IV — *Miscellaneous Provisions*

- 31.** (1) Subject to the provisions of subsection (2), no person shall do any act or enter into any agreement or transaction for the purpose of establishing, carrying on or managing any scheme, other than a collective investment undertaking in terms of this Act, in pursuance of which persons are or will be invited or permitted, for valuable consideration, to acquire an interest or undivided share in an asset or one or more groups of assets and to participate proportionately in the income or profits derived therefrom.
- (2) The provisions of this section shall not apply in respect of any scheme or arrangement which may be exempted therefrom by the Minister by regulations or by notice published in the Gazette for the purposes of this section.

(3) A collective investment undertaking may make application in writing to the Registrar for an exemption under subsection (2), which application shall be lodged with the Registrar before the scheme or arrangement in question is put into operation.

32. The Minister may by regulation prescribe —

- (a) the minimum capital requirements to be imposed on any category of collective investment undertaking;
- (b) guarantee and other requirements to be imposed on promoters to safeguard investors from losses; and
- (c) guarantee and other requirements to be imposed on managers, administrators, depositaries and registered agents of collective investment undertakings, to safeguard investors from losses.

Minimum
capital,
guarantees
and other
requirements

33. (1) The Minister may, after consultation with the Committee, make regulations for the carrying out of or for giving effect to the provisions of this Act.

Regulations

(2) Notwithstanding the generality of the provisions of subsection (1), the Minister may make regulations prescribing penalties, not exceeding a fine of P10,000.00 for the non-rendition, by any person, of any balance sheet, account, statement, document or report required to be furnished in terms of this Act.

(3) Any penalty prescribed under subsection (2) may vary according to the period which has elapsed since the last date on which the balance sheet, account, statement, document or report in question was required to be made, transmitted or deposited,

(4) Any penalty payable under subsection (4) shall be a debt due to the Government and may be recovered by the Minister by action in any competent court.

34. The Committee may make rules in respect of any matter which by this Act is required or permitted to be specified in the rules, and any person who fails to comply with such rules shall be guilty of an offence.

Rules

35. Any person who, or any collective investment undertaking which is not satisfied with any decision or direction of the Registrar under this Act may, within such time and in such manner as may be prescribed by the Minister, appeal to the Minister, and the Minister may confirm, set aside or vary the decision appealed against.

Appeals

36. (1) A collective investment undertaking which —

- (a) carries on business otherwise than within the terms of its licence;
- (b) fails to comply with any condition of its licence;
- (c) supplies to or makes available to the Registrar any information which it knows to be false or misleading; or
- (d) contravenes any provision of this Act shall be guilty of an offence and shall be liable to a fine not exceeding P30,000.00.

Offences

(2) Any person who contravenes any provision of this Act, or who supplies to or makes available to the Registrar any information which he knows to be false or misleading shall be guilty of an offence and shall be liable to a fine not exceeding P30 000.00 or to a term of imprisonment not exceeding 5 years or to both such fine and such imprisonment.

Winding up
of collective
investment
undertaking

37. The Registrar may by regulation prescribe the conditions in terms of which and under which a collective investment undertaking shall be wound up in order to protect the interests of participants, which conditions may include a special investigation or audit of the affairs of a collective investment undertaking prior to distributions of the assets thereof pursuant to such winding up.

Transitional

38. (1) Any person who, at the coming into operation of this Act —
(a) is carrying on any business or activity which falls under the scope of this Act; or
(b) possesses the characteristics of a collective investment undertaking as defined in section 2,
shall, within six months of the coming into operation of this Act, comply with the provisions thereof.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to the penalty provided in section 36 (2).

PASSED by the National Assembly this 19th day of December, 1996.

C.T. MOMPEI,
Clerk of the National Assembly.