

**CHAPTER 56:09 - COLLECTIVE INVESTMENT UNDERTAKINGS: SUBSIDIARY
LEGISLATION
INDEX TO SUBSIDIARY LEGISLATION**

Collective Investment Undertakings Regulations

COLLECTIVE INVESTMENT UNDERTAKINGS REGULATIONS

(under section 88)

(30th May, 2001)

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PART I
Preliminary (regs 1-2)

1. Citation

These Regulations may be cited as the Collective Investment Undertakings Regulations.

2. Interpretation and application

(1) In these Regulations, unless the context otherwise requires-

"call and put options" means, from a buyer's viewpoint, the right to buy (call) or sell (put) a transferable security at a predetermined price within a specified time;

"efficient portfolio management" means the use of certain financial products or derivative instruments to achieve the most efficient use of investor funds;

"futures contract" means an obligation to buy or sell a transferable security at a predetermined price at a future date;

"interest rate and exchange rate swaps" means agreements to exchange for a specified period interest rate payment, and principal and interest payments denominated in different currencies based on agreed currency exchange rates;

"purchase and reverse purchase agreement" means an agreement to lend a transferable security in exchange for collateral and an agreement to reverse such agreements.

(2) An investment company exempted by the Regulatory Authority in accordance with section 35 of the Act, is exempted from conditions in these Regulations only in relation to the matters it is exempted from under section 35.

PART II
General Conditions (regs 3-12)

3. Valuation of assets

(1) The assets of a collective investment undertaking, including any technique or instruments used for the purpose of efficient portfolio management, shall be valued by a method clearly defined in the trust deed or articles of association and approved by the Regulatory Authority and the method of valuation used shall be disclosed in the prospectus.

(2) The conditions for the creation and cancellation of units shall be laid down-

- (a) in the trust deed in the case of a unit trust undertaking; or
- (b) in the articles of association in the case of an investment company.

4. Pricing of units

(1) The assets of a collective investment undertaking shall only be purchased and sold at prices which are in conformity with the method defined in the trust deed or articles of association.

(2) The provisions of sections 47 and 48 of the Act, shall apply in respect to the issuing and purchase of units.

(3) The prospectus shall disclose charges relating to the-

- (a) sale or issue of units; and
- (b) redemption or repurchase of units.

(4) The maximum charge relating to the redemption or repurchase of units as provided for in the trust deed or articles of association shall not be increased without the approval of a majority of votes cast at a general meeting.

(5) In the event of an increase in the redemption or repurchase charge, a reasonable notification period shall be provided by the undertaking to enable unit holders to redeem their units prior to the implementation of the increase.

(6) The prospectus shall disclose the period within which redemption proceeds shall be paid or discharged to investors.

5. Issue of registered certificates

Registered certificates shall be issued in accordance with the provisions of section 52 of the Act.

6. Income and expenditure

(1) In addition to the provisions of section 54 of the Act the maximum annual fee charged by a management company of a unit trust or investment company as provided for in the trust deed or management agreement shall not be increased without the approval of a majority of votes cast at a general meeting.

(2) In the event of an increase in the annual fee, a reasonable notification period shall be provided by the undertaking to enable unit holders to redeem their units prior to the implementation of the increase.

7. Investment objectives

(1) The investment objectives of a collective investment undertaking as disclosed in the prospectus shall not be altered without the approval of a majority of votes cast at a general meeting.

(2) In the event of a change of investment objectives or investment policy, a reasonable notification period shall be provided by the undertaking to enable unit holders to redeem their units prior to implementation of the changes.

(3) General investment restrictions which apply to collective investment undertakings are set out in the First Schedule.

8. Commission arrangements

Where managers or administrators of a collective investment undertaking enter into any advantageous commission arrangement, they shall ensure that-

- (a) the broker or counter party to the arrangement has agreed to provide best execution to the undertaking;
- (b) benefits provided under the arrangement shall be those which assist in the provision of investment services to the undertaking; and
- (c) there is adequate disclosure in the prospectus and in the periodic reports issued by the undertaking.

9. Borrowing powers

(1) A collective investment undertaking shall not borrow money in excess of 25 per cent of its net assets at any time.

(2) Credit balances or cash shall be off set against borrowing when determining the percentage of borrowing outstanding in accordance with subregulation (1).

10. Foreign currency borrowing

(1) A collective investment undertaking which invests across a range of currencies may borrow foreign currency by means of a back to back loan agreement.

(2) Foreign currency obtained in accordance with subregulation (1) shall not be classed as borrowing for the purpose of the Regulatory Authority's borrowing restriction under regulation 9:

Provided that the off-setting deposit-

- (a) shall be denominated in the base currency of the undertaking; and
- (b) equals or exceeds the value of the foreign currency loan outstanding.

(3) Where foreign currency borrowing exceeds the value of the back to back deposit, any excess is regarded as borrowing for the purpose of regulation 9.

11. Disclosure of intention to borrow

Where it is envisaged that borrowing may be undertaken, there shall be full disclosure in an undertaking's prospectus.

12. Particular types of undertakings

Collective investment undertakings may take different forms as set out in Part IX of these Regulations.

PART III
Supervisory Conditions (regs 13-28)

13. Financial resources

A management company, in the case of a unit trust undertaking or an investment company, shall-

- (a) have such financial resources as may be considered as sufficient in terms of regulation 15 at its disposal, to enable it to conduct its business effectively and meet its liabilities;
- (b) inform the Regulatory Authority immediately upon temporarily suspending the repurchase of its units or in any event within the working day on which such suspension takes place.

14. Management company

The Regulatory Authority shall approve-

- (a) the replacement of a management company in the case of a unit trust undertaking; and
- (b) alterations in the trust deed of an authorised unit trust undertaking or change in the name of such undertaking.

15. Financial resources required

(1) A management or administration company (hereinafter referred to as a firm) shall have a minimum level of financial resources equivalent to 0.5 million Pula or three months expenditure, whichever is the greater.

(2) The Regulatory Authority shall approve the form of any subordinated loan incorporated in the calculation of financial resources of a firm, including the repayment of the loan.

(3) Amounts placed with group companies shall be deducted when calculating the minimum level of financial resources of a firm.

16. Conditions applicable to directors

(1) The Regulatory Authority shall approve appointments to the office of director of a firm and departures from the office of director shall be notified in writing to the Regulatory Authority immediately.

(2) The board of directors of a firm shall not have directors in common with the board of directors of a trustee of an undertaking for which it acts.

(3) Directors shall disclose to their board any concurrent directorship which they hold on boards of authorised collective investment undertakings or related entities which supply services to such an undertaking.

(4) Directors and managers of a firm shall be persons of integrity and have appropriate level of knowledge and experience in management or administration of unit trust undertakings or investment companies.

(5) A minimum of two directors of a firm shall be Botswana residents.

17. Change in shareholding to be approved

(1) The Regulatory Authority shall approve any proposed change in ownership or in a significant share holding of a firm.

(2) A significant share holding for the purpose of subregulation (1) means a share holding of 10 per cent or more in a firm.

18. Audited accounts to be submitted

(1) Half yearly financial and annual audited accounts of a firm shall be submitted to the Regulatory Authority.

(2) The half yearly accounts shall be submitted within two months and the annual accounts within four months of the relevant reporting period.

19. Appropriate internal controls of a firm to be maintained

(1) A firm shall maintain an appropriate internal control system to ensure that records clearly identify client funds and the assets in which they have been invested.

(2) A firm shall satisfy the Regulatory Authority on a continuing basis that it has sufficient

management resources to effectively conduct its business.

(3) A firm shall organise and control its internal affairs in a reasonable manner, with proper records and adequate arrangements for ensuring that employees are suitable, adequately trained and properly supervised.

(4) A firm shall have well defined procedures in place to ensure compliance with these Regulations and a firm shall deal with the Regulatory Authority in an open and co-operative manner.

(5) A firm shall notify the Regulator Authority in writing as soon as it becomes aware of any breaches of the Regulatory Authority's supervisory or reporting requirements by the firm.

20. Review meetings, inspections and consultations

(1) The Regulatory Authority shall hold such review meetings with a firm as may be required by the Regulatory Authority and the firm shall, for the purpose of such meeting, supply such additional material as may be required by the Regulatory Authority, including internal auditors' reports, operating procedures and management letters issued by the firm's auditors and by auditors of collective investment undertakings under management or administration of the firm.

(2) The Regulatory Authority may conduct inspections of the operations of a firm if this is deemed necessary by the Regulatory Authority.

(3) A firm shall consult with the Regulatory Authority before engaging in significant new activities, and shall ensure that any reference in publicity material to the role of the Regulatory Authority in relation to the supervision of the firm's activities are not misleading.

21. Requirements in respect of an undertaking not licensed

A firm providing administration services to a collective investment undertaking not licensed by the Regulatory Authority shall submit to the Regulatory Authority in respect of such undertaking-

- (a) a copy of the agreement which the firm has entered into in relation to the undertaking;
- (b) a copy of the prospectus or similar document issued by the undertaking and the firm shall ensure that the prospectus does not give the impression that the undertaking is authorised or supervised in any way in Botswana;
- (c) a copy of the annual audited report issued to unit holders; and
- (d) a monthly return containing the following aggregate information for all undertakings under administration within each base currency category-
 - (i) domicile of the undertakings;
 - (ii) number of undertakings;
 - (iii) number of unit holders; and
 - (iv) total net asset value.

22. Information on undertakings not resident may be requested

The Regulatory Authority may request information on collective investment undertakings not resident in Botswana in order to effectively performing its role as supervisor of service providers in Botswana, and such request shall not imply any regulatory or supervisory role for the Regulatory Authority in respect of such undertakings.

23. Conditions relating directly to collective investment undertaking

(1) The Regulatory Authority shall, in respect of an investment company-

- (a) approve appointments to the office of director; and
- (b) be notified in writing immediately the office of director is vacated.

(2) The board of directors of an investment company shall not have directors in common with the board of directors of its trustee.

(3) Directors of an investment company shall disclose to their board any concurrent directorship which they hold on boards of authorised collective investment undertakings or related entities which supply services to such undertakings.

(4) A disclosure of interest made under subregulation (3) shall be recorded in the

minutes of the meeting at which it is made.

24. Management resources

An investment company which does not employ the services of a management company or fund administration company shall-

- (a) have a minimum paid up share capital equivalent to 0.5 million pula within three months of authorisation;
- (b) satisfy the Regulatory Authority on a continuing basis that it has sufficient management resources to effectively conduct its business and otherwise comply with regulation 24(a); and
- (c) meet the Regulatory Authority for review meetings as required by the Regulatory Authority and an investment company is required, for the purposes of such meeting, to supply any additional information as may be required by the Regulatory Authority, including operating procedures and management letters issued by the company's auditors.

25. Reports and accounts

(1) The contents to be included in the monthly, half yearly and annual reports shall be as set out in the Second Schedule.

(2) The annual audited accounts of a promoter of an undertaking and investment adviser shall be submitted to the Regulatory Authority.

26. Notifications to Regulatory Authority

(1) The management company in the case of a unit trust undertaking or an investment company, shall notify the Regulatory Authority in writing of receipt of approval to market units in another jurisdiction.

(2) The Regulatory Authority shall be given not less than 14 days notice in writing of proposed amendments to the-

- (a) prospectus;
- (b) memorandum and articles of association of an investment company; and
- (c) material agreements entered into with third parties.

(3) The Regulatory Authority may object in writing to amendments notified to it in accordance with subregulation (2) and amendments objected to by the Regulatory Authority shall not be made.

(4) The Regulatory Authority shall be notified in writing and in advance, by a management company, of any proposal to replace third parties which have contracted directly or indirectly with the unit trust or investment company, to carry out services.

(5) The Regulatory Authority may object to the proposals made in accordance with subregulation (4) and replacements objected to by the Regulatory Authority shall not be made.

(6) Where the Regulatory Authority approves proposals made in accordance with subregulation (4), a management company shall audit the undertaking at the date of replacement and furnish the Regulatory Authority with the audit report.

(7) The new trustee or custodian shall confirm to the Regulatory Authority in writing, that they are satisfied with the transfer of assets after an audit report has been furnished to the Regulatory Authority in accordance with subregulation (6).

27. Dealings by promoter, manager, etc.

(1) Any transaction carried out with a collective investment undertaking by a promoter, manager, trustee, investment adviser or an associated company or group of companies shall be carried out as if effected on normal commercial terms, negotiated at arms length and the transactions shall be in the best interest of unit holders.

(2) Transactions entered into in accordance with subregulation (1) shall be permitted subject to-

- (a) certified valuation by a person approved by the trustee as independent and competent;
- (b) execution on best terms on organised investment exchanges under their rules; and

- (c) execution on terms which the trustee is satisfied conform to the principle in subregulation (1).

(3) There shall be full disclosure in the undertaking's prospectus where transactions in accordance with subregulation (1) are entered into.

28. Minimum activities to be undertaken in Botswana

(1) The substantive administration and control of an undertaking shall be executed in Botswana.

(2) Notwithstanding the generality of subregulation (1), the following activities shall be undertaken in Botswana-

- (a) the calculation of each undertaking's net asset value and dealing price, including the updating or confirmation of prices of underlying securities;
- (b) the calculation of income and expense accruals;
- (c) all accounting records, including income, expenses, assets and liabilities;
- (d) semi annual and annual accounts;
- (e) all detailed reconciliation including stock, custody and register.
- (f) the reconciliation of all bank accounts relating to the undertaking, including those relating to dividends; and
- (g) the maintenance and servicing of unit holder's register including input, alteration and deletion of records.

(3) The following shall be issued in Botswana-

- (a) dividends;
- (b) unit and unit holder's certificates or their equivalent; and
- (c) the processing and issue of redemption requests.

(4) Correspondence to unit holders of an undertaking, including completed investors and all application forms from investors, any other instruction from dividend or income distributions, shall originate from, and be retained within, Botswana.

(5) All back up documents underlying books and records of an undertaking shall be held in Botswana where they can be audited and be subject to inspection by the Regulatory Authority as the Regulatory Authority deems appropriate.

(6) The staff who maintain and prepare books and records under this regulation shall be located in Botswana.

(7) Subregulations (1) to (5) shall not preclude overseas hardware and software facilities being used by Botswana Fund managers, administrators or trustee, by means of direct access.

PART IV

Efficient Portfolio Management (regs 29-35)

29. General conditions

(1) Techniques and instruments utilised for the purposes of efficient portfolio management shall only be used in accordance with investment objectives of a collective investment undertaking.

(2) A technique and instrument utilised in accordance with subregulation (1), shall be one which alone or in combination with one or more other techniques and instruments, is reasonably believed by the managers to be economically appropriate to the efficient portfolio management of an undertaking.

(3) The prospectus shall disclose an undertaking's intention to utilise techniques and instruments in accordance with subregulation (1) and the periodic reports shall indicate how they have been utilised.

(4) The Regulatory Authority may consider the use of any other technique and instrument on a case by case basis.

30. Call options

(1) Call options may be purchased on condition that the exercise value of the option shall at all times be held by an undertaking in cash or securities with a maturity period of not

more than 3 months.

(2) Uncovered call options may be purchased on condition that the exercise value of the call options purchased shall not exceed 10 per cent of the net asset value of an undertaking.

(3) Call options may be written or sold on condition that an undertaking shall at all times maintain ownership of the security which is the subject of the call option.

(4) Index call options may be written provided that the assets of an undertaking, or a proportion which shall not be less in value than the exercise value of the call option written, can reasonably be expected to behave in terms of price movement in the same manner as the options contract.

(5) Uncovered call options may be written on condition that the aggregate exercise value of all call options sold in this way shall not exceed 10 per cent of the net asset value of an undertaking.

31. Put options

(1) Put options may be purchased on condition that the security which is the subject of the put option shall remain at all times in the ownership of an undertaking.

(2) Index put options may be purchased provided that the assets of an undertaking, or a proportion of such assets, which shall not be less in value than the exercise value of the put option purchased, can reasonably be expected to behave in terms of price movement in the same manner as the options contract.

(3) Uncovered put options may be purchased provided that the exercise value of the put options purchased in this way shall not exceed 10 per cent of the net asset value of an undertaking.

(4) Put options may be written or sold provided that the exercise value of the option shall at all times be held by an undertaking in cash or securities with a maturity period of not more than 3 months.

32. Futures

(1) Futures contracts may be sold provided that either the security which is the subject of the contract remains at all times in the ownership of an undertaking, or on condition that the assets of an undertaking or a proportion of such assets, which shall not be less in value than the exercise value of the futures contracts sold, can reasonably be expected to behave in terms of price movement, in the same manner as the futures contracts.

(2) Futures contracts may be purchased provided that the exercise value of the contract shall at all times be held by an undertaking in cash or securities with a maturity period of not more than 3 months.

(3) An undertaking which invests directly in both fixed income and equity markets may purchase futures contracts provided that the aggregate net exposure of the undertaking shall not be greater than that which would be achieved through direct investment of the undertaking's assets in underlying securities, and the undertaking shall clearly provide for such an active asset allocation strategy in its investment objectives.

(4) The total amount of premium paid or received for options together with the amount of initial margin paid for futures contracts shall not exceed 10 per cent of the net asset value of an undertaking.

(5) This Regulation shall not apply to a transaction which is being effected to close out an existing position.

33. OTC contracts

(1) Option, interest rate swap and exchange rate swap contracts transacted over the counter (hereinafter referred to as "OTC contracts") are permitted provided-

- (a) the counter-party has share holder's funds in excess of 500 million pula or equivalent in foreign currency;
- (b) the name of the counter-party is disclosed in the subsequent half yearly or annual report issued by an undertaking;

- (c) the manager is satisfied that the counter-party shall-
 - (i) value the transaction at least weekly; and
 - (ii) close out the action at the request of the manager at a fair value; and
- (d) initial outlay in respect of OTC derivatives to any one counter-party shall not exceed 5 per cent of the net asset value of an undertaking.

(2) Other OTC contracts may be permitted by the Regulatory Authority on a case by case basis.

(3) The net maximum potential exposure created by techniques and instruments, borrowing or through both, shall not exceed 25 per cent of the net asset value of an undertaking.

34. Repurchase: reverse repurchase agreements

(1) Reverse repurchase agreements (hereinafter referred to as "repo-contracts") shall be effected in accordance with normal market practice.

(2) Collateral obtained under repo-contracts or stock-lending agreement shall be in the form of-

- (a) cash;
- (b) government or other public securities;
- (c) certificates of deposit;
- (d) letters of credit which are unconditional and irrevocable and which have a credit rating of A1/P1 or better; or
- (e) certificates issued by, securities exchange clearing system.

(3) Until the expiry of a repo-contract or stock-lending agreement, securities obtained under such contracts or agreement shall-

- (a) not be sold or pledged;
- (b) exceed in value, at all times, the value of the amount invested or securities loaned;
- (c) be marked to market daily; and
- (d) be transferred into the name of a trustee, custodian or its agent.

(4) The counter party to a repo-contract or stock-lending agreement shall have a minimum credit rating of A2/P2 or better.

(5) The market value of repo-contracts or stock-lending agreements outstanding with any one counter party shall not exceed 20 percent of an undertaking's net asset value.

(6) Cash received as collateral shall not be invested by an undertaking other than in government or other public securities, certificates of deposit or letters of credit with maturity of less than three months.

(7) An undertaking may terminate a stock-lending agreement at any time and demand the return of any or all of the securities loaned and the agreement shall provide that once such notice is given, the borrower is obliged to redeliver the securities within 5 working days or such other period as normal market practice dictates.

(8) Repo-contracts or stock-lending agreements shall not constitute borrowing or lending for the purpose of restrictions on borrowing or lending.

35. Exchange rate risk

(1) An undertaking may employ techniques and instruments intended to provide protection against exchange rate risk, including cross currency hedging, in the context of the management of its assets and liabilities:

Provided that-

- (a) the exposure of the undertaking to foreign currency risk shall not be leveraged in any way;
- (b) the intention to enter into such transactions shall be fully disclosed in the undertaking's prospectus, including disclosure regarding the currencies into which the undertaking's currency exposure may be transformed; and
- (c) the periodic reports shall indicate how these transactions have been utilised.

PART V

Trustee or Custodian (regs 36-44)

36. Duty to entrust assets

The trust deed in the case of a unit trust undertaking and the articles of association in the case of an investment company shall provide that the assets, of a unit trust undertaking or investment company shall be entrusted to a trustee or custodian for safe keeping.

37. Management resources

(1) The Regulatory Authority shall, in accordance with section 18 of the Act, satisfy itself that a trustee or custodian has-

- (a) a minimum paid up share capital of 5 million pula or its equivalent in foreign currency;
- (b) the appropriate expertise and experience to carry out its functions; and
- (c) sufficient management resources to effectively conduct its business.

(2) Directors and managers shall be persons of integrity and have an appropriate level of knowledge and experience.

(3) A trustee or custodian shall organise and control its internal affairs with proper records and adequate arrangements for ensuring that employees are suitable and adequately trained and properly supervised.

(4) There shall be well defined procedures in place to ensure compliance with regulations and the trustee or custodian shall deal with the staff of the Regulatory Authority in an open and co-operative manner.

(5) The Regulatory Authority may hold meetings with a trustee or custodian, and may require the trustee or custodian to furnish it with additional material as shall be specified by the Regulatory Authority, including auditors reports, operating procedures and management letters issued by the trustee's auditors.

38. Custodian and trustee to comply with instructions of investment company

(1) A custodian shall carry out instructions of an investment company provided they do not conflict with the memorandum and articles of association of an investment company or an agreement entered into between the custodian and the investment company.

(2) A trustee shall carry out instructions of the management company provided they do not conflict with the Act or the trust deed.

39. Trustee or custodian report

The report of a trustee or custodian shall be delivered to the management company or investment company in good time to enable the management company or investment company to include a copy of the report in the Annual Report of the undertaking.

40. Duties not to be delegated

A trustee or custodian shall not delegate any of its duties under this Part or under section 19 of the Act.

41. Third party safe keeping agents

(1) A trustee or custodian shall exercise care and diligence in choosing and appointing a third party as a safe keeping agent, in order to ensure that a third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned.

(2) A trustee or custodian shall maintain an appropriate level of supervision over the third party agent and make appropriate enquiries from time to time to confirm that the obligations of the agent continue to be competently discharged.

42. Fiduciary duties of trustee or custodian

(1) A trustee or custodian shall-

- (a) ensure that-
 - (i) there is legal separation of non-cash assets held under custody and that such assets are held on a fiduciary basis; and
 - (ii) in jurisdictions where fiduciary duties are not recognised, the trustee or custodian shall ensure that the legal entitlement of an undertaking to the assets is assured;

and

- (b) maintain appropriate internal control systems to ensure that records clearly identify the nature and amount of all assets under custody, the ownership of each asset and where documents of title to that asset are located.

(2) A trustee or custodian shall ensure that standards are maintained by a sub-custodian, where the trustee or custodian utilises the services of the sub-custodian.

(3) Where a trustee or custodian utilises the services of a global sub-custodian, the trustee or custodian shall-

- (a) ensure that the non-cash assets are held on a fiduciary basis by the global sub-custodian's network of custodial agents, and this shall be confirmed by the agents on a regular basis;
- (b) maintain records of the location and amounts of all securities held by each of the custodial agents; and
- (c) ensure that the relationship between the trustee or custodian and the global sub-custodian is set out in a formal contract between the two entities.

43. Directors and accounts

(1) A minimum of two directors of a company shall be resident in Botswana.

(2) There shall be no change in ownership or significant shareholding accounts without the approval of the Regulatory Authority.

(3) A significant shareholding for the purpose of this regulation, means a shareholding of 10 per cent or more in a company.

(4) Half yearly financial and annual audited accounts of a company shall be submitted to the Regulatory Authority.

(5) Half yearly accounts shall be submitted within 2 months and annual accounts within 4 months of the relevant reporting period.

(6) Annual audited accounts of a corporate shareholders of a company shall be submitted when required.

44. Undertakings not licensed by the Regulatory Authority

(1) A trustee or custodian providing trustee or custodial services to collective investment undertakings not licensed by the Regulatory Authority, shall submit, in respect of such undertakings, to the extent that they have not been submitted by a management or administration company-

- (a) copy of any agreements which the trustee has entered into in relation to the undertaking;
- (b) a copy of the prospectus or similar document issued by the undertaking, and the trustee shall seek to ensure that the prospectus does not give the impression that the undertaking is licensed or supervised in any way in Botswana;
- (c) a copy of the annual audited report issued to unit holders; and
- (d) a monthly return containing the following aggregate information for all undertakings to which services are provided, within each base currency category-
 - (i) domicile of the undertaking and number of undertakings;
 - (ii) number of unit holders; and
 - (iii) total net asset value.

(2) The Regulatory Authority may request additional information on undertakings not licensed to operate in Botswana, in order to effectively perform its role as supervisor of Botswana service providers and such requests shall not imply any regulatory or supervisory role for the Regulatory Authority in respect of such undertakings.

PART VI

Application for Licensing as a Unit Trust or Investment Company (regs 45-47)

45. Application to licence an undertaking

An application for licensing of a collective investment undertaking shall be made in

writing to the Regulatory Authority, and shall contain information set out in the Third Schedule.

46. Application to licence a unit trust

(1) An application for licensing of a unit trust undertaking shall be made in writing to the Regulatory Authority by the management company and the trustee of the undertaking.

(2) The application made under subregulation (1) shall contain details of the trust deed of the undertaking.

47. Application to license an investment company

An application for authorisation of an investment company shall be made in writing to the Regulatory Authority, and shall contain the following information-

- (a) the full name and address of the investment company and the memorandum and articles of association;
- (b) the names of the directors and the company secretary, including sufficient information in respect of all directors, to enable the Regulatory Authority to be satisfied that they have appropriate expertise and are of good reputation; and
- (c) a copy of the agreement between the company and the custodian.

PART VII

Prospectus and Advertisements (regs 48-53)

48. Obligation to publish and make available prospectus

(1) A collective investment undertaking shall publish a prospectus, which shall be dated and the essential elements of which shall be kept up to date.

(2) The prospectus shall be offered to investors free of charge before the conclusion of a contract.

(3) The prospectus shall contain sufficient information to enable investors to make an informed judgement of the investment proposed to them.

(4) Material changes to the contents of the prospectus shall be notified to unit holders in the subsequent periodic report.

(5) The prospectus may be translated into other languages provided that any such translation shall only contain the same information and shall have the same meaning as in the prospectus submitted to the Regulatory Authority.

49. Information to be contained in a prospectus

(1) The prospectus shall contain the information as set out in the Fourth Schedule.

(2) All information on remuneration, costs and expenses to be borne by the undertaking shall be contained in the same section of the prospectus and in a form that can easily be understood and analysed.

(3) The prospectus shall contain details of-

- (a) name;
- (b) form in law; and
- (c) registered office and head office if different from registered office, of the management company, trustee, custodian or investment adviser.

(4) Where the company is part of a group, the following information shall be contained in the prospectus-

- (a) the name of the group and the ultimate parent thereof;
- (b) the date of incorporation of the company and indication of duration if limited;
- (c) the names and positions in the management company, of the members of the administrative, management and supervisory bodies. their experience, both current and past, relevant to the undertaking;
- (d) details of their main activities outside the company, where these are of significance with respect to the company; and
- (e) amount of the prescribed capital of the management company, with an indication of the capital paid up.

50. General information for inclusion in a prospectus

(1) The prospectus shall provide that the licensing of an undertaking is not an endorsement or guarantee of the undertaking by the Regulatory Authority nor is the Regulatory Authority responsible for the contents of the prospectus.

(2) For purposes of subregulation (1) the contents of the prospectus shall incorporate the following statement-

"The Regulatory Authority of Botswana shall not be liable by virtue of its licensing of this undertaking or by reason of its exercise of the functions conferred on it by legislation in relation to this undertaking, for any default of the undertaking. Licensing of this undertaking does not constitute a warranty by the Regulatory Authority as to the creditworthiness or financial standing of the various parties to the undertaking."

(3) The prospectus issued by all undertakings shall identify and describe in a comprehensive manner, the risks applicable to investing in that particular undertaking and shall in particular make reference to-

- (a) the fact that the prices of units may fall as well as rise;
- (b) the desirability of consulting a stockbroker or financial adviser about the contents of the prospectus; and
- (c) where applicable, the fact that the difference at any time between the sale and repurchase price of units in the undertaking means that the investment may be viewed as medium to long term.

(4) An undertaking with investment objectives which involve a higher than average degree of risk or undertakings investing in emerging markets or warrant undertakings, shall provide that an investment in the fund may not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors.

(5) A provision in accordance with subregulation (4) shall be inserted and highlighted at the beginning of the prospectus and the prospectus shall contain a full description of the risk involved.

(6) The prospectus shall provide details of the persons who accept responsibility for information contained in the prospectus.

(7) In the event that a stated minimum viable size of an undertaking is not reached within a specified period, the prospectus shall provide that the undertaking shall return any subscription to unit holders and apply to the Regulatory Authority for revocation of its authorisation.

(8) The prospectus shall provide-

- (a) a description of the potential conflicts of interest which could arise between the management company, investment adviser and the undertaking with details, where applicable, of how these are going to be resolved;
- (b) a description of any advantageous commission arrangements which may be entered into by a management or administration company of a collective investment undertaking;
- (c) the name of any third party which has been contracted by the management company or investment company to carry out its work; and
- (d) material provisions of the contracts between third parties and the management company or investment company, which may be relevant to unit holders, excluding those relating to remuneration.

51. Advertisements to refer to prospectus

(1) Advertisements comprising an invitation to purchase the units of a collective investment undertaking shall indicate existence of a prospectus and the places where it may be obtained.

(2) Advertisements shall not-

- (a) be inconsistent with the prospectus; and
- (b) contain information which is false or misleading or presented in a manner which is

deceptive.

(3) Collective investment undertakings marketing their units in Botswana or marketing their units in jurisdictions with no statutory regulation of marketing, shall comply with the following advertising standards-

- (a) all advertising shall be prepared with care and with the conscious aim of ensuring that potential investors fully grasp the nature of any commitment into which they may enter;
- (b) advertisements shall not take advantage of inexperience or credulity; and
- (c) when an advertisement contains any forecast or projection, whether of a specific growth rate or of a specific return or rate of return, it shall make clear the basis upon which that forecast or projection is made, explaining in particular-
 - (i) whether reinvestment of income is assumed;
 - (ii) whether account has been taken of the incidence of any taxes or duties and if so how; and
 - (iii) whether the forecast or projected rate of return will be subject to any deductions other than upon premature realisation or otherwise.

52. Advertisements of investment

(1) Advertisements leading to the investment of money in anything the value of which is not guaranteed, shall clearly indicate that the value of the investment can go down as well as up and that the return upon the investment will therefore necessarily be variable.

(2) Where values are guaranteed, sufficient detail shall be included to give the reader a fair view of the nature of the guarantee.

(3) All advertisements making claims, whether specific or not, as to anticipated growth in value or rate of return, shall include a note to be given due prominence, to the effect as appropriate, that neither past experience nor the current situation are necessarily accurate guides to the future.

53. General requirements in respect to advertisements

(1) Where any advertisement quotes past experience in support of a forecast or projected growth in the value or rate return, it shall not mislead in relation to present prospects and shall indicate the circumstances in which and the period over which such experience has been gained in a way that is fair and representative.

(2) Where investors are offered the facility of planned withdrawal from capital as an income equivalent or cashing in units of undertaking, the advertisement shall ensure that the effect of such withdrawals upon the investment is clearly explained.

(3) Any claims made in the advertisement in relation to investment performance shall be substantiated.

(4) Phrases such as "tax free" and "tax paid" shall not be used unless it is made clear which particular tax or duties are involved and the advertisement provides as clearly as possible, what liabilities may arise and by whom they will be paid.

(5) Where the achievement or maintenance of the return claimed or offered for a given investment is in any way dependent upon the assumed effects of tax or duty, this shall be clearly explained and the advertisement shall make it clear that no undertaking can be given that the fiscal system may not be revised with consequent effect upon the return offered.

PART VIII

Inward Marketing of Undertakings Established in Other Jurisdictions (regs 54-57)

54. General information

A collective investment undertaking which proposes to market its units in Botswana shall-

- (a) be licensed or authorised by a supervisory authority set up in order to ensure the protection of unit holders and which in the opinion of the Regulatory Authority provides a similar level of investor protection to that provided under the law of Botswana; or
- (b) satisfy the Regulatory Authority that the management and trustee or custodial

arrangements, constitution and investment objectives of the undertaking provides a similar level of investor protection to that provided by undertakings licensed under the law of Botswana.

55. Application to Regulatory Authority

(1) An undertaking situated in another jurisdiction which proposes to market its units in Botswana shall make application to the Regulatory Authority in writing, enclosing the following information and documentation-

(a) information:

- (i) the full name of the undertaking;
- (ii) the full name and address of the operator;
- (iii) the full name and address of any supervisory authority or authorities to which the operator is subject in the State in which the operator is established;
- (iv) the full name and address of the trustee or custodian;
- (v) the jurisdiction in which the undertaking is authorised;
- (vi) details of the arrangements for the marketing of units in Botswana;
- (vii) the full name and address of the establishment in Botswana (hereinafter referred to as "facilities agent") where facilities will be maintained to enable-
 - (A) unit holders to obtain payment of dividends and redemption or repurchase proceeds;
 - (B) the instruments constituting the undertaking, the prospectus, the annual and half yearly reports to be examined free of charge and copies be obtained if required; and
 - (C) complaints to be made for forwarding to the head office of the operator;

(b) documentation:

- (i) a statement or certificate from the supervisory authority of the undertaking, confirming that it has been authorised;
- (ii) a certified copy of the fund rules or instruments of incorporation;
- (iii) the prospectus and any amendment, thereto;
- (iv) the latest annual report and any subsequent half yearly report;
- (v) a copy of any other document affecting the rights of unit holders in the undertaking; and
- (vi) confirmation from the facilities agent that it has agreed to act for the undertaking.

(2) Documentation submitted to the Regulatory Authority in accordance with subregulation (1) shall be in English or shall be accompanied by a translation in English and an affidavit swearing to the accuracy of the translation.

(3) Marketing of units in Botswana shall not take place until the undertaking has received a letter of approval from the Regulatory Authority.

56. Disclaimer notice

The following disclaimer notice shall be included in a prominent position in each copy of the undertaking's prospectus and in any marketing material distributed in Botswana for the purposes of promoting the undertaking-

"While this undertaking has been approved to market its units to the public in Botswana, by the Regulatory Authority of Botswana, the undertaking is not supervised or licensed in Botswana. It is incorporated under laws and is supervised by"

57. Additional requirements

(1) The prospectus shall provide the following information for Botswana investors-

- (a) details of the facilities agent and the facilities maintained;
- (b) provisions of Botswana tax laws, if applicable;
- (c) details of the places where issue and repurchase prices can be obtained or are published; and

(d) the minimum subscription requirement in case of undertakings which market solely to professional investors.

(2) An undertaking constituted as an umbrella undertaking shall seek approval before marketing units of additional sub-funds in Botswana.

(3) Applications for an undertaking in accordance with subregulation (2), shall be made to the Regulatory Authority, in writing, enclosing the following-

(a) a statement or certificate from the supervisory authority of the undertaking, confirming that the subfund is authorised;

(b) the revised prospectus for the undertaking; and

(c) details of any changes in the operation of the undertaking since the initial approval.

(4) Undertakings marketing their units in Botswana shall comply with the law of Botswana and with any general advertising standards.

(5) The annual and half yearly reports issued by undertakings marketing their units in Botswana shall be submitted to the Regulatory Authority as soon as they are available.

(6) Where an undertaking has received approval from the Regulatory Authority to market units in Botswana, the name of the undertaking and the name and address of the facilities agent shall be placed on a list of undertakings marketing in Botswana, which will be made available to the public on request.

PART IX

Conditions Applying to Particular Types of Collective Investment Undertakings (regs 58-69)

58. General

A collective investment undertaking under this Part shall, subject to the other provisions of this Part, comply with the general conditions applicable to collective investment undertakings in these Regulations.

59. Undertaking investing in units of other undertakings

A fund of a fund undertaking, the principal object of which is investment undertaking in units of other collective investment undertakings shall be subject to the investing in following-

(a) undertakings in which such an undertaking invests shall-

(i) be licensed in Botswana, or, if licensed in another jurisdiction, licensed by a supervisory authority set up in order to ensure the Protection of unit holders and in which, in the opinion of the Regulatory Authority, an equivalent level of investor protection as that provided under the law of Botswana is provided; or

(ii) satisfy the Regulatory Authority that the management, trustee and custodial arrangements, constitution and investment objective of any such undertaking in which it is intended that an investment shall be made shall provide an equivalent level of investor protection as that provided by undertakings licensed under the law of Botswana;

(b) the undertaking shall not invest more than 20 percent of net assets in the units of any one undertaking provided that this limit shall be raised to 30 per cent for one of the undertakings in which it invests, with the approval of the Regulatory Authority;

(c) the undertaking may invest up to 10 per cent of the net assets directly in transferable securities other than units of collective investment undertakings:

(d) the undertaking shall not invest in the units of an undertaking having similar objectives;

(e) where the undertaking invests in the units of a collective investment undertaking managed by the same management company or by an associated or related company, the manager of the undertaking in which the investment is being made shall waive the preliminary or initial charge which it is entitled to charge for its own account;

(f) where a commission is received by the manager of the undertaking by virtue of an investment in the units of another collective investment undertaking, the commission shall be paid into the property of the undertaking; and

- (g) the prospectus shall disclose and quantify, to the extent possible, the types of charges and other costs relating to the underlying collective investment undertakings which will be borne by, the undertaking.

60. Feeder undertaking

A collective investment undertaking (hereinafter referred to as "feeder undertaking"), the principal object of which is investment in a single collective investment undertaking (hereinafter referred to as "the underlying undertaking") shall be subject to the following-

- (a) the prospectus shall contain sufficient information relating to the underlying undertaking to enable investors to make an informed judgement of the investment proposed to them;
- (b) the periodic reports of the underlying undertaking shall be attached to the periodic reports of the feeder undertaking;
- (c) the undertaking shall make appropriate disclosure in its prospectus regarding the relationship between it and the underlying undertaking, including comprehensive information relating to charges and expenses in respect of the underlying undertaking;
- (d) the manager of the underlying undertaking shall waive the preliminary or initial charge which it is entitled to charge for its own account in relation to the acquisition of units by the feeder undertaking;
- (e) where a commission is received by the manager of the undertaking by virtue of an investment in the units of the underlying undertaking, the commission shall be paid into the property of the undertaking; and
- (f) the undertaking may employ techniques and instruments for the purpose of efficient portfolio management and to protect unit holders against exchange rate risk under conditions and within limits laid down by the Regulatory Authority.

61. Umbrella undertaking

A collective investment undertaking the principal object of which is the division of the fund into a number of sub-funds (known as "an umbrella fund"), with rights of unit holders to exchange units in one sub-fund, for units in another sub-fund shall be subject to the following-

- (a) each sub-fund of the undertaking shall comply with the Act;
- (b) the prospectus of an umbrella fund shall provide for the charges, if any, applicable to the exchange of units in one sub-fund for units in another;
- (c) a unit trust undertaking constituted as an umbrella undertaking shall provide for segregation of liability between sub-funds in the trust deed;
- (d) the prospectus of an investment company constituted as an umbrella undertaking shall clearly disclose the potential risks to investors if segregation of liability between sub-funds is not applied in the undertaking;
- (e) investment companies which have as an investment objective the employment of leverage shall not be established in the form of an umbrella undertaking unless the undertaking has taken measures to ensure that the liabilities of each sub-fund are limited to the net asset of that sub-fund;
- (f) a unit trust undertaking constituted as an umbrella undertaking may produce separate periodic reports for individual sub-funds;
- (g) where an undertaking produces separate accounts in accordance with paragraph (f), the report of each sub-fund shall name the other sub-funds and state that the reports of the sub-funds are available free of charge on request from the management company;
- (h) an investment company shall include accounts for all sub-funds of that company in the periodic reports issued by the company;
- (i) an umbrella undertaking which has been licensed by the Regulatory Authority shall obtain the Regulatory Authority's prior approval before establishing a sub-fund;
- (j) the Regulatory Authority shall approve details of proposed sub-funds, and the amendment or supplement to the prospectus which will set out the investment

- (k) objectives and policy for the new sub-funds; and
- (k) where a supplement to the prospectus is issued, the supplement shall state that the undertaking is constituted as an umbrella undertaking and name the other existing sub-funds.

62. Venture or development capital undertaking

A collective investment undertaking which invests in venture or development capital investments shall be subject to the following-

- (a) the title shall clearly indicate that the undertaking is a venture or development capital undertaking;
- (b) the undertaking shall have a minimum subscription requirement of P50 000 or its equivalent in foreign currency;
- (c) the undertaking shall not invest more than 20 per cent of the proportion of net assets which is intended to be invested in venture or development capital investments in any one company or group companies;
- (d) the undertaking may derogate from restrictions under paragraph (c) for one year following the date of its launch, provided it observes the principle of risk spreading;
- (c) the prospectus shall indicate the intention of the undertaking regarding the exercise of legal and management control over underlying investments;
- (j) the undertaking may provide for the issue of partly paid units in the trust deed, or articles of association;
- (g) the prospectus shall fully disclose the nature of the commitment which investors shall enter into;
- (h) where the undertaking provides for partly paid units, investment restrictions apply in terms of uncalled capital and net asset value combined;
- (i) the redemption procedure as described in the trust deed or articles of association, shall be fully disclosed in a prominent position in the prospectus;
- (j) the Regulatory Authority shall, before authorising a venture or development capital undertaking, be satisfied that the management company, or where applicable, investment advisory company, has specific experience in the area of investment in venture or development capital;
- (k) the annual and half yearly reports shall contain-
 - (i) a report on the development of the companies in which the undertaking has invested indicating, inter alia, the nature of the companies' profits and losses in the period; and
 - (ii) the amount of profit and loss for each investment, where an investment has been sold;
- (l) requirements under paragraph (k) shall be in addition to the usual requirements regarding publication of annual and half yearly reports;
- (m) the prospectus shall contain a description of the-
 - (i) risks involved in this type of undertaking and a prominent risk warning which will make reference to the following-
 - (A) the above average risk involved;
 - (B) the suitability of this type of investment only for people who are in a position to take such a risk;
 - (C) the likelihood that because the undertaking is invested in unquoted companies, delays may arise in meeting redemption requests from unit holders; and
 - (D) a recommendation that not more than 5 per cent of an investor's portfolio be invested in the undertaking; and
 - (ii) potential conflicts of interest which could arise between the management company and investment adviser and the undertaking; and

- (n) where the undertaking invests principally in venture or development capital investments, issue and redemption prices shall be made available after a valuation of the portfolio has taken place and at least twice a year thereafter.

63. Futures and options undertakings, capital protected

A collective investment undertaking which invests in futures, options, and other derivative instruments, and which provides for the protection of capital invested in the undertaking over a given period of time, not greater than 7 years, shall be subject to the following-

- (a) the property of the undertaking shall consist of futures and options, or other derivative instruments which are disclosed in the prospectus and approved by the Regulatory Authority, deposits or short term securities which may include securities with a maturity of up to 7 years;
- (b) the Regulatory Authority shall approve measures undertaken for the protection of capital, particularly those dealing with the segregation of assets;
- (c) the Regulatory Authority may relax the investment restrictions contained in this regulation in order to provide for the protection of capital;
- (d) not more than 5 per cent of the net asset value of the undertaking shall be invested in the debt securities of companies with a credit rating of less than A1/P1;
- (e) futures and options shall be traded on an organised exchange;
- (f) option, interest rate swap and exchange rate swap contracts transacted over the counter shall be permitted:
 - Provided that-
 - (i) the counter-party has shareholders' funds in excess of P500 million or equivalent in foreign currency;
 - (ii) the name of the counter-party is disclosed in the subsequent half yearly or annual report issued by the undertaking;
 - (iii) the manager is satisfied that the counter-party-
 - (A) has agreed to value the transaction at least weekly;
 - (B) will close out the transaction at the request of the manager at a fair value; and
 - (C) initial outlay in respect of the OTC derivatives to any one counter-party shall not exceed 5 per cent of the net asset value of the undertaking;
- (g) the Regulatory Authority may permit other OTC contracts on a case by case basis;
- (h) the undertaking shall not hold an open position in any one futures or options contract for which the margin or premium requirement represents 5 per cent or more of the net assets;
- (i) the undertaking shall not hold an open position in contracts concerning a single commodity or single financial instrument for which the margin or premium requirement represents 10 per cent or more of net assets; the Regulatory Authority may permit a derogation from the limits under paragraph (i), where the investment objective of the undertaking envisages tracking the performance of a securities index to enable the objectives of the undertaking to be achieved;
- (j) foreign exchange transactions with credit institutions are permitted subject to restrictions specified in this regulation;
- (k) the undertaking may borrow, for temporary purposes, up to 10 per cent of the net asset value of the undertaking provided that the intention to borrow shall not form part of the investment objectives of the undertaking;
- (l) before authorising a futures and options undertaking, the Regulatory Authority shall be satisfied that the directors of the management company, or where applicable, investment advisory company, have specific experience in this area of investment: and
- (m) the prospectus shall-

- (i) contain a full description of the risk involved in this type of undertaking; and
- (ii) disclose what steps the undertaking has taken to ensure that the liabilities of the undertaking are limited to the net assets of the undertaking, or in the case of a sub-fund of an umbrella undertaking, to the net assets of that sub-fund.

64. Leveraged futures and options undertaking

A collective investment undertaking which invests in futures and options, and other derivative instruments which does not provide for the protection of capital invested in the undertaking, and which does not fall within the terms of the Regulatory Authority's regulation dealing with the subject of efficient portfolio management, shall be subject to the following-

- (a) the property of the undertaking shall consist of futures and options or other derivative instruments which are disclosed in the prospectus and approved by the Regulatory Authority, deposits or short term securities which may include securities with maturities of up to 7 years;
- (b) not more than 5 per cent of the net asset value of the undertaking may be invested in the debt securities of companies with a credit rating of less than A1 /P1;
- (c) futures and options shall be traded on an organised exchange;
- (d) option, interest rate swap and exchange rate swap contracts transacted over the counter shall be permitted provided that-
 - (i) the counter-party has shareholders' funds in excess of P500 million or equivalent in foreign currency;
 - (ii) the name of the counter-party is disclosed in the subsequent half yearly or annual report issued by the undertaking;
 - (iii) the manager is satisfied that the counter-party has agreed to value the transaction at least weekly, and will close out the transaction at the request of the manager at a fair value; and
 - (iv) initial outlay in respect of OTC derivatives to any one counter-party shall not exceed 5 per cent of the net asset value of the undertaking;
- (e) the Regulatory Authority may permit other OTC contracts on a case by case basis;
- (f) the property of the undertaking shall include liquid assets which have a total minimum value, at all times, at least equal to the sum of all margin deposited and all premium paid, in respect of transactions which have not been closed out;
- (g) the undertaking shall not hold an open position in-
 - (i) anyone futures or option contract for which the margin or premium requirement represents 5 percent or more of net assets; or
 - (ii) contracts concerning a single commodity or single financial instrument for which the margin or premium requirement represents 10 percent or more of net assets;
- (h) the Regulatory Authority may permit a derogation from the limits of paragraph (g) where the investment objective of the undertaking envisages tracking the performance of a securities index in order to enable the objective of the undertaking to be achieved;
- (i) foreign exchange transactions with credit institutions shall be subject to restrictions in this regulation;
- (j) the undertaking may borrow for temporary purposes, up to 10 percent of the net asset value of the undertaking provided that the intention to borrow shall not form part of the investment objectives of the undertaking;
- (k) before authorising an undertaking, the Regulatory Authority shall be satisfied that the directors of the management company or where applicable, investment advisory company, have specific experience in this area of investment; and
- (l) the prospectus shall-
 - (i) contain a full description of the risks involved in this type of undertaking and a prominent risk warning which will make specific reference to the following-
 - (A) the above average risk involved;

- (B) the suitability of this type of investment only for people who are in a position to take such a risk; and
 - (C) a recommendation that not more than 5 percent of an investor's portfolio be invested in the undertaking; and
- (ii) disclose what steps the undertaking has taken to ensure that the liabilities of the undertaking are limited to the net assets of the undertaking, or in the case of a sub-fund of an umbrella undertaking, to the net assets of that sub-fund.

65. Money market undertaking

A collective investment undertaking, the sole objective of which is investment in money market instruments, shall be subject to the following-

- (a) at least 80 percent of the assets of the undertaking shall consist of securities or deposits which have a maturity at date of acquisition of not greater than one year;
- (b) no more than 5 percent of the net asset value of the undertaking may be invested in the debt securities of companies with a credit rating of less than A1/P1; and
- (c) the prospectus of the undertaking shall contain a risk warning drawing attention to the difference between the nature of a deposit and the nature of an investment in a money market undertaking with particular reference to the risk that the principal invested in a money market undertaking is capable of fluctuation.

66. Property undertaking

(1) In this regulation, unless the context otherwise requires-

"property" means a freehold or leasehold, with a minimum unexpired lease of 70 years, interest in any land or building; and

"property related assets" means securities, shares, debentures, warrants or certificates representing these, issued by a body corporate whose main activity is investing in, dealing in, developing or redeveloping property.

(2) A collective investment undertaking which invests in property or property related assets shall be subject to the following-

- (a) the Regulatory Authority shall satisfy itself that the management company or, where applicable, investment advisory company has specific experience in the area of investment in property before authorising the undertaking;
- (b) the undertaking may provide for the issue of partly paid units in the trust deed or articles of association;
- (c) the prospectus shall fully disclose the nature of the commitment which investors may enter into;
- (d) where the undertaking provides for partly paid units, investment restrictions shall apply in terms of uncalled capital and net asset value combined; and
- (e) the management company of the undertaking shall appoint a qualified independent valuer, selected on a basis approved by the Regulatory Authority and details of the appointment shall be included in the prospectus and in the periodic reports issued by the undertaking.

67. Close-ended undertaking

A collective investment undertaking which is constituted as an undertaking which, after the initial investment period, is closed for a set period during which no transactions with the manager of the fund take place in the units of the fund, shall be subject to the following-

- (a) an applicant who wishes to establish a close-ended undertaking shall satisfy the Regulatory Authority that-
 - (i) the nature of the scheme as reflected in the investment objective;
 - (ii) the nature of potential investors;
 - (iii) the life or period of closure of the scheme;
 - (iv) the intention regarding the listing of the scheme; and
 - (v) any proposal from the manager to arrange for a market to be made, or otherwise

- to provide liquidity in the units,
are such that it would be appropriate and prudent to approve the undertaking as a close ended undertaking;
- (b) the undertaking shall have a finite close ended period, the duration of which shall be provided for in the trust deed or articles of association;
 - (c) the Regulatory Authority may permit an undertaking to derogate from general supervisory conditions, and provide for the issue of units other than at net asset value:
Provided that the undertaking demonstrates that unit holders shall not be prejudiced by such a provision and conditions under which units may be issued shall be subject to approval by the Regulatory Authority; and
 - (d) the prospectus of the undertaking shall make appropriate reference to the fact that the undertaking shall not redeem its units and to the availability, or otherwise, of other mechanisms through which unit holders may dispose of units during the closed period.

68. Undertaking marketing solely to professional investors

A collective investment undertaking which is constituted to market its units only to professional investors shall be subject to the following-

- (a) the undertaking may be exempt from conditions relating to investment and borrowing under these regulations, which exemptions may be in whole or in part;
- (b) to qualify for exemptions under paragraph (a), an undertaking shall have a minimum subscription requirement of P500 000 or its equivalent in other currencies;
- (c) for purposes of paragraph (6), the aggregate of an investor's investment in the sub-funds of an umbrella undertaking may be taken into account so as to determine this requirement, and the amounts of subsequent subscription from investors who have already subscribed the minimum subscription under paragraph (b) are unrestricted;
- (d) the prospectus shall-
 - (i) indicate, in a prominent position, that it has been licensed by the Regulatory Authority to market solely to professional investors;
 - (ii) specify its minimum subscription requirement and add the following-
"Accordingly, the requirements of the Regulatory Authority of Botswana which are deemed necessary for the protection of retail investors, in particular the conditions set down by the Regulatory Authority of Botswana in relation to investment and leverage, do not apply to the undertaking.";
 - (iii) describe the investment objectives of the undertaking and this description shall be comprehensive and accurate, readily comprehensible to investors and sufficient to enable investors to make an informed judgement on the investment proposed to them;
 - (iv) contain quantitative parameters which limit the extent of leverage which shall be engaged in by the undertaking and the extent to which the investments of the undertaking shall be concentrated in a single or narrow range of exposures:
Provided that the limits shall be relevant to the investment policies of the undertaking and where the undertaking has employed more than one investment policy, different limits may apply to each such policy;
- (e) the undertaking is not required to make public the issue and redemption prices of their units except to unit holders on request; and
- (f) periodic reports issued by the undertaking shall, where applicable, disclose if distribution has been made out of the capital of the undertaking.

69. Offence and penalty

A person who contravenes a provision of these regulations commits an offence and shall be liable on conviction to a fine not exceeding P500 or to imprisonment for a term not exceeding 6 months or to both.

FIRST SCHEDULE

GENERAL INVESTMENT RESTRICTIONS

(reg 7(3))

1. An undertaking shall have reached a minimum viable size within a specified period of its launch and the minimum viable size and specified period shall be defined in the prospectus.

2. In the event that the minimum viable size is not reached within the specified period, an undertaking shall return any subscriptions to the unit holders and apply to the Regulatory Authority for revocation of its authorisation.

3. The investment objectives and policies of an undertaking shall be clearly defined in the prospectus with sufficient information to enable unit holders to be fully aware of the risks they are taking.

4. An undertaking shall not invest more than 10 percent of its net assets in securities which are not traded in or dealt on a market which is provided for in the trust deed or articles of association.

5. Restrictions in respect of markets may be imposed by the Regulatory Authority on a case by case basis.

6. An undertaking may invest no more than 10 percent of its net assets in securities issued by the same institution.

7. No more than 10 percent of the net assets of an undertaking may be kept on deposit with any one institution and this limit may be increased to 30 percent for deposits with or securities evidencing deposits issued by or securities guaranteed by the following-

(a) first class banks;

(b) a bank authorised by a signatory state to the Basle Capital Convergence Agreement of July, 1988; or

(c) the trustee.

8. Related companies or institutions shall be regarded as a single issuer for the purposes of paragraph 7.

9. An undertaking may not hold more than 10 percent of any class of security issued by any single issuer and this requirement shall not apply to investments in other collective investment undertakings of the open ended venture or development capital type.

10. An investment company or a management company acting in connection with all of the undertakings which it manages, may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body:

Provided that this paragraph shall not apply to venture or development capital undertakings.

11. An undertaking may, subject to authorisation by the Regulatory Authority, invest up to 100 percent of its assets in transferable securities issued or guaranteed by any State, its constituent States, its local authorities or public international bodies of which one or more States are members.

12. Full disclosure shall be made in the prospectus indicating the States, local authorities and public international bodies in the securities of which it is intended to invest more than 10 percent of the assets in accordance with the provisions of paragraph 11.

13. An undertaking may acquire the units of other open ended collective investment undertakings subject to the following-

(a) an undertaking may not invest more than 20 percent of net assets in such undertaking;

(b) where an undertaking invests in units of a collective investment undertaking managed by the same management company or by an associated or related company, the manager of the undertaking in which the investment is being made shall waive the initial charge which it is entitled to charge for its own account in relation to the acquisition of units; and

(c) where a commission is received by the manager of the undertaking by virtue of an investment in the units of another collective investment undertaking, this commission shall be paid into the property of the undertaking.

14. The Regulatory Authority may allow derogations from restrictions laid down in this Schedule to an undertaking investing in other collective investment undertakings or companies which are authorised or incorporated in another State and where such collective investment undertaking or company invest their assets in the securities of issuing bodies which have their registered offices in that State and where under the legislation of that State such a holding represents the most effective way in which the undertaking can invest in the securities of that State.

15. The Regulatory Authority may authorise an undertaking to wholly own shares of a limited company which would in turn invest in investments which are permitted under this Schedule for reasons which the Regulatory Authority is satisfied are justified as being in the interest of unit holders.

16. The limits on investments contained in this Schedule shall be deemed to apply at the time of purchase of the investments.

17. Where the limits under paragraph 13 are subsequently exceeded for reasons beyond the control of an undertaking or as a result of the exercise of subscription rights, the undertaking shall adopt, as a priority objective, the remedying of that situation, taking due account of the interests of its unit holders.

18. An undertaking may employ techniques and instruments for the purposes of efficient portfolio management and to provide protection against exchange rate risk under the conditions and within the limits laid down by the Regulatory Authority.

19. An undertaking may engage, to a limited extent, in leverage through the use of techniques and instruments permitted for the purposes of efficient portfolio management.

20. The net maximum potential exposure created by such techniques and instruments or created through borrowing shall not exceed 25 percent of the net asset value of an undertaking.

21. The prospectus shall disclose an undertaking's intention to engage in leverage.

22. An undertaking may hold ancillary liquid assets.

23. An undertaking shall not carry out sales of transferable securities when such securities are not in the ownership of the undertaking.

24. An undertaking may invest in warrants on transferable securities which warrants are traded in or dealt on a market which is provided for in the trust deed or articles of association provided that an undertaking, an objective of which is to invest in such warrants shall include the following risk warning in a prominent place in the prospectus:

"An investment in the undertaking shall not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors".

25. Other undertakings may invest no more than 5 percent of their net assets in warrants under paragraph 24.

SECOND SCHEDULE

(reg 25(1))

A. INFORMATION TO BE INCLUDED IN MONTHLY RETURNS

1. Collective investment undertakings shall furnish monthly returns to the Regulatory Authority, containing the following information-

- (a) total gross asset value of the undertaking at month end;
- (b) total net asset value of the undertaking at month end;
- (c) number of units in circulation at month end;
- (d) net asset value per unit at month end;
- (e) net proceeds from the issue of units during the month;
- (f) payments made for the repurchase of units during the month; and
- (g) net amount from issues and repurchases in a month.

2. Returns in accordance with paragraph 1 shall be submitted to the Regulatory Authority within 20 working days from the month end to which it refers.

B. PUBLICATION OF ANNUAL AND HALF YEARLY REPORT

1. A collective investment undertaking shall publish an annual report for each financial year and a half yearly report covering the first 6 months of the financial year.

2. Dates for the initial reports issued by a collective investment undertaking shall be agreed with the Regulatory Authority at the time of authorisation.

3. The accounting information given in the annual report shall be audited by one or more persons empowered to audit accounts in accordance with the Companies Act.

4. The auditor's report to unit holders, including any qualifications, shall be reproduced in full in the annual report.

5. The latest annual report and any subsequent half yearly report published shall be offered to investors free of charge before the conclusion of a contract.

6. The annual and half yearly reports shall be available to the public at places specified in the prospectus.

7. The annual and half yearly reports shall be supplied to unit holders free of charge on request.

C. INFORMATION TO BE CONTAINED IN THE ANNUAL REPORT

1. The annual report shall include the following as well as material information which will enable investors to make an informed judgement on the development of the undertaking and its results-

- (a) a balance sheet or statement of assets and liabilities;
- (b) the number of units in circulation;
- (c) the net asset value per unit;
- (d) a portfolio statement distinguishing between the different types of investments and each investment analysed in accordance with the most appropriate criteria in the light of the investment policy of the undertaking (such as in accordance with economic, geographical or currency criteria) as a percentage of net assets and for each of the investments the proportion it represents of the total net assets of the undertaking shall be stated;
- (e) a statement of changes in the composition of the portfolio during the reference period to ensure that unit holders can identify significant changes in the disposition of the assets of the undertaking and only material changes are required to be included in the published statement; and
- (f) "Changes in the composition" means aggregate purchases of a security exceeding 1 percent of the total value of purchases for the period and aggregate disposals greater than 1 percent of the total value of sales and at a minimum the largest 20 purchases and 20 sales shall be given.

2. Undertakings may include a declaration that a complete statement of changes will be made available to unit holders on request free of charge.

3. Where an undertaking holds more than 10 percent of its assets in deposits or other accounts with credit institutions, details of the amounts and the names of the institutions shall be provided.

4. Undertakings holding less than 10 percent of assets in deposits or other accounts with credit institutions shall submit the relevant details to the Regulatory Authority with their reports.

5. A description of any advantageous commission arrangements affecting the undertaking during the period shall be contained in the report.

6. A description on how techniques and instruments permitted for the purposes of efficient portfolio management have been utilised during the reporting period, identifying the specific techniques and instruments used during the period and indicating the purposes for the use of such techniques and instruments to allow unit holders assess the nature and the risk relating to them shall be contained in the report.

7. Open derivative positions at reporting date shall be marked and specifically identified in the portfolio statement.

8. Information on open option positions shall include the strike price, final exercise date and an indication whether such positions are covered or not.

9. Treatment of realised and unrealised gains or losses arising from efficient portfolio management transactions shall be explained in a note to the accounts.

10. Collective investment undertakings which have engaged in stock lending shall disclose in a note to the accounts, the aggregate value of securities on loan at reporting date, together with the value of collateral held by the undertaking in respect of these securities.

11. A description of any material changes in the prospectus during the reporting period.

12. A list of exchange rates used in the report.

13. A statement of the developments concerning the assets of the undertaking during the reference period including the following-

- (a) income from investments;
- (b) other income;
- (c) management charges;
- (d) trustee;
- (e) other charges and taxes;
- (f) net income;
- (g) distribution and income reinvested;
- (h) changes in capital account;
- (i) appreciation or depreciation of investments; and
- (j) any other charges affecting the assets and liabilities of the undertaking.

14. A comparative table covering the last three financial years and including for each financial year, at the end of the financial year-

- (a) the total net asset value;
- (b) the net asset value per unit;
- (c) report on the activities of the financial year; and

(d) trustee or custodial report.

D. INFORMATION TO BE CONTAINED IN THE HALF YEARLY REPORT

1. The half yearly report shall contain the following information-

- (a) a balance sheet or statement of assets and liabilities;
- (b) number of units in circulation; and
- (c) net asset value per unit.

2. A portfolio statement distinguishing between the different types of investments and each investment analysed in accordance with the most appropriate criteria in the light of the investment policy of the undertaking in accordance with economic, geographical or currency criteria as a percentage of net assets and for each of the investments the proportion it represents of the total assets of the undertaking shall be stated.

3. A statement of changes in the composition of the portfolio during the reference period and to ensure that unit holders can identify significant changes in the disposition of the assets of the undertaking and only material changes are required to be included in the published statement.

4. Changes in the composition are defined as aggregate purchases of a security exceeding 1 percent of the total value of purchases for the period and aggregate disposals greater than 1 percent of the total value of sales and at a minimum the largest 20 purchases and 20 sales shall be given.

5. Undertakings may include a declaration that a complete statement of changes will be made available to unit holders on request, free of charge.

6. Where an undertaking holds more than 10 percent of its assets in deposits or other accounts with credit institutions, details of the amounts and the names of the institutions shall be provided.

7. Undertakings holding less than 10 percent of assets in deposits or other accounts with credit institutions shall submit the relevant details to the Regulatory Authority with their report.

8. A description of any advantageous commission arrangements affecting the undertaking during the reference period shall be included in the report.

9. A description on how techniques and instruments permitted for the purposes of efficient portfolio management have been utilised during the reporting period identifying the specific techniques and instruments used during the period and indicating the purposes for the use of such techniques and instruments to allow unit holders assess their nature and the risk relating to them.

10. Open derivative positions at the reporting date shall be marked and specifically identified in the portfolio statement.

11. Information on open option positions shall include the strike price, final exercise date and an indication whether such positions are covered or not.

12. Treatment of realised and unrealised gains or losses arising from efficient portfolio management transactions shall be explained in a note to the accounts.

13. Collective investment undertakings which have engaged in stock lending shall disclose, in a note to the accounts, the aggregate value of securities on loan at the reporting date, together with the value of collateral held by the undertaking in respect of these securities.

14. A description of any material changes in the prospectus during the reporting period shall be included in the report.

15. Where an undertaking has paid or proposes to pay an interim dividend, the half yearly report shall indicate the results after tax for the half year concerned and the interim dividend paid or proposed.

THIRD SCHEDULE

INFORMATION TO BE CONTAINED IN AN APPLICATION FOR LICENSING

(reg 45)

An application for licensing as a unit trust or investment company shall contain the following information-

- (a) the name of the undertaking;
- (b) a statement of the general nature of the investment objective of the undertaking;
- (c) the prospectus;
- (d) the full name and address of the promoter of the undertaking, including-
 - (i) sufficient information concerning the promoter, to enable the Regulatory Authority to be satisfied as to its expertise, integrity and adequacy of its financial resources;
 - (ii) details of shareholders;
 - (iii) latest audited accounts; and

- (iv) details of overseas regulatory status if any;
- (e) where an undertaking proposes to employ the services of a management company, the following information shall be supplied in respect of that company-
 - (i) full name and address;
 - (ii) memorandum and articles of association;
 - (iii) the names of the directors, the company secretary and the shareholders; and
 - (iv) sufficient information in respect of all directors and shareholders to enable the Regulatory Authority to be satisfied that they have appropriate financial resources, including a curriculum vitae for each director and the latest audited accounts and details of the overseas regulatory status (if any) in the case of each share holder of a management company;
- (f) the full name and address of the proposed trustee or custodian;
- (g) the full name and address of the proposed investment adviser, if it is different from the management company or investment company;
- (h) a copy of the relevant agreement with the adviser;
- (i) sufficient information concerning the investment adviser to enable the Regulatory Authority to be satisfied as to its expertise, integrity, and adequacy, of financial resources;
- (j) details of shareholders;
- (k) latest audited accounts;
- (l) details of the overseas regulatory;
- (m) the full name and address of the auditor;
- (n) the full name and address of any third party which has been contracted by the undertaking, or management company acting for the undertaking, to carry out its work and copies of the relevant agreements with the third party including-
 - (i) sufficient information concerning any third party involved, to enable the Regulatory Authority to be satisfied as to its expertise, integrity and adequacy of financial resources;
 - (ii) details of shareholders;
 - (iii) latest audited accounts;
 - (iv) details of overseas regulatory status if any; and
 - (v) such additional information as the Regulatory Authority may specify in the course of determining individual applications.

FOURTH SCHEDULE **INFORMATION TO BE CONTAINED IN A PROSPECTUS**

(reg. 49(1))

1. The name, form in law and if applicable, registered office and head office of the undertaking if different from the registered office.
2. The date of establishment or incorporation of the undertaking and indication of its duration if limited.
3. A statement of the place where the trust deed or articles of association of the undertaking, if not annexed, and periodic reports may be obtained.
4. Brief information relevant to unit holders, of the tax system applicable to the undertaking and details of whether deductions are made at source from the income and capital gains paid by the undertaking to unit holders.
5. The accounting and distribution dates and the time limit, if any, after which entitlement to dividend lapses and procedure in this event.
6. In the case investment companies-
 - (i) the names and positions in the company of the directors;
 - (ii) the experience of directors, both current and past, which is relevant to the undertaking; and
 - (iii) details of their main activities outside the company where these are of significance with respect to that company.
7. The authorised share capital.
8. The name and address of the undertaking's auditors.
9. Details of the type and main characteristic of the units and in particular the nature of the right, real or personal or other represented by the unit.
10. Original securities or certificates providing evidence of title.
11. Entry in a register or in an account.
12. Characteristics of the units, registered or bearer.

- 13.** Indication of any denominations which may be provided for.
- 14.** Indication of unit holders voting rights.
- 15.** Circumstances in which winding up of the undertaking can be decided on and winding up procedure, in particular the rights of unit holders.
- 16.** where applicable, indications of stock exchanges or markets where the units are listed or dealt in.
- 17.** Procedures and conditions-
- (i) of issue and sale of units; and
 - (ii) for repurchase or redemption of units, including the period within which redemption proceeds will normally be paid or discharged to investors.
- 18.** Circumstances in which repurchase or redemption may be suspended.
- 19.** Description of rules for determining and applying income.
- 20.** Description of the undertaking's investment objectives and investment policy which shall-
- (i) be comprehensive, accurate and readily comprehensible to investors;
 - (ii) be sufficient to enable investors to make an informed judgement on the investment proposed to them; and
 - (iii) include any limitations on the investment policy and borrowing powers which may be used in the management of the undertaking;
- 21.** Description of the undertaking's intentions regarding techniques and instruments which may be used for the purposes of efficient portfolio management, including its objectives as (for hedging purposes or performance enhancement or both) and policy, a description of the different techniques and instruments which it can utilise and the risks inherent in these.
- 22.** Rules for the valuation of assets.
- 23.** Determination of the sale or issue price and the repurchase or redemption price of units in particular-
- (i) the method and frequency of the calculation of the prices;
 - (ii) information concerning the charges relating to the sale or issue and the repurchase or redemption of units;
 - (iii) the means, places and frequency of the publication of the prices.
- 24.** In the case of umbrella undertakings, the charges, if any, applicable to switching of investments from one sub-fund to another;
- 25.** The manner, amount and calculation of remuneration payable by the undertaking to the management company or directors of the investment company, the trustee, custodian or third parties. and the reimbursement of costs by the undertaking to the management company, directors of the investment company, the trustee, custodian or third parties.
- 26.** All other costs and expenses which shall be borne by the undertaking, including costs of establishment.