

## **INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES LAW - 1999 & 2000**

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## PART I - PRELIMINARY AND GENERAL

### Short Title

1. This Law may be cited as the International Collective Investment Schemes Law of 1999 and 2000.

### Interpretation

2. In this Law, unless the context otherwise requires -

**“associated undertaking”** means, as appropriate -

a holding company or a subsidiary company of a scheme, of its manager or of its trustee;

a subsidiary of a company of which a scheme, its manager or its trustee is also a subsidiary;

any other company that is not a subsidiary of a scheme, its manager or its trustee but in respect of which a scheme, its manager or its trustee is beneficially entitled to more than twenty per cent in nominal value of either the issued share capital or of the shares carrying voting rights in that company;

a partnership or trust in which a scheme, its manager or its trustee has an interest in excess of twenty per cent;

A company or partnership or trust which has an interest in excess of twenty per cent in a scheme, its manager or its trustee.

**“auditor”** means a person qualified to be appointed as auditor of a company, other than a private company, in accordance with section 155 of the Companies Law and approved by the Bank under the Law;

**“Bank”** means the Central Bank of Cyprus;

**“beneficial owner”** means the true owner of units who may be a different person from the nominee owner;

**“company”** means a company within the meaning of the Companies Law or the equivalent law of any other jurisdiction, as appropriate;

**“Constitutional documentation”** means in the case of an international investment company the memorandum and articles of association, in the case of an international unit trust scheme the trust deed and in the case of an international investment limited partnership the partnership agreement. The constitutional documentation may be in the English language;

**“Court”** means the District Court in the district where the scheme has its registered office;

**“director”** includes any person occupying the position of director by whatever name this position

is called and any person who effectively directs or exercises a material influence over the business of a company and includes a person in accordance with whose directions or instructions the officers of a company are accustomed to act unless the officers act on advice given by him in a professional capacity;

**“distribution”** means a payment made to a unit holder by an international collective investment scheme other than a payment made in respect of redemption or repurchase of a unit;

**“experienced investor”** means a unit holder who meets the criteria prescribed from time to time by the Bank in accordance with regulations issued under Section 67 of the Law;

**“fit and proper person”** means a person who meets the criteria prescribed from time to time by the Bank in accordance with regulations issued under Section 67 of the Law;

**“general partner”** means a partner who is not a limited partner as defined in the Law;

**“holding company”** has the meaning given to it by section 148 of the Companies Law or the equivalent law of any other jurisdiction, as appropriate;

**“international collective investment scheme”** which for the purposes of the Law it shall be hereinafter be referred to as **“scheme”**, means an international fixed capital company, an international variable capital company, an international unit trust scheme and an international investment limited partnership, the sole object of which is the collective investment of funds of unit holders and the units of which, unless provided otherwise by the Law or any other law applicable thereto or its constitutional documentation, are at the option of unit holders redeemed or repurchased directly out of the assets of the scheme;

**“international fixed capital company”** means a company incorporated under the Companies Law which is recognised to operate as an international fixed capital company under Part II of the Law;

**“international investment company”** means an international fixed capital company or an international variable capital company;

**“international investment limited partnership”** means a limited partnership registered under the Partnership and Business Names Law which is recognised to operate as an international investment limited partnership under Part II of the Law;

**“international unit trust scheme”** means an international trust created under the International Trusts Law which is recognised to operate as an international unit trust scheme under Part II of the Law;

**“international variable capital company”** means a company incorporated under the Companies Law which is recognised to operate as an international variable capital company under Part II of the Law;

**“investment restrictions”** means investment restrictions of general or limited applicability which are issued by the Bank from time to time in accordance with regulations issued under section 67 of the Law;

**“limited partner”** means a person who has been admitted to an international investment limited partnership as a limited partner in accordance with the partnership agreement and who shall, at the time of entering into such partnership, contribute or undertake to contribute a stated amount to the capital of the partnership and, except as provided by the Law, shall not be liable for the debts or obligations of the international investment limited partnership beyond the amount so contributed or the amount undertaken to be contributed;

**“Law”** means the International Collective Investment Schemes Law, 1999;

**“manager”** means a person entrusted with the management of the assets and generally of the activities of the scheme and includes in the case of an international investment limited partnership, the general partner(s);

**“net asset value of a scheme”** is the aggregate of its assets less the aggregate of its liabilities;

**“offering memorandum”** means any prospectus, notice, circular, advertisement or other invitation to the public for the purchase of units in a scheme;

**“officer”** means a director, executive director, secretary or a person who acts under the immediate control of a director or an executive director by whatever name called;

**“Offshore Enterprise”** means a company or partnership falling within section 8 paragraph (y) and a company falling within section 28A of the Income Tax Law;

**“partnership”** means a general or limited partnership, established under the Partnership and Business Names Law or the equivalent law of any other jurisdiction as appropriate;

**“partnership agreement”** means any written agreement of the partners as to the affairs of an international investment limited partnership and the conduct of its business as may be amended, supplemented or restated from time to time;

**“person”** means an individual, a company, a partnership, an association, a society, an institution or a body of persons corporate or unincorporated and includes a trust or an international unit trust scheme;

**“prescribed fee”** means any fee or charges prescribed by the Bank from time to time in accordance with regulations issued under section 67 of the Law;

**“private international collective investment scheme”** means an international collective investment scheme which complies with the provisions of sections 36 to 38 of Part III of the Law;

**“property”** or **“ownership”** means immovable or movable property of whatever kind (including choses in action) in all cases located outside the Republic with the exception –

deposits with banks licensed under the Banking Law (No 66(I) of 1997),

units in a scheme and shares and interests in offshore enterprises,

shares listed on the Cyprus Stock Exchange;

**"recognition"** means the recognition granted under sections 4, 10, 18 and 21 of the Law;

**"registered office"** in the case of a company has the meaning ascribed to it by section 102 or in the case of overseas companies the address given under section 347(c) of the Companies Law and in the case of an international unit trust scheme means the registered office of the trustee and in the case of a partnership means the place where the business of the partnership is carried on as declared in its application for registration under the Partnership and Business Names Law;

**"Registrar"** means in the case of companies the Official Receiver and Registrar under the Companies Law and in the case of partnerships the Registrar of Partnerships under the Partnership and Business Names Law;

**"Republic"** means the Republic of Cyprus;

**"share"** means share in the share capital of a company of whatever form;

**"Stock Exchange"** for the purposes of the Law is an exchange recognised by the Bank, after taking into account the opinion of the Minister of Finance;

**"subsidiary company"** has the meaning given to it in section 148 of the Companies Law or the equivalent law of any other jurisdiction as appropriate;

**"tax"** means any municipal taxes, inheritance tax, sales tax, value added tax, stamp duty or any other taxes save for any taxes under the Income Tax Law or the Capital Gains Tax Law;

**"trust agreement"** means a written agreement other than a trust deed by which a trustee of a scheme is appointed;

**"trust deed"** means the instrument creating an international unit trust scheme as may be amended, supplemented or varied from time to time;

**"trustee"** means the trustee of a scheme, in whom the property of the scheme has been vested in accordance with the terms of a trust deed or trust agreement;

**"unit"** means a share, participation or interest in a scheme and includes any other interest or right –

in the assets, profits or gains of a scheme or

to receive a distribution from a scheme;

**"Unit holder"** means the owner of units of a scheme and who may be a scheme or an offshore enterprise or a person not being a permanent resident of Cyprus for the purposes of the Exchange



Control Law.

### **Regulatory And Supervisory Authority**

3.

- 1) The Bank shall be the regulatory and supervisory authority for schemes, their managers and trustees.
- 2) The Bank shall consult and exchange information with regulatory or supervisory authorities of other countries at the stage of application for recognition and on an ongoing basis for the purposes of establishing the suitability of schemes, the managers, trustees or associated undertakings of any of the aforementioned, of the promoters of schemes or of the investments of schemes.
- 3) Save as provided for in subsection (2) of this section, the Bank may not pass on any information acquired by or supplied to it under subsection (2) unless compelled to do so by order of a competent court, issued by virtue of the provisions of any other law.

## **PART II - INTERNATIONAL FIXED CAPITAL COMPANIES**

### **Recognition Of International Fixed Capital Companies**

4.

- 1) Upon written application to the Bank by or on behalf of a company incorporated in the Republic, the Bank may recognise such company as an international fixed capital company if it is satisfied that -
  - a) The competence of the directors and promoters of the applicant company in respect of matters concerning international fixed capital companies and their probity is such as to render them suitable to act as directors and promoters of the applicant company;
  - b) the manager meets the requirements under section 39;
  - c) the trustee meets the requirements under section 46;
  - d) the manager and the trustee act independently of one another;
  - e) the constitutional documentation of the company contains the information prescribed from time to time by the Bank in a form acceptable to the Bank;
  - f) the offering memorandum of the company contains the information prescribed by the Bank from time to time in a form acceptable to the Bank;
  - g) the company submits to the Bank other documentation and information as prescribed by the Bank from time to time in a form acceptable to the Bank together with the prescribed fee; and

- h) The name of the international fixed capital company is not, in the Bank's opinion undesirable.
- 2) The Bank may impose in any recognition such conditions and give such directions as it deems appropriate including, conditions as to the activities which the international fixed capital company must carry on from within the Republic and may at any time amend or vary all or any of such conditions and directions given as it deems appropriate.
  - 3) The international fixed capital company, its manager and trustee shall comply with any conditions imposed or directions given by the Bank under subsection (2).
  - 4) The Bank in applying this section designates the international fixed capital company as -
    - a) A scheme to be marketed to the general public; or
    - b) a scheme to be marketed solely to experienced investors; or
    - c) A private international collective investment scheme.
  - 5) The recognition of an international fixed capital company by the Bank shall not constitute a warranty by the Bank as to the performance of the scheme and the Bank shall not be liable for the said performance or any omissions or malpractice by the scheme its manager or trustee.

#### **Share Capital Of International Fixed Capital Companies**

5. An international fixed capital company shall have such minimum issued and fully paid up share capital as may be prescribed by the Bank and may be denominated in any currency approved by the Bank.

#### **International Fixed Capital Companies Of Limited Duration**

6.
  - 1) An international fixed capital company may, on satisfying the Bank that the interests of existing and prospective unit holders and of creditors are protected, be authorised to provide in its constitutional documentation that, at the end of a fixed duration or upon the occurrence of a specified event, the company will be wound-up.
  - 2) The following provisions of the Companies Law shall, in relation to a company to which this section applies, be read as if -
    - a) In section 261(1)(a) the words "and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily" were deleted;
    - b) subsection (1) of section 262 was replaced with the following new subsection -

"When a company is being wound-up under the provisions of section 261(1) it shall within fourteen days of the expiration of the fixed duration or the

occurrence of an event giving rise to the winding-up or the passing of a resolution that the company be wound-up, give notice of the expiration or the occurrence of the event or the passing of resolution by the company by advertisement in the official Gazette of the Republic”;

- c) in section 263 the words “or on the expiration of the fixed duration of the company or upon the occurrence of the event giving rise to the winding-up or the passing of a resolution by the company” were inserted at the end of the section; and
- d) the words “within twenty-one days of a voluntary winding-up having deemed to commence in accordance with section 263, the company in a general meeting or as otherwise may be provided in its constitutional documentation shall appoint a liquidator” were inserted as a new subsection (3) of section 268.

### **Managers Of International Fixed Capital Companies**

7.

- 1) Save as provided for in subsection (3) of this section, an international fixed capital company shall appoint a manager and the procedures to be followed in appointing a manager shall be set out in the company's constitutional documentation.
- 2) The manager of an international fixed capital company shall not be replaced without the prior approval of the Bank.
- 3) Notwithstanding subsection (1) the Bank may exempt an international fixed capital company from the requirement to appoint a manager if the directors of that company satisfy the Bank on a continuing basis that the company has sufficient management resources at its disposal to effectively conduct its business with due and proper regard being always had for the protection of the interests of unit holders, as if it had a manager.
- 4) In the event of the Bank exempting an international fixed capital company from the requirement to appoint a manager, all duties and obligations of the manager in the Law and any administrative act issued under the Law relating to Managers, shall apply to the directors of the international fixed capital company.

### **Trustees Of International Fixed Capital Companies**

8.

- 1) Save as provided for in subsection (3) of this section, an international fixed capital company shall appoint a trustee.
- 2) The trustee of an international fixed capital company shall not be replaced without the prior approval of the Bank.
- 3) Notwithstanding subsection (1) the Bank may exempt an international fixed capital company

from the requirement to appoint a trustee if -

- a) The units of the company are or are expected to be listed on a Stock Exchange and the Bank considers that its units are or are expected to be actively traded on that Stock Exchange;
- b) the Bank is satisfied that the interests of the unit holders in the company will not in any way be prejudiced by the absence of a trustee; and
- c) the international fixed capital company assumes the obligation to ascertain the net asset value of its units and communicates it to the Bank and the unit holders at least every fifteen days and its auditor ensures at least once monthly that the net asset value of the units of the international fixed capital company is calculated in accordance with the Law or any administrative act issued under the Law and its constitutional documentation and that its assets are invested in accordance with the Law or any administrative act issued under the Law and its constitutional documentation.

### **Changes In Directors Of International Fixed Capital Companies**

9. No appointment shall be made to the office of the director of an international fixed capital company without the prior approval of the Bank and the creation or existence of a vacant position in the office of director of a company must be notified in writing to the Bank immediately upon that happening.

### **INTERNATIONAL VARIABLE CAPITAL COMPANIES**

#### **Recognition Of International Variable Capital Companies**

10.

- 1) Upon written application to the Bank in accordance with this section by or on behalf of a company incorporated in the Republic the Bank may recognise the company as an international variable capital company if it is satisfied that -
  - a) The competence of the directors and promoters of the applicant company in respect of matters concerning international variable capital companies and their probity is such as to render them suitable to act as directors and promoters of the applicant company;
  - b) that the manager meets the requirements under section 39;
  - c) the trustee meets the requirements under section 46;
  - d) the manager and the trustee act independently of one another;
  - e) the constitutional documentation of the company contains the information prescribed from time to time by the Bank in a form acceptable to the Bank;
  - f) the offering memorandum of the company contains the information prescribed by the

- Bank from time to time in a form acceptable to the Bank;
- g) the company submits to the Bank other documentation and information as prescribed by the Bank from time to time in a form acceptable to the Bank together with the prescribed fee; and
  - h) The name of the international variable capital company is not in the opinion of the Bank undesirable.
- 2) The Bank may impose in any recognition such conditions and give such directions as it deems appropriate including, conditions as to the activities which the international variable capital company must carry on from within the Republic and may at any time amend or vary all or any of such conditions and directions given as it deems appropriate.
  - 3) The international variable capital company, its manager and trustee shall comply with any conditions imposed or directions given by the Bank under subsection (2).
  - 4) The Bank shall, in applying this section designate the international variable capital company as -
    - a) A scheme to be marketed to the general public; or
    - b) a scheme to be marketed solely to experienced investors; or
    - c) A private international collective investment scheme.
  - 5) The recognition of an international variable capital company by the Bank shall not constitute a warranty by the Bank as to the performance of the scheme and the Bank shall not be liable for the said performance or any omissions or malpractice by the scheme, its manager or trustee.

## **Contents Of Constitutional Documentation Of International Variable Capital Companies**

11.

- 1) The constitutional documentation of an international variable capital company may, if it is so desired, in respect of the share capital of the company state in lieu of the matters set out in paragraph (a) of section 4(4) of the Companies Law the following -
  - a) That the amount of the share capital of the company shall be equal to the net asset value of the shares of the company at any time in issuance; and
  - b) That the share capital may be divided into a specified number of shares without assigning any nominal value thereto (no par value).
- 2) The constitutional documentation of an international variable capital company referred to in section 11(1) (a) and (b) shall include a provision that the value of the shares in issuance of the company, is at all times equal to its net asset value.

3) In the Companies Law -

- a) A reference to a company limited by shares shall be construed as including an international variable capital company within the meaning of this section and reference to a share or to the share capital of a company limited by shares shall be construed accordingly; and
- b) a reference to the nominal value of a share, or of the share capital issued by a company limited by shares shall be construed, in the case of an international variable capital company, referred to in section 11(1) (a) and (b) as a reference to the value of the consideration for which the share or share capital has been issued.

### **Power Of International Variable Capital Companies To Repurchase Own Shares**

12.

- 1) The constitutional documentation of an international variable company shall include a provision that the shares of the company may or may not, at the request of any of the unit holders and subject to the provisions contained in its constitutional documentation, be repurchased by the company directly or indirectly out of the company's assets.
- 2) Notwithstanding anything contained in the Companies Law an international variable capital company shall not be obliged to create any reserve account in connection with the purchase of its own shares.

### **Treatment Of Repurchased Shares**

13. Shares of an international variable capital company which have been repurchased by the company shall be cancelled and the amount of the company's issued share capital and reserves shall be reduced by the amount of the consideration paid by the company for the repurchase of the shares.

### **International Variable Capital Companies Of Limited Duration**

14.

- 1) An international variable capital company may, on satisfying the Bank that the interests of existing and prospective unit holders and of creditors are protected, be authorised to provide in its constitutional documentation that, at the end of a fixed duration or upon the occurrence of a specified event, the company will be wound-up.
- 2) The following provisions of the Companies Law shall, in relation to a company to which this section applies, be read as if -
  - a) In section 261(1)(a) the words "and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily" were deleted;

b) subsection (1) of section 262 was replaced with the following new subsection -

“When a company is being wound-up under the provisions of section 261(1) it shall within fourteen days of the expiration of the fixed duration or the occurrence of an event giving rise to the winding-up or the passing of a resolution that the company be wound-up, give notice of the expiration or the occurrence of the event or the passing of resolution by the company by advertisement in the official Gazette of the Republic”;

c) in section 263 the words “or on the expiration of the fixed duration of the company or upon the occurrence of the event giving rise to the winding-up or the passing of a resolution by the company” were inserted at the end of the section; and

d) the words “within twenty-one days of a voluntary winding-up having deemed to commence in accordance with section 263, the company in a general meeting or as otherwise may be provided in its constitutional documentation shall appoint a liquidator” were inserted as a new subsection (3) of section 268.

### **Managers Of International Variable Capital Companies**

15.

- 1) Save as provided for in subsection (3) of this section an international variable capital company shall appoint a manager and the procedures to be followed in appointing a manager shall be set out in its constitutional documentation.
- 2) The manager of an international variable capital company shall not be replaced without the prior approval of the Bank.
- 3) Notwithstanding subsection (1) the Bank may exempt an international variable capital company from the requirement to appoint a manager, if the directors of that company satisfy the Bank on a continuing basis that the company has sufficient management resources at its disposal to effectively conduct its business having regard to the protection of the interests of unit holders, as if it had a manager.
- 4) In the event of the Bank exempting an international variable capital company from the requirement to appoint a manager, all duties and obligations of the manager in the Law and any administrative act issued under the Law relating to managers, shall apply to the directors of the international variable capital company.

### **Trustees Of International Variable Capital Companies**

16.

- 1) Save as provided for in subsection (3) of this section an international variable capital company shall appoint a trustee.

- 2) The trustee of an international variable capital company shall not be replaced without the prior approval of the Bank.
- 3) Notwithstanding subsection (1) the Bank may exempt an international variable capital company from the requirement to appoint a trustee if -
  - a) The units of the company are or are expected to be listed on a Stock Exchange and the Bank considers that its units are or are expected to be actively traded on that Stock Exchange;
  - b) the international variable capital company intervenes or undertakes to intervene on the Stock Exchange to prevent the Stock Exchange value of its units from deviating by more than five per cent from their net asset value;
  - c) the Bank is satisfied that the interests of the unit holders in the company will not in any way be prejudiced by the absence of a trustee; and
  - d) the international variable capital company assumes the obligation to ascertain the net asset value of its units and communicates it to the Bank and the unit holders at least every fifteen days and its auditor ensures at least once monthly that the net asset value of the units of the international variable capital company is calculated in accordance with the Law and any administrative act issued under the Law and its constitutional documentation and that its assets are invested in accordance with the Law and any administrative act issued under the Law and its constitutional documentation.

### **Changes In Directors Of International Variable Capital Companies**

17. No appointment shall be made to the office of the director of an international variable capital company without the prior approval of the Bank and the creation or existence of a vacant position in the office of director of a company must be notified in writing to the Bank immediately upon that happening.

### **INTERNATIONAL UNIT TRUST SCHEMES**

#### **Recognition Of International Unit Trust Schemes**

18.
  - 1) Upon written application to the Bank in accordance with this section by the trustee of an international trust created under the International Trusts Law, the Bank may recognise it as an international unit trust scheme if it is satisfied that -
    - a) The manager meets the requirements under section 39;
    - b) the trustee meets the requirements under section 46;
    - c) the manager and the trustee act independently of one another;



- d) the constitutional documentation of the scheme contains the information prescribed by the Bank from time to time and is in a form acceptable to the Bank;
  - e) the offering memorandum of the scheme contains the information prescribed by the Bank from time to time in a form acceptable to the Bank;
  - f) the trustee submits to the Bank other documentation and information prescribed by the Bank from time to time in a form acceptable to the Bank together with the prescribed fee; and
  - g) The name of the international unit trust scheme is not in the opinion of the Bank undesirable.
- 2) The Bank may impose in any recognition such conditions and give directions as it deems appropriate, including conditions as to the activities which an international unit trust scheme must carry on from within the Republic and may at any time amend or vary all or any of such conditions and directions given as it deems appropriate.
  - 3) The manager and trustee of an international unit trust scheme shall comply with any conditions imposed or directions given by the Bank under subsection (2).
  - 4) The Bank shall, in applying this section, designate the international unit trust scheme as -
    - a) A scheme to be marketed to the general public; or
    - b) a scheme to be marketed solely to experienced investors; or
    - c) A private international collective investment scheme.
  - 5) The recognition of an international unit trust scheme by the Bank shall not constitute a warranty by the Bank as to the performance of the scheme and the Bank shall not be liable for the said performance or any omissions or malpractice by the scheme, its manager or trustee.

### **Assets Of An International Unit Trust Scheme**

19.

- 1) The assets of an international unit trust scheme shall be vested in and entrusted to a trustee to be held in accordance with the trusts created under the trust deed and shall be dealt with by the manager in accordance with and subject to the trusts contained in the trust deed.
- 2) The proceeds of sale of any units of an international unit trust scheme and any income in respect of the assets of an international unit trust scheme that are not distributed to the unit holders shall be the assets of an international unit trust scheme and be subject to and dealt with by the manager in accordance with the trusts created under the trust deed.

## **Managers Of International Unit Trust Schemes**

20.

- 1) The trustee of an international unit trust scheme shall appoint a manager to that scheme and the procedures to be followed in appointing a manager shall be set out in the trust deed.
- 2) The manager and the trustee of an international unit trust scheme shall not be replaced without the prior approval of the Bank.

## **INTERNATIONAL INVESTMENT LIMITED PARTNERSHIPS**

### **Recognition Of International Investment Limited Partnerships**

21.

- 1) Upon written application to the Bank in accordance with this section by or on behalf of a limited partnership registered in accordance with the Partnership and Business Names Law, the Bank may recognise it as an international investment limited partnership if it is satisfied that -
  - a) The general partner meets the requirements under section 39;
  - b) the trustee meets the requirements under section 46;
  - c) the general partner and the trustee act independently of one another;
  - d) the constitutional documentation of the international investment limited partnership contains the information prescribed by the Bank from time to time in a form acceptable to the Bank;
  - e) the offering memorandum of the international investment limited partnership contains the information prescribed by the Bank from time to time in a form acceptable to the Bank;
  - f) the general partner submits to the Bank other documentation and information prescribed by the Bank from time to time, in a form acceptable to the Bank together with the prescribed fee; and
  - g) The name of the international investment limited partnership is not undesirable.
- 2) The Bank may impose in any recognition such conditions and give such directions as it deems appropriate including any conditions as to the activities which an international investment limited partnership must carry on in the Republic and may at any time amend or vary all or any of such conditions and directions given as it deems appropriate.
- 3) The general partner and the trustee of an international investment limited partnership shall comply with any conditions imposed or directions given by the Bank under subsection (2).
- 4) The Bank shall, in applying this section, designate the international investment limited

partnership as -

- a) A scheme to be marketed to the general public; or
  - b) a scheme to be marketed solely to experienced investors; or
  - c) A private international collective investment scheme.
- 5) The recognition of an international investment limited partnership by the Bank shall not constitute a warranty by the Bank as to the performance of the scheme and the Bank shall not be liable for the said performance or any omissions or malpractice by the scheme, its general partner or trustee.

### **Trustees Of International Investment Limited Partnerships**

22.

- 1) Save as provided for in subsection (3) of this section, an international investment limited partnership shall appoint a trustee.
- 2) The general partner and the trustee of an international investment limited partnership shall not be replaced without the prior approval of the Bank.
- 3) Notwithstanding subsection (1) the Bank may exempt an international investment limited partnership from the requirement to appoint a trustee, if -
  - a) The units of the international investment limited partnership are or are expected to be listed on a Stock Exchange and the Bank considers that its units are or are expected to be actively traded on that Stock Exchange;
  - b) the international investment limited partnership intervenes on or undertakes to intervene on the Stock Exchange to prevent the Stock Exchange value of its units from deviating by more than five per cent from their net asset value;
  - c) the Bank is satisfied that the interests of limited partners in that international investment limited partnership will not in any way be prejudiced by the absence of a trustee; and
  - d) the international investment limited partnership assumes the obligation to ascertain the net asset value of its units and communicates it to the Bank and the unit holders at least every fifteen days and its auditor ensures at least once monthly that the net asset value of the units of the international investment limited partnership is calculated in accordance with the Law or any administrative act issued under the Law and its constitutional documentation and that its assets are invested in accordance with the Law or any administrative act issued under the Law and its constitutional documentation.

## Limited Liability Of Partners

23.

- 1) A limited partner shall not take part in the conduct of the business of the international investment limited partnership and in particular shall not have power to contract on behalf of the international investment limited partnership and all contracts, deeds, instruments, letters and documents whatsoever shall be entered into, drafted, signed, executed or prepared by the general partner on behalf of the international investment limited partnership.
- 2) If a limited partner takes part in the conduct of the business of an international investment limited partnership, that limited partner shall be liable in the event of insolvency of the scheme for debts of the international investment limited partnership incurred during the period that he so participated in the conduct of the business as though he were for such period a general partner.
- 3) A limited partner shall be liable by virtue of subsection (2) only in respect of debts or obligations incurred by the international investment limited partnership in favour of a person who at the time the debt or obligation was so incurred reasonably believed, based upon the conduct of the limited partner, that the limited partner was a general partner and whether or not such debts or obligations have since been assigned or otherwise transferred to another person.
- 4) A limited partner shall not be deemed to take part in the conduct of the business of an international investment limited partnership within the meaning of the Law solely by doing any one or more of the following, irrespective of the frequency of such acts -
  - a) Being a contractor for, or being an employee or an agent of the international investment limited partnership or being an officer or shareholder of a general partner of the international investment limited partnership which is a body corporate;
  - b) consulting with and advising a general partner with respect to the business of the international investment limited partnership;
  - c) investigating, reviewing, or being informed as to the accounts or business affairs of the international investment limited partnership or exercising any right conferred by the Law;
  - d) acting as guarantor or providing any other form of security for the international investment limited partnership either generally or in respect of specific obligations;
  - e) voting as a limited partner on one or more of the following matters -
    - (i) the dissolution and winding-up of the international investment limited partnership,
    - (ii) the purchase, sale, exchange, lease, mortgage, pledge, or other acquisition or

transfer of any asset by or on behalf of the international investment limited partnership,

(iii) the incurring or renewal of any indebtedness of the international investment limited partnership,

(iv) the change in the objectives or policy of the international investment limited partnership,

(v) the admission, removal or withdrawal of a general or limited partner or trustee or the continuation of the business of the international investment limited partnership,

(vi) the approval of transactions in which one or more of the general partners have a conflict of interest or potential conflict of interest with one or more of the limited partners.

5) Subsection (4) shall not import any implication that the exercise of any other power by a limited partner will necessarily constitute taking part by such limited partner in the business of the international investment limited partnership.

#### **Admission Of Limited Partners And Assignment Of Interest**

24.

1) Notwithstanding anything provided in the partnership agreement, a person may be admitted to an international investment limited partnership as a limited partner with the approval of the general partner, or if more than one general partner, of all of them, whether the assignment is effected under subsection (2) or otherwise without any requirement to obtain the approval of the existing limited partners.

2) Subject to subsection (1) a limited partner may assign absolutely the whole or any part of his partnership interest and an assignee shall as of the date of such assignment become a limited partner with all of the rights and obligations of the assignor relating to the international investment limited partnership, including the obligation of the assignor to make contributions in respect of the partnership interest or the part thereof assigned excluding any liability of the assignor arising pursuant to sections 23 and 25.

3) A limited partner may assign the whole or any part of his partnership interest by way of mortgage or charge provided that no such assignment shall operate to constitute the assignee a partner in the international investment limited partnership or relieve the assignor of any of its partnership obligations, arising from his participation in the said partnership.

#### **Return Of Capital Contribution**

25.

1) No person whether during his term as a limited partner of an international investment limited

partnership or on ceasing to be a limited partner at anytime thereafter or otherwise on a dissolution of the international investment limited partnership, shall receive out of the capital of the international investment limited partnership a payment representing the return of any part of his contribution to the partnership unless at the time of such payment the general partner, or the general partners in majority, certify that the international investment limited partnership is able to pay its debts in full as they fall due after the proposed return of contribution is made.

- 2) In the event of insolvency of an international investment limited partnership, a period of four months from the date of receipt by a limited partner of any payment representing the return of a contribution by the limited partner or part thereof in circumstances where the certificate referred to in subsection (1) has not been secured, such payment shall be repayable by the limited partner together with such further sum as may be determined through a direction given in accordance with Section 68, to the extent that such contribution is necessary to discharge a debt or obligation of the international investment limited partnership incurred during the period in which the contribution represented an asset of the international investment limited partnership.
- 3) In this section “receipt” shall include the release of the limited partner from any undertaking forming part of a contribution and in this context a liability to make a repayment pursuant to subsection (2) shall be read to refer to due performance of such undertaking.
- 4) A distribution of any assets of an international investment limited partnership to a limited partner shall be deemed to be a return of contribution for the purposes in subsection (1) to the extent that a distribution to him reduces the value of his share in the international investment limited partnership calculated on the basis of the value of the net assets of the international investment limited partnership.

### **Cessation Of Limited Partner On Assignment**

26. A limited partner shall cease to be a limited partner of an international investment limited partnership on the absolute assignment of all of his partnership interest or on the return of the whole of his contribution to the international investment limited partnership provided that, notwithstanding any term of the partnership agreement or of any other agreement to the contrary no such assignment shall relieve the assignor of any liability arising under sections 23 or 25.

### **Legal Proceedings**

27.

- 1) Subject to subsections (2) and (3), legal proceedings in respect of any liability of or to an international investment limited partnership including proceedings to enforce a foreign judgement against or by the international investment limited partnership may be instituted

against or by any of the general partners and no limited partner shall be a party to or named in such proceedings.

- 2) Subsection (1) shall be without prejudice to the right of a general partner or a creditor of an international investment limited partnership or other person to institute or join in proceedings against any one or more of the limited partners who may be liable for the debts of the international investment limited partnership pursuant to sections 23 or 25.
- 3) A limited partner may with the leave of the Court, bring an action on behalf of an international investment limited partnership if the general partners with authority to bring such proceedings refuse to do so, and the Court determines that this refusal is unjustified or prejudices the interests of the limited partner.

### **International Investment Limited Partnership Not Dissolved By Change In Limited Partners**

28.

- 1) Subject to subsection (2) and subject to any explicit or implied term of the partnership agreement an international investment limited partnership shall not be dissolved by -
  - a) A change in any one or more of the limited partners or general partners;
  - b) the assignment of the whole or part of the partnership interest of a limited partner;
  - c) the death, incapacity, bankruptcy, removal, resignation, dissolution or winding-up of a limited partner or a general partner, where there is more than one general partner;
  - d) any one or more of the limited partners or the general partners granting a mortgage or charge or other form of security interest over the whole or part of their partnership interest;
  - e) The sale, exchange, lease, mortgage, pledge or other transfer of any assets of the international investment limited partnership.
- 2) Notwithstanding the provisions of subsection (1) and irrespective of any implicit or implied term of the partnership agreement to the contrary and subject to subsection (3) -
  - a) The death, incapacity, retirement, bankruptcy, removal, resignation, insolvency, dissolution or winding-up of the sole or last remaining general partner, or
  - b) the withdrawal of the recognition of the international investment limited partnership,Shall cause the dissolution of the international investment limited partnership.
- 3) If within thirty days of the date of dissolution of an international investment limited partnership due to the circumstances specified in subsection (2) (a) the limited partners with a majority of seventy five percent elect one or more new general partners who shall be

approved by the Bank, the business of the international investment limited partnership shall not be required to be wound-up, but may be resumed and continued as provided for in the partnership agreement.

### **Notice Of Dissolution**

29.

- 1) An international investment limited partnership shall not be dissolved by an act of the partners unless a notice of dissolution is signed by a general partner, delivered to the Bank and published in the official Gazette of the Republic.
- 2) In the event of dissolution of an international investment limited partnership, its affairs shall be wound-up forthwith in accordance with the provisions of the partnership agreement and the Partnership and Business Names Law unless the Court otherwise orders on the application of a partner or creditor.
- 3) Where an international investment limited partnership is, by the terms of the partnership agreement, for a fixed period of time, the international investment limited partnership shall be deemed to be dissolved upon the expiry of that period, and the general partner shall cause a notice to be placed in the official Gazette of the Republic to that effect.

### **Matters Or Differences As To Business Of An Investment Limited Partnership And Contracts With Partners**

30.

- 1) Subject to any implicit or implied term of the partnership agreement -
  - a) Any matter or difference arising in connection with the business of an international investment limited partnership shall be decided by the general partner and, if more than one by a majority of the general partners;
  - b) A limited partner may by himself or his agents at any time inspect the books of account of the international investment limited partnership and inquire into the state and prospects of the international limited partnership's business with such assistance as may reasonably be required of the general partner.
- 2) Notwithstanding any rules of Law applicable to partnerships, but subject to conditions imposed by the Bank, a partner may enter into any contract, including for the lending of money, or transact any business with an international investment limited partnership, and such partner shall have the same rights and obligations with respect thereto as if he were not a partner.



## **PART III - INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES MARKETED TO THE GENERAL PUBLIC**

### **Investment Restrictions Of Schemes Marketed To The General Public**

31.

- 1) A scheme which has been designated to be marketed to the general public must comply with the investment restrictions issued under Section 67.
- 2) A scheme marketed to the general public may derogate from the investment restrictions issued under Section 68 for such period as the Bank may determine provided that the scheme, its manager or its trustee, as the case may be shall take such steps as they deem necessary or as may be required by the Bank to ensure that the scheme's assets are not subject to unnecessary risk.

## **INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES MARKETED SOLELY TO EXPERIENCED INVESTORS**

### **Investment Restrictions Of Schemes Marketed Solely To Experienced Investors**

32. A scheme which has been designated to be marketed solely to experienced investors may with the prior approval of the Bank not apply all or any of the investment restrictions issued under Section 67.

### **Minimum Initial Subscription In Schemes Marketed Solely To Experienced Investors**

33. All unit holders in a scheme marketed solely to experienced investors must make an initial minimum subscription in such amount as the Bank may determine.

### **Prohibition Of Issue Of Bearer Shares**

34. A scheme marketed solely to experienced investors may not issue bearer units.

### **Relief Of Requirement To Make Public The Sale And Redemption Prices**

35. A scheme marketed solely to experienced investors shall not be required to make public the sale and redemption or repurchase prices of its units but shall make the sale and redemption or repurchase prices of its units available to experienced investors at their request.

## **PRIVATE INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES**

### **Investment Restrictions Of Private International Collective Investment Schemes**

36. A scheme which has been designated as a private international collective investment scheme is not required to apply the investment restrictions issued under Section 67.

## Definition Of Private International Collective Investment Schemes

37.

- 1) In this Law "private international collective investment scheme" means a scheme which by its constitutional documentation -
  - a) Restricts the right to transfer its units;
  - b) limits the number of its unit holders to one hundred, not including persons who are in the employment of the private international collective investment scheme and persons who, having been formerly in the employment of the scheme, were while in that employment, and have continued after the termination of that employment to be, unit holders of the scheme;
  - c) prohibits any invitation to the public to subscribe for any units of the scheme; and
  - d) Prohibits the issue of bearer units.
- 2) For the purpose of Subsection (1) (c) above an invitation made to an experienced investor shall not be deemed to be an invitation to the public.

## Relief Of Requirement For Private International Collective Investment Schemes To Appoint Managers Or Trustees

38. Notwithstanding any provision of the Law or any administrative act issued under the Law a private international collective investment scheme shall not be obliged to appoint a manager or trustee.

## PART IV - MANAGERS

### Requirements For Managers Of Schemes

39.

- 1) A manager shall on an ongoing basis, satisfy the Bank that, having regard to the investment policy and the particular investment objectives of the international collective investment scheme for which it acts as manager -
  - a) It has sufficient financial and operational resources at its disposal to meet its liabilities and to enable it to conduct its business effectively;
  - b) it has sufficient investment expertise at its disposal to conduct its business in accordance with the investment objectives and policy as set out in the constitutional documentation of the scheme or that it has made appropriate arrangements to obtain that expertise through the appointment of experienced fund administrators, investment advisers or other experts;
  - c) it does not have directors in common with the board of directors of the trustee but with

- the prior approval of the Bank the trustee and the manager may be associated undertakings;
- d) its officers are persons of integrity and have an appropriate level of knowledge and experience and any significant shareholders are considered to be fit and proper persons;
  - e) it organises and controls its internal affairs in a manner acceptable to the Bank with proper records and adequate arrangements ensuring that its employees are suitable, adequately trained and properly supervised; and
  - f) It has well defined procedures in place to ensure compliance with the Law, with any administrative act issued under the Law and with the constitutional documentation of the scheme of which it is the manager.
- 2) Except and to the extent that the Bank permits, a manager shall not engage in activities other than those necessary to properly fulfill its role as manager for the purposes of or in connection with any schemes or ancillary business.
  - 3) A manager may, with the consent of the Bank, delegate all or any of its functions or duties to any other person or persons approved by the Bank on such terms and conditions as the Bank may deem appropriate to impose but such delegation shall in no way release the manager of its obligations and responsibilities under the Law or any administrative act issued under the Law.
  - 4) Any person to whom functions or duties have been delegated under sub-section (3) above shall be subject to the provisions of the Law and the administrative acts issued under the Law in performing such functions or duties as if it was a manager.

### **Obligations Of Managers Of Schemes**

40.

- 1) A manager shall notify the Bank as soon as it becomes aware of any breaches of the Law or any administrative act issued under the Law in connection with a scheme for which it is a manager.
- 2) A manager shall notify the Bank as soon as it becomes aware of any investigation into the conduct of the affairs of any scheme for which it is the manager or of its own affairs or those of a trustee of the scheme or of any associated undertaking of any of the foregoing by any regulatory, supervisory or enforcement authority in any jurisdiction.
- 3) A manager shall ensure that any references to the role of the Bank in relation to its supervision of the manager's activities contained in informative material of any nature are accurate and are not misleading.
- 4) A manager shall comply at all times with the regulations issued by the Bank pursuant to

section 67.

- 5) A manager shall prepare the annual and half yearly reports required under the Law or administrative act issued under the Law.
- 6) A manager of a scheme designated by the Bank to be marketed solely to experienced investors shall ensure that all unit holders in the scheme have made the minimum subscription in the scheme as set down in section 33.

### **Liability Of Managers Of Schemes**

41. A manager shall be liable to the unit holders of a scheme which it manages for any loss suffered by them as a result of its improper performance of its obligations under the Law or administrative act issued under the Law or its contract with the scheme, and any provisions in any agreement entered into by a manager which purports to limit its liability under the Law shall be void.

### **Change Of Ownership Of Managers Of Schemes**

42.

- 1) No change in a significant shareholding of a manager shall be made without the prior approval of the Bank.
- 2) In this section and section 39(1) (d) "significant shareholding" means a shareholding of ten per cent or more of the issued share capital in a company.

This provision shall not be applicable where the shares of the company acting as manager are listed on a Stock Exchange.

### **Directors Of Managers Of Schemes**

43. No appointment shall be made to the office of the director of a manager without the prior approval of the Bank and any changes in the office of director of a manager must be notified in writing to the Bank immediately upon that change being made.

### **Place Of Business Of Managers Of Schemes**

44. A manager shall unless the requirement is otherwise waived by the Bank, have a place of business in the Republic from where to conduct its business.

## **TRUSTEES**

### **Eligibility Of Trustees Of Schemes**

45. In the Law the following can act as trustees -

- a) A Bank licensed to carry on business in or from within the Republic or in a country which in the opinion of the Bank exercises adequate banking supervision in its jurisdiction and which has such minimum paid up share capital as the Bank may from time to time

prescribe; or

- b) any other person other than a Bank referred to in paragraph (a) above, which provides trustee services to the public at large in or from within the Republic and which is adequately supervised or in a country which in the opinion of the Bank exercises adequate financial regulation and which has such minimum paid up share capital as the Bank may from time to time prescribe; or
- c) A company incorporated in the Republic which is a subsidiary of a person referred to at paragraphs (a) or (b) above, provided that its liabilities are fully guaranteed by that person.

### **Requirements For Trustees Of Schemes**

46. A trustee must satisfy the Bank on an ongoing basis that, having regard to the investment policy and the particular investment objectives of the scheme for which it acts as trustee that -

- a) It has sufficient financial and operational resources at its disposal to meet its liabilities and to enable it to conduct its business effectively;
- b) it meets the requirements set out in section 45;
- c) it does not have directors in common with the board of directors of the scheme for which it acts or with the board of directors of the manager of the scheme, but with the prior approval of the Bank, the scheme, the manager and the trustee may be associated undertakings;
- d) its officers are persons of integrity and have an appropriate level of knowledge and experience and the significant shareholders are considered by the Bank to be fit and proper persons;
- e) it organises and controls its affairs in a manner acceptable to the Bank with proper records and adequate arrangements in order to ensure that its employees are suitable, adequately trained and properly supervised; and
- f) It has well defined procedures in place to ensure compliance with the Law, any administrative act issued under the Law and with the constitutional documentation of the scheme for which it acts as trustee.

### **Obligations Of Trustees Of Schemes**

47.

- 1) A trustee is obliged to -
  - a) Ensure that the manager takes all reasonable steps and exercises all due diligence in order to have the property of the scheme invested in accordance with the Law or any

- administrative act issued under the Law and its constitutional documentation;
- b) ensure that appropriate accounting systems and internal controls are applied so that proper records are kept clearly identifying the contributions by unit holders and the property in which they have been invested;
  - c) ensure that the sale, redemption or repurchase of units effected by or on behalf of a scheme are carried out in accordance with the Law, an administrative act issued under the Law and its constitutional documentation;
  - d) ensure that the net asset value of units of a scheme is calculated in accordance with the Law, any administrative act issued under the Law and its constitutional documentation;
  - e) carry out the instructions of the manager of the scheme unless such instructions conflict with the Law or any administrative act issued under the Law or the constitutional documentation of the scheme or any agreement entered into between the trustee and the scheme:  
  
Provided that a trustee shall not create or cancel units on behalf of the scheme, in any period in which redemption or repurchase of the units of the scheme is suspended;
  - f) ensure that in a transaction involving the assets of a scheme, any obligation due to the scheme is satisfied within time limits which is acceptable market practice in the context of that particular transaction;
  - g) ensure that the income of a scheme is applied in accordance with the Law or any administrative act issued under the Law and with its constitutional documentation;
  - h) in each annual accounting period, enquire into the conduct of the manager in its management of the scheme and report thereon to the unit holders;
  - i) ensure that the report referred to at clause (h) is delivered to the manager in sufficient time to enable the manager to include a copy of this report in the annual report of the scheme;
  - j) ensure that any information or returns which the Bank shall require have been forwarded to the Bank by the manager;
  - k) notify the Bank as soon as it becomes aware of any breaches of the Law or any administrative act issued under the Law in connection with a scheme of which it is the trustee; and
  - l) notify the Bank as soon as it becomes aware of any investigation into the conduct of the affairs of any scheme of which it is a trustee or its own affairs or the affairs of the manager of the scheme or of any associated undertaking of any of the foregoing by any regulatory, supervisory or enforcement authority in any jurisdiction.

### **Liability Of Trustees Of Schemes**

48. A trustee shall be liable to the manager and to the unit holders of a scheme for any loss suffered by them as a result of its improper performance of its obligations under the Law or any administrative act issued under the Law and the liability of a trustee shall not be affected by the fact that it has entrusted to a third party some or all of the assets of a scheme in its safekeeping and any provisions in the trust deed of an international unit trust scheme or in a trust agreement or in any other agreement entered into by a trustee, which purports to limit the liability of a trustee under the Law shall be void.

### **Change Of Ownership Of Trustees Of Schemes**

49.

- 1) No change in a significant shareholder of a trustee shall be made without the prior approval of the Bank.
- 2) In this section and section 46(d) "significant shareholder" means a shareholder holding ten percent or more of the issued share capital of a company. This provision shall not be applicable where the shares of the company which acts as trustee are listed on a Stock Exchange.

### **Directors Of Trustees Of Schemes**

50. No appointment shall be made to the office of the director of a trustee without the prior approval of the Bank and any other changes in the office of director of a trustee must be notified in writing to the Bank immediately upon that change being made.

### **Place Of Business Of Trustees Of Schemes**

51. A trustee shall, unless the requirement is otherwise waived by the Bank, have a place of business in the Republic from where to conduct its business.

## **PART V - INSPECTION, INVESTIGATION AND REGULATION**

### **Maintenance Of Records And Powers Of Authorised Persons**

52.

- 1) Every scheme, its manager and trustee shall ensure that such books and records as may be specified from time to time by the Bank are kept and shall notify the Bank of the address at which such books or records are kept for the purpose of their inspection.
- 2) For inspection purposes the Bank receives the prescribed fee.
- 3)
  - a) An authorised person may upon production of his authorisation inspect and take copies

- of, and make such enquiries as he may consider necessary in relation to -
- (i) the books and records kept pursuant to the Law or administrative act issued under the Law, and
  - (ii) any other document of the scheme, the manager or trustee relating to the business of the scheme;
- b) a person who has in his control, possession or has the ability of procuring any of the aforesaid books, records or other documents is obliged at the request of an authorised person to -
- (i) produce them and permit him to inspect and take copies of them;
  - (ii) give any information which may be reasonably required with regard to them; and
  - (iii) give such other assistance and information as is reasonable in the circumstances;
- c) reference in this section to books, records or other documents, shall be construed as including any books, records or other documents kept in a non-legible form, by the use of electronic means or otherwise, which is capable of being reproduced in a legible form and all the electronic or other automatic means, if any, by which such books, records or other documents are capable of being reproduced.
- 4) Books and records kept pursuant to this section shall be in addition to those required to be kept by or under any other enactment, and shall be retained for at least such period as the Bank may specify.
- 5)
- a) For the purposes of this section, "authorised person" means -
    - (i) an officer or employee of the Bank; or
    - (ii) any person who, in the opinion of the Bank, possesses appropriate qualifications or experience, and who is appointed by the Bank, to carry out the inspection or any part thereof to which this section relates;
  - b) The Bank may decide that any expenses of the authorised person relating to the carrying out of his duties under this section shall be defrayed by the scheme, its manager or its trustee.

### **Appointment And Powers Of Inspectors**

53.

- 1) Without prejudice to the powers of the Bank under the Law, the Bank may apply to the Court and is obliged to do so upon request of unit holders owning ten percent or more of the net value of the scheme, and the Court may, if satisfied with the matters set forth in subsection



- (2), appoint one or more inspectors to investigate the affairs of that scheme, its manager or trustee and, where the Court considers necessary, the affairs of any associated undertakings of any of the aforementioned and to report thereon in such manner as the Court directs.
- 2) The Court may appoint an inspector under this section where it is satisfied that there are circumstances suggesting that -
    - a) The interests of unit holders are disregarded or prejudiced; or
    - b) unit holders are not being provided with all the information relating to the affairs of the scheme which they might reasonably expect; or
    - c) the affairs of the scheme are being conducted with the effect of defrauding its unit holders or creditors or the creditors of any other person or are conducted in an otherwise unlawful manner; or
    - d) there has been persistent default by the scheme, its manager or trustee in complying with the requirements of the Law or administrative act issued under the Law; or
    - e) The appointment of an inspector is required in the interests of the proper and orderly regulation of international collective investment schemes.
  - 3) In exercising its discretion under this provision the Court may consider any matter which may assist it in reaching its ruling including events occurring outside the Republic.
  - 4) The Bank, before applying to the Court to appoint an inspector under this section, may, if it is of the opinion that it would not be prejudicial to the interests of unit holders or creditors of the scheme, notify in writing the scheme, its manager and trustee of the action which it proposes to take and of the grounds on which it proposes to take such action and, in such case, the aforementioned shall within such period as the Bank may set out in the notification, be entitled to give to the Bank a statement in writing explaining their activities.
  - 5) Where an inspector appointed under subsection (1) thinks it necessary for the purposes of his investigation to investigate the affairs of any other scheme, he shall apply to the Court for an order to widen the scope of his investigation, and if such order be granted the inspector shall be entitled to investigate the affairs of that scheme, its manager or trustee and associated undertakings of any of the aforementioned and he is obliged to include in his report a reference regarding their business affairs.
  - 6) Where the Court appoints an inspector under subsection (1) it may, at any time, give such directions as it thinks fit, with a view to ensuring that the investigation is carried out as efficiently and as cost effectively as is practicable in the circumstances.
  - 7)
    - a) In the event of an investigation under this section, it shall be the duty of -

- (i) the scheme, its manager and trustee and any associated undertakings of the above mentioned and of all their officers including persons outside the Republic,
  - (ii) any other persons including persons outside the Republic, who the inspector considers that they may have or have the possibility to procure any information concerning the affairs of the scheme,  
  
when required to produce to the inspector books, records or other documents relating to the affairs of a scheme being investigated under subsections (1) or (5) which are in their control, possession or procurement, to attend before the inspector at a specified place and time and otherwise to give to him all assistance in connection with the investigation which they are reasonably able to give;
- b) if an inspector has reasonable grounds for believing that any person maintains or has maintained either at that time or at any time in the past an account of any description with a Bank or with any other financial enterprise, which -
- (i) had been used in the financing of any transaction, arrangement or agreement relating to the affairs of the scheme, which is being investigated under this section, and
  - (ii) has been in any way connected with any act or omission, or series of acts or omissions, which constitute misconduct, whether fraudulent or not, towards a scheme or any unit holder or creditor of the scheme,  
  
the inspector may require such person to produce to him all documents in his possession or under his control relating to that account;
- c) when any person mentioned in this section refuses to produce to the inspector any books, records or other documents or refuses to attend before the inspector or refuses to answer any question put to him by the inspector with respect to the affairs of the scheme which is under investigation under this section, the inspector may inform the Court in writing about the refusal. The Court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and any statement which may be offered in defence, may issue any order or direction as it thinks fit including -
- (i) a direction to the person concerned to produce particular books, records or other documents or to attend before the inspector or to answer a particular question put to him by the inspector, or
  - (ii) a direction that the person concerned need not produce particular books, records or other documents or to attend before the inspector or to answer a particular question put to him by the inspector;
- d) the inspector may examine on oath orally or by written interrogatories any person

- mentioned in subsection 7(a) above and may for this purpose -
- (i) administer an oath accordingly, and
  - (ii) Record the answers of the person examined and require that person to sign.
- 8)
- a) The expenses of an investigation including the fees of the inspector appointed by the Court under subsection (1) shall be defrayed by the Bank but the Court may direct that any person dealt with in the report shall be liable to repay the Bank any expenses or part thereof incurred by the Bank;
  - b) The report of an inspector may, if he thinks fit, and is obliged to, if the Court so directs, include a recommendation as to any directions, which he thinks appropriate, in the light of his investigation, to be given under subsection 8(a).
- 9)
- a) An inspector may, if he thinks fit, and is obliged to, if the Court so directs, make an interim report to the Court and, on the conclusion of his investigation make a final report, but he may at any time in the course of the investigation, without making an interim report, inform the Court of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed;
  - b) on a report being presented to it under this section the Court shall -
    - (i) forward a copy of any such report to the Bank, and
    - (ii) if it thinks fit -
      - (1) furnish a copy thereof, to the scheme its manager, trustee and its auditor,
      - (2) furnish a copy thereof, on request and on payment of such fees as the Court may fix, to any other person who is a unit holder of the scheme or whose interests as a creditor of the scheme are affected or whose interests are affected in any other way,
      - (3) cause any such report to be printed and published,
      - (4) Orders that a particular part of a report made by virtue of this section be omitted from a copy forwarded or furnished or published under this section.
- 10) Having considered a report under subsection (9) the Court may -
- (i) Make such order in relation to matters arising from that report including -
    - (1) an order for the winding-up or dissolution of the scheme,
    - (2) an order for the purpose of remedying any damage suffered by any person whose

interests were adversely affected by the conduct of the affairs of the scheme provided that, in making any such order, the Court shall have regard to the interests of any other person who may be adversely affected by the order;

- (ii) May refer to the Attorney General for investigation, any matter arising from the said report.

### **Obligation Of Schemes, Managers And Trustees To Furnish Information**

54.

- 1) A scheme, its manager and trustee shall each furnish the Bank at such times as the Bank, such information and returns concerning the business of the scheme, its manager or trustee, as the Bank may specify from time to time, being information and returns which the Bank considers necessary to have for the due performance of its statutory functions.
- 2) Subsections (1) shall apply to the business of an associated undertaking to the extent that the information and returns sought by the Bank are, in the opinion of the Bank, materially relevant to the proper appraisal of the business of the scheme.

### **Changes In The Constitutional Documentation, In The Offering Memorandum And The Name Of A Scheme**

55. No changes shall be effected to the constitutional documentation or the offering memorandum or the name of a scheme, without the prior consent of the Bank.

### **Requirement By The Bank For Taking Measures**

56.

- 1) Where the Bank is of the opinion that any of the requirements for recognition of a scheme are no longer satisfied, or that the scheme, its manager or trustee -
  - a) Has become or is likely to become unable to meet his obligations towards the unit holders or the creditors of the scheme; or
  - b) has contravened the Law or any administrative act issued under the Law or knowingly has furnished the Bank with false, inaccurate or misleading information; or
  - c) no longer fulfils the requirements imposed by the Bank, regarding capital adequacy, the Bank may require in writing from the scheme, its manager or trustee to take such measures, including the winding-up or dissolution of the scheme or the suspension of its business as, in the opinion of the Bank, is necessary in the interest of the proper and orderly regulation of the scheme or for the protection of unit holders or creditors of the scheme.

- 2) For the purposes of subsection (1) the Bank may take into account any matter relating to the scheme, its manager or trustee, or associated undertaking of any of the aforementioned.
- 3) The Bank may at any time withdraw the requirement for taking measures issued under subsection (1).
- 4) While a requirement for taking measures issued under this section is in force the Court may, upon application by the Bank, issue an order to restrain any disposal of the assets of the scheme.

### **Revocation Of Recognition Of A Scheme**

57.

- 1) The Bank may revoke the recognition of a scheme if it appears to the Bank that -
  - a) any of the requirements for the recognition of the scheme are no longer satisfied; or
  - b) the continuation of the recognition of the scheme is undesirable for the purpose of safeguarding the interests of unit holders; or
  - c) The scheme, its manager or trustee have contravened the Law or an administrative act issued under the Law or knowingly have furnished the Bank with false, inaccurate or misleading information.
- 2) The Bank may revoke the recognition of the scheme at the request of the scheme, its manager or trustee, but it may refuse to do so if it considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question of whether the recognition should be revoked or that revocation would not be in the interests of the unit holders.
- 3) The Bank shall, immediately upon the revocation of a recognition, notify the scheme its manager and trustee and as soon as practicable publish a notice of that revocation in the Official Gazette of the Republic and in at least one international daily newspaper and shall in the case of an international investment company and an international investment limited partnership send a copy of that notice to the Registrar.
- 4) Upon application by the Bank, the Court may issue an order to restrain any disposal of the assets of the scheme the recognition of which has been revoked.
- 5) A scheme whose recognition has been revoked shall be promptly wound-up or dissolved the earliest possible and it shall be the duty of the scheme, its manager and trustee to ensure that the scheme is promptly wound-up or dissolved.

## Replacement Of Manager And Trustee Of A Scheme

58.

- 1) The Bank may if it deems appropriate require the replacement of the manager or trustee of the scheme with another manager or trustee where the Bank is satisfied that the manager or trustee -
  - a) Has failed to demonstrate the competence or probity, reasonably expected of him, in discharging his functions; or
  - b) has ceased to enjoy a good reputation; or
  - c) it is undesirable in the interests of the unit holders that the person should remain as manager or trustee; or
  - d) has ceased to fulfil the requirements under sections 39 or 46 as the case may be; or
  - e) Has contravened the Law or an administrative act issued under the Law, or has knowingly furnished the Bank with false, inaccurate or misleading information.
- 2) The liabilities of the manager or trustee that has been replaced by another under this section are not affected, in respect to the debts and obligations of the scheme.

## Notification By The Bank Of Intention To Require The Taking Of Measures Or Revocation Of Recognition Or Replacement Of The Manager Or Trustee

59.

- 1) Where the Bank proposes to require in writing the taking of measures under section 56 or to revoke the recognition of the scheme under section 57 or to require the replacement of the manager or trustee under section 58, shall give to the scheme, the manager or trustee, notice of its said intention.
- 2) Upon receipt of such notification, the scheme, the manager or trustee shall cause the unit holders to be informed of the contents of such notice from the Bank.
- 3) The scheme, the manager or trustee or any unit holder may, within fifteen days or such other period as the Bank may determine of the date of service of a notice pursuant to subsection (1), make written representations to the Bank.
- 4) The Bank shall have regard to any representations made in accordance with subsection (3) in determining whether to require the taking of measures or to revoke the recognition of a scheme or to replace the manager or trustee, as the case may be.
- 5) Notwithstanding the foregoing provisions, the Bank shall if it is satisfied that it is to the interest of the unit holders or the creditors of the scheme, require in writing the taking of

measures, revoke the recognition of a scheme or replace its manager or trustee without giving notice under subsection (1).

### **Power of Court in case of failure to comply with the Law or any administrative act issued under the Law**

60.

- 1) On application by the Bank, the Court if satisfied that there has occurred a failure by a scheme or by its manager or trustee to comply with the Law, or any administrative act issued under the Law, the Court may, by order, prohibit the continuance of the failure or enforce compliance with the Law, or any administrative act issued under the Law, by the scheme, its manager or trustee.
- 2) The Court in examining any application filed under this section may grant such interim or interlocutory order.
- 3) An application under this section shall be made on notice to the scheme, the manager or the trustee.
- 4) Upon receipt of a notice of an application under this section the scheme, its manager or trustee shall cause the unit holders to be forthwith informed thereof.

### **Liability Of Officers Of The Scheme, The Manager Or Trustee, Where There Is A Contravention Of The Law Or Any Administrative Act Issued Under The Law**

61.

- 1) Subject to subsection (2) of this section, if the Court on the application of the liquidator or the Bank or any unit holder or creditor of a scheme which is being wound-up or dissolved and is unable to pay all its debts, considers that there has been a violation of any section of the Law or of any administrative act issued under the Law which contributed to -
  - a) The inability of the scheme to pay its debts, or
  - b) substantial uncertainty as to the assets and liabilities of the scheme, the contributions of unit holders and investments of the said scheme, or
  - c) substantial impediment of its orderly winding-up,may declare that any one or more of the officers or former officers of the scheme, the manager or trustee is or are responsible for the contravention and shall be personally liable, for all or such part of the debts and other liabilities of the scheme as may be specified by the Court.
- 2) On the hearing of an application under subsection (1) the person bringing the application may give evidence or call witnesses.

3)

a) Where the Court makes a declaration under subsection (1) it may concurrently give such directions as it thinks proper for the purpose of giving effect to the declaration. In particular, it may make a provision for making the liability of any such person under the declaration a charge -

(i) on any debt or obligation due from the scheme to the said person, or

(ii) on any mortgage or charge or any interest in any mortgage or charge on any assets of the scheme held by the said person or any other person on behalf of the person liable under the declaration and may from time to time make such order as may be necessary for the purpose of enforcing any charge imposed under this subsection;

b) a copy of the declaration referred to in paragraph 3(a) above shall, in the case of an international investment company and an international investment limited partnership, be lodged with the Registrar whereas in the case of an international unit trust scheme be lodged with the Bank and shall be made available for public inspection.

4) The Court upon the hearing of the application under subsection (1) in respect of any person, shall take into consideration the following -

a) The said person took all reasonable steps to secure compliance by the scheme, its manager or trustee in accordance with the Law or any administrative act issued under the Law;

b) The said person had reasonable grounds for believing that a competent and reliable person, formally appointed for this purpose, was charged with the duty of ensuring that the scheme, its manager and trustee complied with of the Law or any administrative act issued under the Law.

5) This section shall have effect notwithstanding that the person in relation to whom an application is made for a declaration under subsection (1) may be liable to be prosecuted for a criminal offence in respect of the matters of the ground on which the declaration is to be made or that such person has been convicted of such an offence.

6)

a) If in connection with a scheme which is being wound-up or dissolved and is unable to pay its debts, the Court considers that there has been a violation of the Law or any administrative act issued under the Law which has contributed –

(i) to the inability of the scheme to pay its debts, or

(ii) to substantial uncertainty as to the assets and liabilities of the scheme, the contributions of unit holders and investments of the said scheme, or



(iii) to substantial impediment of its orderly winding-up,

every officer of the scheme, of its manager or of the trustee, who is responsible for the violation of the Law or any administrative act issued under the Law shall be guilty of an offence;

b) in a criminal prosecution for an offence under this section, it shall be a defence for the person charged to show that -

(i) he took all reasonable steps to secure compliance by the scheme, its manager or trustee with the provisions of the Law or any administrative act issued under the Law, or

(ii) He had reasonable grounds for believing that a competent and reliable person, formally appointed for this purpose was charged with the duty of ensuring that the scheme, its manager and trustee complied with the Law or any administrative act issued under the Law.

## **PART VI - GENERAL PROVISIONS**

### **Publication Of Offering Memorandum**

62.

- 1) A scheme offering to the public units for purchase shall publish an offering memorandum which may be in the English language and which must be dated and the contents of which must be kept up to date.
- 2) An offering memorandum published by a scheme shall include all information necessary to enable potential unit holders to make an informed judgment of the investment proposed to them and shall, as a minimum, contain the information prescribed by the Bank.
- 3) Sections 40, 43 and 44 of the Companies Law shall apply in relation to an offering memorandum issued by an international unit trust scheme and an international investment limited partnership as the case may be as if it were an international investment company.
- 4) The constitutional documentation and the most recent annual and half-yearly accounts of the scheme shall form an integral part of the offering memorandum and shall be annexed thereto unless the public is informed in the offering memorandum that on request the constitutional documentation or the most recent annual and half-yearly accounts will be sent to any interested party or is appraised of the place where anyone may consult them.
- 5) The offering memorandum must be offered to any interested party without any charge prior to the conclusion of a contract to purchase units.
- 6) An offering memorandum, before it is published, circulated or distributed by any person, should be approved by the Bank. Any person who is knowingly responsible for the publication,

circulation or distribution of an offering memorandum or of a form of application for an offering memorandum which has not been approved by the Bank, shall be guilty of an offence.

### **Calculation of Net Asset Value**

63. A scheme must set out in its constitutional documentation and in the offering memorandum to the satisfaction of the Bank the methods and frequency of calculation of the net asset value of its units and the manner in which the same will be made available to the unit holders.

### **Requirement Of Appointment Of Auditor By The Scheme**

64.

- 1) Every scheme has the obligation to appoint an auditor.
- 2) A person appointed under subsection (1) above, is required to obtain the Bank's approval prior to acting as an auditor.

### **Publication Of Annual And Half Yearly Reports**

65.

- 1) For every scheme there shall be prepared an annual report for each financial year and a half yearly report covering the first six months of the financial year which reports shall be sent to the Bank and the unit holders within three months of the end of the financial year in the case of the annual report, and within two months of the end of the half year in the case of the half yearly report and shall contain such information as may be prescribed by the Bank.
- 2) Financial statements prepared under subsection (1) in relation to a scheme shall be prepared in accordance with the International Accounting Standards published by the International Accounting Standards Committee or where there are no specific standards, in accordance with a manner and form prescribed by the Bank.
- 3) The information given in the annual report prepared pursuant to subsection (1) shall be audited by auditors in accordance with the International Auditing Standards and who shall prepare a report. The report of the auditor shall be included in its entirety in the annual report of the said scheme.
- 4) If the auditor of a scheme has reason to believe that -
  - a) The information provided to unit holders in the reports do not truly describe the financial position and the assets and liabilities of the scheme or that there are material inaccuracies or omissions in the reports; or
  - b) the assets of the scheme are not or have not been invested in accordance with the constitutional documentation of the scheme, its offering memorandum, the Law or any

administrative act issued under the Law; or

- c) there exist circumstances which are likely to materially affect the ability of the scheme to fulfil its obligations to unit holders or to comply with any of its obligations under the Law or any administrative act issued under the Law; or
- d) there are material defects in the internal control systems or in the accounting records of the scheme or his report will be otherwise qualified,

He shall report these matters to the Bank in writing without delay.

- 5) The auditor shall furnish annually to the Bank a written report stating whether in his opinion and to the best of his knowledge, the scheme has complied with its obligations under the Law or any administrative act issued under the Law.
- 6) Where the auditor so requests, the Bank shall provide to that auditor in writing details of such returns of a financial nature submitted to the Bank by the scheme. This information is provided for the purpose of enabling him to exercise his functions under the Law and in so doing the Bank shall not be constrained by any obligation of confidentiality imposed by the Law or any other law or regulation.
- 7) The auditor of a scheme shall send to that scheme a copy of any written report made by him to the Bank under subsections (4) and (5).
- 8) Whenever the Bank is of the opinion that the exercise of its functions under the Law or the protection of the interests of unit holders so requires, it may require the auditor of a scheme to supply it with such information as it may specify.
- 9) No duty to which the auditor may be subject shall be regarded as contravened and no liability to the scheme, its unit holders, its creditors or other interested parties shall attach to the auditor by reason of his compliance with any obligation imposed on him by or under the Law.

### **Payment In Cash Or Non-Cash Contribution For The Purchase Of Units**

66.

- 1) A contribution by unit holders for the purchase of units may be satisfied in cash or with the exchange of other kind of property, provided that in the case of a non-cash contribution, the value of the relevant property shall be the fair market value of the property at the time of transfer of the property to the scheme.
- 2) The auditor of a scheme shall, where a scheme proposes to issue units in exchange for non-cash property and where the value of the non-cash property exceeds ten per cent of the net asset value of the scheme, prepare a report containing the information set out in subsection (4).
- 3) If, at the time of making the report referred to at subsection (2), it appears to the auditor that a valuation of part of the non-cash property consideration referred to in subsection (2) should be

made by a person who appears to the auditor to have the requisite knowledge and experience to value that non-cash property consideration then the auditor may arrange for or accept such a valuation report prepared by such person as will enable him to fully prepare his report pursuant to subsection (2), provided that such person shall not be an officer of the scheme or its manager or trustee.

- 4) The report referred to at subsection (2) shall state that -
  - a) In the case of a valuation made pursuant to subsection (3) it was, in the auditor's opinion, reasonable for him to obtain such a report and to accept a valuation made pursuant to same;
  - b) the method of valuation contained in such report was reasonable in all respects;
  - c) it appears that there has been no material change in the value of the non-cash property consideration since the valuation; and
  - d) That on the basis of the valuation the number of units to be issued is or is not reasonable.
- 5) Any report prepared by an auditor pursuant to subsection (2) shall be delivered without delay by the auditor to the scheme, its manager or trustee who shall make such report available free of charge to unit holders in that scheme.

## Regulations

67.

- 1) The Bank may issue regulations to specify the investment restrictions which must be adhered to by schemes, in relation to their investment objectives and their investment policy. The investment restrictions should refer, on one hand, to the type of assets in which a scheme may not invest and, on the other hand, to the type of investments which it may acquire as well as to the extent to which it may invest in securities of any one issuer, including the extent to which it may borrow in order to finance the purchase of investments.
- 2) The Bank may issue regulations containing directions to schemes, their managers and trustees by which the following among other, may be specified -
  - a) The fees which need to be prescribed by the Bank under the Law;
  - b) the method and the frequency of the calculation of the net asset value of the scheme;
  - c) the method of determining the price of sale, redemption or repurchase of units;
  - d) the contents of the offering memorandum which should include, as a minimum, the following -
    - (i) information regarding the establishment and the legal structure of the scheme,

- (ii) information regarding the manager;
  - (iii) information regarding the trustee,
  - (iv) the investment objectives and the investment policy of the scheme,
  - (v) details regarding any important contracts between the scheme, its manager, its trustee or other experienced persons, who specialize in the management of schemes and in the provision of investment advice or other experts;
- e) the contents of the constitutional documentation;
  - f) the contents of the declaration given to the scheme, its manager or trustee by all persons acquiring units in the scheme, stating that they fall within the term “unit holder”, in accordance with section 2 of the Law;
  - g) the books and records which must be kept by the scheme, its manager and trustee as well as the contents of the periodic reports which must be submitted to the Bank;
  - h) the mandatory activities of schemes in the Republic;
  - i) the requirements for defining a person as “fit and proper” and “experienced investor”;
  - j) Any other matters pertaining to schemes, their managers and trustees.
- 3) The Bank may issue regulations containing codes of conduct for schemes, managers and trustees, the contents of which may differ depending on the various types of schemes and the experience of unit holders to whom the scheme is promoted and which regulations specifically refer to matters such as the suitability and ability of officials, the capital adequacy of schemes and managers, the promotion and advertisement of schemes, the internal control systems, including systems for the prevention of money laundering, the avoidance of conflict of interests, the relations with the Bank and other relevant matters.
  - 4) The investment restrictions, directions and codes of conduct which are issued from time to time under this section are published in the Official Gazette of the Republic and come into effect from the date of their publication.
  - 5) The Bank may, if it deems appropriate, vary the investment restrictions, the directions and the codes of conduct referred to in subsections (1), (2) and (3).

### **Names Of Schemes**

68. Every scheme shall include the words “international fixed capital company”, “international variable capital company”, “international unit trust scheme”, “international investment limited partnership”, as the case may be, on all deeds, announcements, publications, letters and other documents relating to or issued by it, in the language in which the aforementioned are published.

## Register Of Schemes

69.

- 1) The Bank shall establish and maintain a register entitled "Registry of International Collective Investment Schemes".
- 2) The register shall be open to the inspection of any member of the public on the payment of such fee as the Bank may prescribe.
- 3) The Bank shall, as soon as practicable after the date of the recognition of a scheme, publish a notice to that effect in the Official Gazette of the Republic.
- 4) The Bank shall publish at least once a year, in such manner as it thinks fit, the names of all schemes whose recognition is in force.

## Certificate Of Recognition

70.

- 1) The Bank shall issue to every scheme a certificate of recognition.
- 2) The Bank shall, within five days of the issue of a certificate of recognition pursuant to subsection (1), send in the case of international investment companies and international investment limited partnerships, a copy of the certificate of recognition to the Registrar.

## Sale Of Units

71.

- 1) The units of a scheme shall be sold initially and for such period as specified in the offering memorandum, at a price which is specified in the said offering memorandum and after the expiration of the said period, at a price arrived at by dividing the net asset value of the scheme by the number of units outstanding and such price may be increased by the addition of a sum representing duties, charges and fees in accordance with all applicable laws and the constitutional documentation of the scheme.
- 2) Every scheme must make public in such a manner as may be specified by the Bank from time to time the net asset value of its units and the sale, redemption or repurchase price of its units.
- 3) Units of a scheme may not be issued as partly paid and may not be sold unless the equivalent of the net issue price is paid and be included into the assets of the scheme. This shall not preclude the issue of bonus units.
- 4) A payment for the purchase of units in a scheme shall not be made by the provision of any services or loans to the scheme.

- 5) No person other than a unit holder shall hold units in a scheme.

### **Redemption Or Repurchase Of Units**

72. The price at which units of a scheme may be redeemed or repurchased shall be arrived at by dividing the net asset value of the scheme by the number of units outstanding and such price may be decreased by the deduction of a sum representing duties, charges and fees, in accordance with all applicable laws and the constitutional documentation of the scheme.

### **Value Of Assets Of The Scheme**

73. The value of the assets of a scheme shall be based, in the case of officially quoted securities, on the last known Stock Exchange quotation and, in the case of securities not so quoted, on the probable realisation value which must be estimated by the scheme, its manager, trustee or auditor as the case may be with care and in good faith, in accordance with the provisions of its constitutional documentation or according to directions issued by the Bank from time to time.

### **Suspension Of Repurchase Or Redemption Of Units**

74.

- 1) A scheme whose constitutional documentation provides that its units may be redeemed or repurchased at the option of the unit holders may temporarily suspend the repurchase of its units -
  - a) According to the procedure provided in its constitutional documentation; or
  - b) In exceptional cases where circumstances so require upon approval of the Bank and where suspension is justified having regard to the interest of the unit holders.
- 2) The Bank may at any time require the suspension or redemption or repurchase of units if in its judgment this is in the interest of the unit holders.
- 3) A scheme which acts in accordance with subsection (1) (a) must without delay communicate its decision to the Bank.

### **Dealings With Schemes**

75.

- 1) All transactions entered into between a scheme on the one hand and its promoter, manager, trustee or investment adviser or any associated undertaking or officer, on the other hand, of any of the aforementioned, shall be carried out as if effected on normal commercial terms negotiated at arms' length and the parties to such a transaction (in this section "a connected transaction") shall ensure it is carried out in the best interests of the unit holders of the scheme.

- 2) The parties referred to in subsection (1) may enter into a connected transaction if -
  - a) The trustee obtains a certified valuation of the connected transaction from a person approved by the Bank as independent and competent;
  - b) The connected transaction is executed on the best terms on the Stock Exchange and according to the rules of that Stock Exchange.
- 3) Where it is envisaged that connected transactions may be entered into, there shall be full disclosure of such connected transactions in the offering memorandum of that scheme.

### **Exemption From The Obligation To Pay Tax**

76. Notwithstanding the provisions of any other Law, a scheme established in the Republic as well as its manager or trustee, if not permanent residents of the Republic, shall be exempt from the obligation to pay tax.

### **Liability of Bank**

77. Neither the Bank nor any person who is an officer or employee of the Bank shall be liable in any action suit or legal proceedings for damages for anything done or omitted in the discharge of the functions and responsibilities of the Bank under the Law, unless it is shown that the act or omission was not in good faith or was the result of gross negligence.

### **Parallel Applicability Of The Companies Law And Partnership And Business Names Law**

- 78.
- 1) The Companies Law shall continue to be in force and be applicable to international investment companies, except sections 31, 38-39, 41-42, 45-51, 84, 108, 118, 124, 141-147, 150-152, 158-169 and, in addition in the case of international variable capital companies except for sections 57(1) proviso, 60-62 and 64-69.
  - 2) In the case where international investment companies are authorised by the Bank to issue units to bearer, articles 73-77, 81, 83, 105, 106, 107, 109, 110, 111, 112, 113, 125, 126, 127, 130, 134, 187 and 190 shall be not applied.
  - 3) The Partnership and Business Names Law shall continue to be in force and applicable to international investment limited partnerships except sections 3, 37, 40, 44-46, 47(3), 52(1) (d), 53, 64 and 65.



## **PART VII - SECRECY**

### **Duty To Maintain Secrecy**

79.

- 1) No officer or employee of a scheme or its manager or trustee or their respective associated undertakings or any other person who has in its possession any of the records of a scheme or has access to them, while his employment in or professional relation with a scheme or its manager or trustee or their respective associated undertakings continues or after the termination thereof, give, divulge, reveal or use for his own benefit any information whatsoever regarding the affairs of a scheme or of any of its unit holders.
- 2) Subsection (1) shall not apply in any case where -
  - a) Such information is given, divulged, revealed or used pursuant to any other provision of the Law;
  - b) the scheme is declared bankrupt or is being wound-up or dissolved;
  - c) civil proceedings are instituted between the scheme and its manager or trustee or any of its unit holders, only to the extent relevant to the subject matter of such civil proceedings;
  - d) the information is given to the police under the provisions of any law or to a public officer who is duly authorised under any law to obtain that information or to a Court in the investigation or prosecution of a criminal offence under any law;
  - e) the scheme, its manager or trustee, has been served with a garnishee order or with any writ of attachment or any other order of a competent Court attaching monies or assets of a unit holder and the information is connected with compliance with such order; or
  - f) The information is required in the course of the duties of persons in the employment of a scheme or of its manager or trustee or their respective associated undertakings or their auditors or legal advisors.
- 3) For the purposes of this section the expression "associated undertaking" shall, with reference to the manager and trustee be deemed to include any person or persons to whom the scheme, a manager or trustee have delegated functions or duties under the Law.

## **PART VIII - OFFENCES AND PENALTIES**

### **Offences And Penalties**

80.

- 1) A scheme, its manager or trustee and any person being an officer of the above, who fails to take all reasonable steps to ensure compliance of the scheme, its manager or its trustee with

the requirements of the Law or any administrative act issued under the Law is guilty of an offence -

Provided, however, that -

- a) In any proceedings against a person in respect of an offence under this section constituting a failure to take reasonable steps to secure compliance by the scheme, its manager or trustee with the requirements of the Law or any administrative act issued under the Law, it shall be defence to prove that he had reasonable grounds for believing that a competent and reliable person who was officially appointed for this purpose was charged with the duty of ensuring compliance with the provisions of the Law or administrative act issued under the Law and that this person was in a position to discharge this duty;
  - b) No person is sentenced to imprisonment for an offence under this section unless it is proved that the offence was wilfully committed.
- 2) Any person who is required to provide an authorised person with books, records or other documents under the Law or to give to the authorised person any information and who fails to do so as well as who knowingly provides to an authorised person false information shall be guilty of an offence.
  - 3) Any person who causes to disappear, destroys, mutilates or falsifies or is privy to disappearance, destruction, mutilation or falsification of any book, record or other document affecting or relating to the property or the affairs of the scheme or makes or is privy to the making of a false entry therein shall be guilty of an offence.
  - 4) A person other than a unit holder, as defined in section 2 of the Law, who acquires or possesses directly or indirectly a unit in a scheme and any manager, trustee or any other person who is in any other manner involved in the management or administration of a scheme, allows, tolerates or knowingly conceals directly or indirectly the possession of any unit by any person other than a unit holder, as defined in section 2 of the Law, is guilty of an offence.
  - 5) Any person who is guilty of an offence under the Law in case of his conviction is subject to imprisonment for a period which does not exceed ten years or to a fine which does not exceed fifty thousand pounds or to both sentences.

## Introduction of the units of certain schemes in the Cyprus Stock Exchange

81.

- 1) Notwithstanding the provisions of any other law and subject to the conditions prescribed by this section, the units of international collective schemes may be introduced in the Cyprus Stock Exchange:
  - a) of companies, which according to the provisions of section 10 of the principal law have been recognized as international variable capital companies and designated, according to the provisions of paragraph (a) of subsection (4) of the above-mentioned section, as schemes to be promoted to the public at large, governed by the provisions of section 31 of this Law; and
  - b) of international trusts, which according to the provisions of section 18 of this Law, have been recognized as international unit trust schemes and designated, according to the provisions of paragraph (a) of subsection (4) of the above-mentioned section, as schemes to be promoted to the public at large, governed by the provisions of section 31 of this Law.
- 2) The introduction of units shall be effected upon an application submitted to the Cyprus Stock Exchange Council, in the form prescribed by the decision of the Council which is published in the Official Gazette of the Republic.
- 3) Together with the application, all the certificates that have been submitted to the Bank for the recognition of these international collective investment schemes, as well as a copy of the recognition certificate of the scheme issued under the provisions of section 70 of this Law, must be submitted.
- 4) Subject to the provisions of subsection (5) of this section, the international collective investment schemes, the units of which are introduced in the Stock Exchange of Cyprus must comply with all the obligations imposed by this Law and shall be discharged from any other obligation imposed by the Cyprus Stock Exchange Law and Regulations issued thereof.
- 5) The transfer of units of international collective investment schemes that have been introduced on the Cyprus Stock Exchange effected outside the Stock Exchange shall be permitted, but if the transfer is effected through the Stock Exchange all the provisions governing the negotiation, liquidation and completion of the stock exchange transactions must be met:

Provided that the acts effected outside the Stock Exchange in relation to the above units shall be exempted from the obligation for notification imposed by the Cyprus Stock Exchange Law and Regulations issued thereof and are not notified to the Stock Exchange.
- 6) Documents submitted to the Bank which relate to international collective investment schemes,

the units of which have been introduced to the Cyprus Stock Exchange, under the provisions of this Law, shall be communicated as soon as possible by the Bank to the Cyprus Stock Exchange, with the exception of the documents that relate to the investigation and inspection of the scheme, of the director or trustee of the scheme, according to the provisions of section 52 and 53 or of those that relate to information provided by virtue of section 54 of this Law.

- 7) Revocation of the recognition of the international collective investment scheme, according to the provisions of section 57 of this Law, shall have the consequence of striking-out the units from the Cyprus Stock Exchange, according to the provisions of section 30 of the Cyprus Stock Exchange Law.