

Zimbabwe

Collective Investment Schemes Act Chapter 24:19

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Collective Investment Schemes Act
 Contents

Part I – Preliminary 1

 1. Short title and date of commencement 1

 2. Interpretation 1

 3. Meaning of "collective investment scheme" 2

Part II – Administration 4

 4. Functions of chief executive officer and staff of commission 4

Part III – Registration of collective investment schemes 4

 5. Prohibition against promotion or operation of unregistered collective investment schemes 4

 6. Categories in which collective investment schemes may be registered 4

 7. Registration of collective investment schemes 5

 8. Cancellation of registration 6

 9. Registration and cancellation thereof to be notified in Gazette 7

Part IV – Internal schemes 7

 10. Application of Part IV 7

 11. Trust deed 7

 12. Manager and trustee 7

 13. Licensing of manager and trustee 8

 14. Cancellation of licence of manager or trustee 9

 15. Suspension of licence of manager or trustee 10

 16. Issue, cancellation or suspension of licence to be notified in Gazette 11

 17. Replacement of manager or trustee 11

 18. Auditors of internal schemes 11

Part V – External schemes 12

 19. Application of Part V 12

 20. Additional requirements for registration of external schemes 12

 21. Manager of external scheme to maintain local office 12

 22. Suspension of registration of external scheme 13

Part VI – Professional schemes 13

 23. Application of Part VI 13

 24. Additional requirements for registration of professional schemes 13

 25. Auditors of professional schemes 14

 26. Suspension of registration of professional scheme 14

 27. Application of sections 11 and 12 to professional schemes 14

Part VII – Inspections and investigations 15

28. Inspectors	15
29. Chief executive officer may demand information	15
30. Investigation into affairs of licensed person or registered scheme	15
31. Procedure on completion of investigation	16
32. Expenses of investigation	16
Part VIII – General	16
33. Restrictions on promotion of registered schemes	16
34. Unsolicited calls	17
35. Duty of disclosure towards participants in registered schemes	18
36. Right of action by participants against manager of registered schemes	18
37. Secrecy to be observed by Chief Executive Officer and other officers	18
38. Annual reports of Chief Executive Officer	19
39. Appeals	19
40. Evidence	21
41. False statements etc.	21
42. Rules	21
43. Transitional provisions: existing schemes	23

Zimbabwe

Collective Investment Schemes Act Chapter 24:19

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AN ACT to regulate and control the promotion and operation of collective investment schemes in Zimbabwe and to provide for matters connected with or incidental to the foregoing.

Part I – Preliminary

1. Short title and date of commencement

This Act may be cited as the Collective Investment Schemes Act *[Chapter 24:19]*.

[Short title amended by s.i. 262 of 2006]

2. Interpretation

In this Act—

"**advertisement**", in relation to a collective investment scheme, means any form of advertising in any media whatever but, except in relation to a professional scheme, does not include editorial or journalistic advice or comment on matters of public interest where the intention of the comment is neither to promote the collective investment scheme nor to procure persons to become participants in it;

"**Chief Executive Officer**" means the Chief Executive Officer of the Commission;

[definition inserted by Act 2 of 2013]

"**collective investment scheme**" has the meaning given to it in section three;

"**Commission**" means the Securities and Exchange Commission established by section 3 of the Securities and Exchange Act *[Chapter 24:25]*;

[definition inserted by Act 2 of 2013]

"**external scheme**" means a collective investment scheme described in section nineteen;

"**fixed date**", in relation to any provision of this Act, means the date fixed in terms of subsection (2) of section one as the date of commencement of that provision;

"**group of companies**" means companies or other bodies corporate that are related to each other as holding company and subsidiary, or as subsidiaries of the same holding company, for the purposes of section 143 of the Companies Act *[Chapter 24:03]*;

"**holder**", in relation to a licence, means the person to whom the licence has been issued;

"**inspector**" means a person appointed as an inspector in terms of subsection (1) of section twenty-eight;

"**internal scheme**" means a collective investment scheme described in section ten;

"**licence**" means a licence issued in terms of section thirteen to the manager or trustee of an internal scheme, and "licensed" shall be construed accordingly;

"**manager**", in relation to—

- (a) any collective investment scheme, means the person who is responsible to participants for the management and control of the scheme and for the issue and redemption of units in the scheme;
- (b) an external scheme, includes the promoter of the scheme;

"**Minister**" means the Minister of Finance and Economic Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

[definition inserted by section 4 of Act 22 of 2001]

"**participant**" means a person who invests in or otherwise takes part in a collective investment scheme;

"**professional scheme**" mean a collective investment scheme described in section twenty-three;

"**promoter**", in relation to a collective investment scheme, means a person who promotes the establishment of the scheme and additionally, or alternatively, promotes the sale of units, shares or other interests in the scheme;

"**registered**" means registered in terms of this Act;

"**registered office**", in relation to the holder of a licence, means the holder's registered office for the purpose of section 112 of the Companies Act *[Chapter 24:03]*;

"**Registrar**" *[definition repealed by Act 2 of 2013]*

"**trust deed**", in relation to a unit trust scheme, means the written agreement between the manager and trustee which constitutes the scheme and under whose terms the property of the scheme is held;

"**trustee**", in relation to a unit trust scheme, means the person who holds the property of the scheme in trust for the participants;

"**unit**", in relation to a unit trust scheme, means the interest or share, by whatever name called, which a participant has in the scheme;

"**unit trust scheme**" means a collective investment scheme under which the property of the scheme is held in trust for the participants.

3. Meaning of "collective investment scheme"

- (1) Subject to subsection (2), a collective scheme is an arrangement with respect to property of any description, the purpose or effect of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property, where—
 - (a) the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in regard to its management; and
 - (b) the arrangement has either or both the following characteristics—
 - (i) the participants' contributions and the profits or income out of which payments are to be made are pooled;
 - (ii) the property is managed as a whole.

- (2) The following arrangements, contracts and dispositions are not collective investment schemes for the purposes of this Act—
- (a) an arrangement managed by a person otherwise than by way of business and with no view to profit;
 - (b) an arrangement under which each of the participants carries on a business other than the management of investments for third parties and enters into the arrangement for commercial purposes related to that business;
 - (c) an arrangement under which all the participants as well as the person managing or controlling the arrangement are companies in the same group of companies;
 - (d) a franchise arrangement under which a person exploits a right to use a trade name or design or other form of intellectual property or the goodwill attached to it;
 - (e) an arrangement whose dominant purpose is to enable participants to share in the use or enjoyment of a particular property or to make its use available to other persons by time-share or otherwise;
 - (f) an arrangement whose purpose is to provide clearing services for a stock exchange, commercial bank or other financial institution;
 - (g) an arrangement under which the participants' property is held in trust but—
 - (i) each participant remains the beneficial owner of part of the property and is entitled to withdraw that part from the arrangement at any time; and
 - (ii) the participants' contributions, profits and income are not pooled;
 - (iii) parts only of the property are bought and sold together and the property is not otherwise managed as a whole except where a person becomes or ceases to be a participant;
 - (h) a contract of insurance;
 - (i) a pension fund, provident fund or retirement annuity fund required to be registered under the Pension and Provident Funds Act [*Chapter 24:09*];
 - (j) a medical aid scheme established for the purpose of providing benefits for its members and their dependants in respect of expenditure incurred on medical, dental or optical treatment;
 - (k) membership of a building society, a co-operative society, a company or other body corporate or of a partnership, unless the principal or sole purpose of the membership is to participate in or receive profits or income as is described in subsection (1);
 - (l) a deposit with—
 - (i) a bank or financial institution registered in terms of the Banking Act [*Chapter 24:01*]; or
 - (ii) a building society registered in terms of the Building Societies Act [*Chapter 24:02*]; or
 - (iii) the Post Office Savings Bank operating under the Post Office Savings Bank Act [*Chapter 24:10*];
 - (m) any other arrangement, contract or disposition, or any class thereof, that may be prescribed.

Part II – Administration

4. Functions of chief executive officer and staff of commission

- (1) The Chief Executive Officer shall perform his or her functions under this Act subject to such general directions as the Commission may give him or her.
- (2) Other members of the Commission's staff shall perform such of the Chief Executive Officer's functions under this Act as the Chief Executive Officer may assign to them.

[section substituted by Act [2 of 2013](#)]

Part III – Registration of collective investment schemes

5. Prohibition against promotion or operation of unregistered collective investment schemes

- (1) Subject to this Act, no person shall—
 - (a) issue any advertisement in Zimbabwe which—
 - (i) invites persons to become or offer to become participants in a collective investment scheme; or
 - (ii) contains information calculated to lead, directly or indirectly, to persons becoming or offering to become participants in a collective investment scheme; or
 - (b) advise or procure any person in Zimbabwe to become or offer to become a participant in a collective investment scheme; or
 - (c) manage or operate a collective investment scheme in Zimbabwe;

unless the collective investment scheme is registered in terms of this Act.

- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[subsection amended by section 4 of Act [22 of 2001](#)]

- (3) For the purpose of paragraph (a) of subsection (1), an advertisement shall be treated as issued in Zimbabwe if it is directed to persons in Zimbabwe or is made available to them otherwise than in—
 - (a) a newspaper, journal or other periodical publication published and circulating principally outside Zimbabwe; or
 - (b) a sound or television broadcast or in some other electronic medium transmitted principally for reception outside Zimbabwe.

6. Categories in which collective investment schemes may be registered

- (1) Subject to this Act, a collective investment scheme may be registered as—
 - (a) an internal scheme; or
 - (b) an external scheme; or
 - (c) a professional scheme.
- (2) Without derogation from subsection (2) of section 21 of the Interpretation Act [*Chapter 1:01*], regulations made in terms of section forty-two may define separate classes of collective investment

schemes falling within any of the categories specified in paragraphs (a), (b) and (c) of subsection (1) and, subject to this Act, may make different provision in respect of any such class.

7. Registration of collective investment schemes

- (1) An application for the registration of a collective investment scheme shall be made to the Chief Executive Officer in the prescribed form and manner and shall be accompanied by—
 - (a) a copy of the scheme's trust deed; and
 - (b) a copy of any prospectus or advertisement issued or proposed to be issued in respect of the scheme; and
 - (c) the prescribed fee, if any; and
 - (d) such other documents and information as may be prescribed or as the Chief Executive Officer may reasonably require.
- (2) If, after considering an application in terms of subsection (1), the Chief Executive Officer is satisfied that—
 - (a) the applicant will operate the collective investment scheme in accordance with this Act, to the extent that this is ascertainable at the time of registration; and
 - (b) the form of registration sought is appropriate to the category of scheme that the applicant wishes to operate; and
 - (c) the name of the collective investment scheme is not undesirable or misleading or so similar to the name of another registered scheme as to be likely to cause confusion; and
 - (d) the purposes of the collective investment scheme—
 - (i) are accurately described in the prospectus and advertisements submitted with the application; and
 - (ii) are based on sound financial principles;and
 - (iii) are reasonably capable of being carried into effect and
 - (e) generally, the applicant and the collective investment scheme comply with such of the requirements of this Act as are applicable to them;

the Chief Executive Officer shall register the scheme as an internal scheme, an external scheme or a professional scheme, as the case may be, and shall notify the applicant in writing accordingly.
- (3) Subject to section thirty-nine, if the Chief Executive Officer is not satisfied as to any matter referred to in paragraphs (a) to (e) of subsection (2), he shall not register the scheme concerned:
Provided that—
 - (i) before reaching a final decision he shall notify the applicant in writing that he proposes to reject the application and of his reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter;
 - (ii) within ten days after deciding not to register the scheme, he shall notify the applicant in writing of his decision and of the reasons for it.
- (4) The period between the Chief Executive Officer's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which he notifies the applicant of his decision or proposed decision in terms of subsection (2) or (3), as the case may be, shall not exceed three months unless the applicant consents to an extension of the period.

[section amended by Act 2 of 2013]

8. Cancellation of registration

- (1) Subject to subsections (3) and (4), the Chief Executive Officer, with the approval of the Commission, may cancel the registration of a collective investment scheme if he believes on reasonable grounds that—
- (a) the scheme was registered in error or through fraud or the misrepresentation of a material fact; or
 - (b) the scheme has ceased to exist; or
 - (c) the scheme no longer satisfies any of the requirements for registration; or
 - (d) the manager or trustee of the scheme has—
 - (i) contravened any provision of this Act; or
 - (ii) furnished the Commission or the Chief Executive Officer with information that is materially false, inaccurate or misleading; or
 - (iii) failed to comply with a material term or condition of any prospectus or advertisement issued in respect of the scheme; or
 - (iv) in the case of an internal scheme, has ceased to be licensed; or
 - (e) any fee prescribed for the registration or continued registration of the scheme has not been paid; or
 - (f) the scheme is no longer financially sound; and
- that it is in the best interests of participants or potential participants in the scheme that its registration should be cancelled.
- (2) In determining whether or not it is in the best interests of participants or potential participants in a scheme that its registration should be cancelled in terms of subsection (1), the Chief Executive Officer may take into account any matter relating to the scheme or its manager or trustee or any person who controls or appears to control the operation of the scheme, directly or indirectly, or who is employed by or associated with the manager or trustee of the scheme.
- (3) Before cancelling the registration of a collective investment scheme in terms of subsection (1), the Chief Executive Officer shall notify the scheme's manager and trustee in writing that he proposes to cancel its registration and of his reasons for doing so:
- Provided that, if the Chief Executive Officer believes on reasonable grounds that neither the scheme's manager nor its trustee can be notified at their registered offices, the Chief Executive Officer shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the manager or the trustee has its registered office, stating that the scheme's registration will be cancelled unless the manager or trustee lodges an appeal with the Minister in terms of section thirty-nine within thirty days from the date of publication of the notice in the *Gazette*.
- (4) The Chief Executive Officer shall not cancel the registration of a collective investment scheme in terms of subsection (1)—
- (a) until—
 - (i) the period within which an appeal may be lodged in terms of section thirty-nine has elapsed; or
 - (ii) the thirty-day period referred to in the proviso to subsection (3) has elapsed, where a notice was published in terms of that proviso;
 - (b) if an appeal is lodged in terms of section thirty-nine, until he has been notified that the Minister has upheld his decision.

- (5) The Chief Executive Officer may cancel the registration of a collective investment scheme if the scheme's manager or trustee so requests and the Chief Executive Officer is satisfied that cancellation will be in the best interests of any participants in the scheme:

Provided that if he refuses to cancel the registration of a collective investment scheme in terms of this subsection, he shall, within ten days after reaching his decision, notify the scheme's manager or trustee in writing of his decision and of the reasons for it.

9. Registration and cancellation thereof to be notified in *Gazette*

Whenever the Chief Executive Officer registers a collective investment scheme or cancels the registration of a collective investment scheme in terms of this Part, he shall cause notice thereof to be published in the *Gazette*.

Part IV – Internal schemes

10. Application of Part IV

This Part shall apply to internal schemes, that is to say, to any unit trust scheme which is constituted by a trust deed executed in Zimbabwe and which is operated wholly or mainly in Zimbabwe.

11. Trust deed

- (1) The trust deed of an internal scheme shall be executed in Zimbabwe by the scheme's manager and trustee or proposed manager and proposed trustee, and shall comply with such requirements as may be prescribed.
- (2) Subject to this Act, the provisions of the trust deed of an internal scheme shall be binding on the scheme's manager and trustee and on each participant in the scheme.
- (3) The trustee of an internal scheme shall be responsible for ensuring that the provisions of the trust deed concerning the scheme's investment policies and investment restrictions are carried out.
- (4) Any provision in the trust deed of an internal scheme shall be void to the extent that it would have the effect of relieving the scheme's manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.
- (5) No provision of the trust deed of a registered internal scheme shall be altered unless the Chief Executive Officer has approved the alteration and any conditions or requirements that may be prescribed for such alteration have been complied with.

12. Manager and trustee

- (1) No person other than a company which is—
 - (a) registered and resident in Zimbabwe; and
 - (b) licensed in terms of section thirteen;shall be or act as the manager or trustee of an internal scheme.
- (2) The manager and trustee of an internal scheme shall be separate companies and under separate control, and to that end—
 - (a) the manager and trustee shall not be members of the same group of companies;
 - (b) a majority of the directors of the manager shall not be directors of the trustee, and vice versa;

- (c) no shareholder of the trustee shall be a director or employee of the manager, nor shall he or any partner of his be appointed as auditor of the manager.
- (3) Any person who holds himself out or performs any act as manager or trustee of an internal scheme and who is not licensed as the manager or trustee, as the case may be, of the internal scheme concerned, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[subsection amended by section 4 of Act [22 of 2001](#)]

13. Licensing of manager and trustee

- (1) An application for a licence to enable a company to be the manager or trustee of an internal scheme shall be made to the Chief Executive Officer in the prescribed form and manner and shall be accompanied by—
 - (a) the prescribed fee, if any; and
 - (b) such documents and information as may be prescribed or as the Chief Executive Officer may reasonably require.

[subsection amended by Act [2 of 2013](#)]

- (2) Upon receipt of an application in terms of subsection (1), the Chief Executive Officer shall issue a licence to the applicant permitting it to be the manager or trustee, as the case may be, of an internal scheme if the Chief Executive Officer is satisfied—
 - (a) that the applicant is a company registered in Zimbabwe and that its affairs are managed and controlled in Zimbabwe; and
 - (b) that the applicant's issued and paid-up share capital is of such amount as may be prescribed and the applicant has such other funds, whether directly or by way of loans or guarantees, as may be prescribed; and
 - (c) that the individuals who control the applicant are fit and proper persons; and
 - (d) that the applicant will maintain such indemnity insurance as may be prescribed; and
 - (e) where the applicant wishes to be registered as a manager, that the applicant is prevented by its memorandum from engaging in any activities other than those connected with—
 - (i) managing unit trusts; or
 - (ii) managing investments for third parties;and
 - (f) where the applicant wishes to be licensed as a trustee, that the applicant is—
 - (i) registered as a commercial bank or an accepting house in terms of the Banking Act [[Chapter 24:01](#)] or is the wholly-owned subsidiary of such a commercial bank or accepting house; or
 - (ii) registered as an insurer in terms of the Insurance Act [[Chapter 24:07](#)] or is the wholly-owned subsidiary of such an insurer; or
 - (iii) a company all of whose issued shares are held by persons who—
 - (A) are registered as public auditors in terms of the Public Accountants and Auditors Act [[Chapter 27:12](#)]; and

(B) are, in the Chief Executive Officer's opinion, fit and proper persons to control a trust company;

and

(g) that the applicant complies with such other requirements as may be prescribed.

[subsection amended by Act 2 of 2013]

(3) Subject to section thirty-nine, if the Chief Executive Officer is not satisfied as to any matter referred to in paragraph (a) to (g) of subsection (2), he shall not issue a licence to the applicant concerned:

Provided that—

(i) before deciding not to issue a licence he shall notify the applicant in writing that he proposes to reject the application and of his reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter;

(ii) within ten days after deciding not to issue a licence, he shall notify the applicant in writing of his decision and of the reasons for it.

[subsection amended by Act 2 of 2013]

(4) A licence shall be in the prescribed form and shall specify—

(a) the internal scheme or schemes of which the holder may be manager or trustee; and

(b) the capacity, whether as manager or trustee, in which the holder may act in relation to the scheme or schemes referred to in paragraph (a); and

(c) such terms and conditions as may be prescribed or as the Chief Executive Officer may reasonably determine.

[subsection amended by Act 2 of 2013]

(5) A licence shall be valid indefinitely or for such fixed period as the Chief Executive Officer may fix, subject to rules, in any particular case.

[subsection substituted by Act 2 of 2013]

(6) Where the Chief Executive Officer issues a licence for a fixed period, he or she shall ensure that the period is clearly endorsed on the licence.

[subsection inserted by Act 2 of 2013]

14. Cancellation of licence of manager or trustee

(1) Subject to subsections (2) and (3), the Chief Executive Officer may, by notice in writing to the holder, cancel a licence if he has reasonable grounds for believing that—

(a) the licence was issued in error or through fraud or the misrepresentation of a material fact by the holder; or

(b) the holder has wilfully contravened any provision of this Act and has failed to remedy the contravention; or

(c) the holder has been placed under judicial management; or

(d) the holder has been wound up or has otherwise ceased to exist; or

(e) the holder no longer satisfies any of the requirements specified or referred to in subsection (2) of section thirteen for the issue of a licence; or

(f) any fee prescribed for the issue or renewal or continuation of the licence has not been paid.

- (2) Before cancelling a licence in terms of subsection (1), the Chief Executive Officer shall notify the holder in writing that he proposes to cancel the licence and of his reasons for doing so:

Provided that, if the Chief Executive Officer believes on reasonable grounds that it is not possible so to notify the holder at its registered office, the Chief Executive Officer shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the holder's registered office is situated, stating that the licence will be cancelled unless the holder lodges an appeal with the Minister in terms of section thirty-nine within thirty days from the date of publication of the notice in the *Gazette*.

- (3) The Chief Executive Officer shall not cancel a licence in terms of subsection (1)—

(a) until—

- (i) the period within which an appeal may be lodged in terms of section thirty-nine has elapsed; or
- (ii) the thirty-day period referred to in the proviso to subsection (2) has elapsed, where a notice was published in terms of that proviso;

unless the holder of the licence has consented to its cancellation;

- (b) if an appeal is lodged in terms of section thirty-nine, until he has been notified that the Minister has upheld his decision.

- (4) The Chief Executive Officer may cancel a licence if the holder so requests and the Chief Executive Officer is satisfied that cancellation will be in the best interests of any participants in the internal scheme of which the holder is licensed to be the manager or trustee, as the case may be:

Provided that if the Chief Executive Officer refuses to cancel a licence in terms of this subsection, he shall, within ten days after reaching his decision, notify the holder in writing of his decision and of the reasons for it.

[section amended by Act 2 of 2013]

15. Suspension of licence of manager or trustee

- (1) Subject to subsection (6), if the Chief Executive Officer considers that—

(a) it is necessary to suspend a licence—

- (i) in order to facilitate an investigation into the holder's conduct in relation to an internal scheme; or
- (ii) pending the determination of an appeal in terms of section thirty-nine; or
- (iii) following the institution of proceedings for the winding up of the holder or the placing of the holder under judicial management;

and

- (b) the suspension will not prejudice the participants in the scheme concerned;

he may, by notice in writing to the holder, suspend the licence wholly or partially in relation to all internal schemes of which the holder is manager or trustee or in relation to any particular such scheme.

- (2) A suspension in terms of subsection (1) shall last for such period as the Chief Executive Officer may specify but in no case shall it last longer than six months.
- (3) The Chief Executive Officer may at any time, by notice in writing to the holder of the licence concerned, revoke a suspension in terms of subsection (1).

- (4) While a licence is suspended in terms of subsection (1), the holder shall, in relation to any internal scheme of which it is the manager or trustee, exercise only such functions, if any, as the Chief Executive Officer may permit it to exercise.
- (5) Any person who contravenes subsection (4) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[subsection amended by section 4 of Act 22 of 2001]

- (6) When notifying a holder of the suspension of its licence in terms of subsection (1), the Chief Executive Officer shall inform it of the grounds for the suspension.

[section amended by Act 2 of 2013]

16. Issue, cancellation or suspension of licence to be notified in Gazette

Whenever the Chief Executive Officer issues, cancels or suspends a licence in terms of this Part, he shall cause notice thereof to be published in the *Gazette*.

[section amended by Act 2 of 2013]

17. Replacement of manager or trustee

- (1) Except with the prior approval of the Chief Executive Officer, the manager of an internal scheme—
 - (a) shall not resign or retire from the management of the scheme; and
 - (b) shall not be removed from office by the trustee or the participants in the scheme.
- (2) The trustee of an internal scheme shall not resign or retire from its trusteeship of the scheme unless it has given manager of the scheme and the Chief Executive Officer at least six months' notice of its intention to do so.
- (3) During the six-month period referred to in subsection (2) the manager of the scheme concerned shall take all reasonable steps to procure another trustee for the scheme and, if the manager fails to procure one, the Chief Executive Officer, after consultation with the manager, may direct it to secure the appointment, in accordance with the scheme's trust deed, of a licensed company nominated by the Chief Executive Officer that is willing to become the scheme's trustee.
- (4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[subsection amended by section 4 of Act 22 of 2001]

- (5) The Chief Executive Officer shall cause notice to be published in the *Gazette* of the resignation, retirement removal or appointment of a manager or trustee of an internal scheme.

[section amended by Act 2 of 2013]

18. Auditors of internal schemes

- (1) The manager and trustee of every internal scheme shall appoint a person registered as a public auditor in terms of the Public Accountants and Auditors Act [Chapter 27:12] to be the auditor of the scheme:

Provided that, if the trustee is a company referred to in subparagraph (iii) of paragraph (f) of subsection (2) of section thirteen, no member of that company shall be appointed as the scheme's auditor.

- (2) The auditor of an internal scheme shall be responsible for—
- (a) auditing the scheme's accounts at such intervals and in such manner as may be prescribed; and
 - (b) making such reports to the scheme's participants as may be prescribed; and
 - (c) reporting to the Chief Executive Officer—
 - (i) any matter of which he has become aware in the course of his duties as auditor and which is materially relevant to the interests of the scheme's participants or to the performance by the Chief Executive Officer of his functions under this Act; or
 - (ii) any matter which the Chief Executive Officer may from time to time reasonably require him to report.

[subsection amended by Act 2 of 2013]

- (3) The auditor shall make the reports referred to in paragraph (c) of subsection (2) notwithstanding any contract or professional duty of confidentiality to the contrary, and for the purposes of the law of delict any such report shall be regarded as privileged unless it is proved that the auditor made it in bad faith.

Part V – External schemes

19. Application of Part V

This Part shall apply to external schemes, that is to say, to any unit trust scheme which is established and managed outside Zimbabwe.

20. Additional requirements for registration of external schemes

Without derogation from subsection (2) of section seven, the Chief Executive Officer shall not register a scheme as an external scheme in terms of that section unless he is satisfied that—

- (a) the regulation of the scheme within the country or territory where it is established affords Zimbabwean participants a level of protection generally comparable to that provided for participants in internal schemes; and
- (b) Zimbabwean residents will be able to participate in the scheme on terms generally equivalent to those on which other persons may participate; and
- (c) participation in the scheme by Zimbabwean residents will not be contrary to the Exchange Control Act [Chapter 22:05] or any regulations made under that Act; and
- (d) the scheme's manager and any trustee are fit and proper persons and would generally have been eligible for a licence had section thirteen, *mutatis mutandis*, applied to them.

[section amended by Act 2 of 2013]

21. Manager of external scheme to maintain local office

The manager of every registered external scheme shall maintain an office in Zimbabwe where—

- (a) the scheme's operations in Zimbabwe shall be conducted; and
 - (b) all communications and notices may be addressed and all process may be served; and
- shall inform the Chief Executive Officer of the address of the office and of any change in that address.

22. Suspension of registration of external scheme

- (1) Subject to subsection (5), if the Chief Executive Officer considers that—
 - (a) it is necessary to suspend the registration of an external scheme—
 - (i) in order to facilitate an investigation into the operation of the scheme; or
 - (ii) pending the determination of an appeal in terms of section thirty-nine; or
 - (iii) following the institution of proceedings for the winding up of the scheme's manager or trustee or the placing of the manager or trustee under judicial management;and
 - (b) the suspension will not prejudice the Zimbabwean participants in the scheme;he may, by notice in writing to the scheme's manager, suspend the scheme's registration for such period, not exceeding six months, as the Chief Executive Officer may specify.
 - (2) The Chief Executive Officer may at any time, by notice in writing to the manager of the scheme concerned, revoke a suspension in terms of subsection (1).
 - (3) While its registration is suspended in terms of subsection (1), no person shall promote an external scheme within Zimbabwe.
 - (4) Any person who contravenes subsection (3) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- [subsection amended by section 4 of Act 22 of 2001]*
- (5) When notifying an external scheme's manager of the suspension of his scheme's registration in terms of subsection (1), the Chief Executive Officer shall inform him of the grounds for the suspension.

[section amended by Act 2 of 2013]

Part VI – Professional schemes

23. Application of Part VI

This part shall apply to professional schemes, that is to say, to any unit trust scheme—

- (a) which has between five and thirty participants, all of whom are registered public accountants, registered public auditors or members of a securities exchange registered under the Securities act [Chapter 24:25] or possess such other qualifications or experience as may be prescribed; and
- [paragraph as amended by section 120 of Act 17 of 2004]*
- (b) in which each participant invests not less than the prescribed amount.

24. Additional requirements for registration of professional schemes

Without derogation from subsection (2) of section seven the Chief Executive Officer shall not register a scheme as a professional scheme in terms of that section unless he is satisfied that—

- (a) the promoters of the scheme are qualified to be managers of an internal scheme or are individuals who are registered as public accountants, public auditors, legal practitioners or possess such other qualifications as may be prescribed; and

- (b) promotion of the scheme will be restricted to persons who are eligible to become participants in a professional scheme.

[section amended by Act 2 of 2013]

25. Auditors of professional schemes

- (1) The manager and trustee of every professional scheme shall appoint a person registered as a public auditor in terms of the Public Accountants and Auditors Act [Chapter 27:12] to be the auditor of the scheme.
- (2) The functions of an auditor of a professional scheme shall be as provided in the scheme's trust deed or as may be prescribed.

26. Suspension of registration of professional scheme

- (1) Subject to subsection (5), if the Chief Executive Officer considers that—
 - (a) it is necessary to suspend the registration of a professional scheme—
 - (i) in order to facilitate an investigation into the operation of the scheme; or
 - (ii) pending the determination of an appeal in terms of section thirty-nine; or
 - (iii) following the institution of proceedings for the winding up of the scheme's manager or trustee or the placing of the manager or trustee under judicial management;and
 - (b) the suspension will not prejudice the participants in the scheme;he may, by notice in writing to the scheme's manager, suspend the scheme's registration for such period, not exceeding six months, as the Chief Executive Officer may specify.
- (2) The Chief Executive Officer may at any time, by notice in writing to the manager of the scheme concerned, revoke a suspension in terms of subsection (1).
- (3) While its registration is suspended in terms of subsection (1), no person shall promote a professional scheme within Zimbabwe.
- (4) Any person who contravenes subsection (3) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[subsection amended by section 4 of Act 22 of 2001]

- (5) When notifying a professional scheme's manager of the suspension of his scheme's registration in terms of subsection (1), the Chief Executive Officer shall inform him of the grounds for the suspension.

[section amended by Act 2 of 2013]

27. Application of sections 11 and 12 to professional schemes

Sections eleven and twelve shall apply, *mutatis mutandis*, in relation to professional schemes as they do in relation to internal schemes:

Provided that it shall not be necessary for the manager or trustee of a professional scheme to be licensed.

Part VII – Inspections and investigations

28. Inspectors

Inspectors "Persons who have been appointed to be inspectors in terms of section 101 of the Securities and Exchange Act [Chapter 24:25] shall be inspectors for the purposes of this Act.

[section substituted by Act 2 of 2013]

29. Chief executive officer may demand information

- (1) The Chief Executive Officer may, for the purpose of ensuring the proper enforcement of this Act, demand from a licensed person any document or information relating to any matter connected with the operation of a collective investment scheme, whether registered or not.
- (2) If the Chief Executive Officer has reason to believe that any person who is not licensed is operating or promoting a collective investment scheme, whether registered or not, he may direct that person, by written notice, to submit to him, within a period stated in the notice or within such further period as he may allow, any document or information concerning the collective investment scheme.
- (3) Any person who fails to comply to the best of his ability with a demand or notice in terms of subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[subsection amended by section 4 of Act 22 of 2001 and Act 2 of 2013]

30. Investigation into affairs of licensed person or registered scheme

- (1) If—
 - (a) a licensed person has failed to furnish the Chief Executive Officer with any document or information required under any provision of this Act within the period specified by or in terms of that provision, and has not furnished that document or information within a period of thirty days, commencing on the date on which the Chief Executive Officer has reminded him in writing of his failure; or
 - (b) a licensed person has furnished incorrect or incomplete information to the Chief Executive Officer and has not furnished correct or complete information within a period of thirty days, commencing on the date on which the Chief Executive Officer has called upon him to correct or complete the information; or
 - (c) any document or information furnished by a licensed person to the Chief Executive Officer shows that the licensed person has failed to comply with any provision of this Act; or
 - (d) the auditor of any registered scheme has informed the scheme's manager of an irregularity that requires correction and the manager has not corrected the irregularity within a period of thirty days, commencing on the date on which the Chief Executive Officer has called upon the manager, in writing, to correct it; or
 - (e) the Chief Executive Officer has reasonable grounds for believing that any person connected with a registered scheme has committed an offence under this Act, other than an offence arising out of conduct referred to in paragraph (a) or (b); or
 - (f) the Chief Executive Officer has reasonable grounds for believing that the rights of any class of participants in a registered scheme are being prejudiced;

the Chief Executive Officer may direct an inspector to investigate the affairs or any part of the affairs of the manager or scheme concerned.

- (2) For the purposes of an investigation under subsection (1), the inspector concerned shall have the powers, rights and privileges that are conferred upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 18 of that Act shall apply, *mutatis mutandis*, in relation to an investigation under this section and to any person summoned to give or giving evidence at that investigation.

31. Procedure on completion of investigation

- (1) On completion of an investigation in terms section thirty, the inspector shall forward his report thereon to the Chief Executive Officer, who shall send a copy of it to—
- (a) the manager whose affairs were being investigated; or
 - (b) the trustee of the scheme whose affairs were being investigated;
- inviting the manager or trustee, as the case may be, to make representations on any matter contained in the report.
- (2) A manager or trustee to whom a copy of a report has been sent in terms of subsection (1) may, within thirty days, submit to the Chief Executive Officer representations on any matter contained in it.
- (3) After considering an inspector's report on any investigation conducted by the inspector in terms of section thirty, together with any representations made by the manager or trustee in terms of subsection (2), the Chief Executive Officer may cancel the registration of the scheme concerned in terms of section eight or cancel the licence of the manager or trustee concerned in terms of section fourteen or take such other action in terms of this Act as he considers is warranted.

32. Expenses of investigation

- (1) The Commission may recover from—
- (a) a manager whose affairs have been investigated in terms of this Part; or
 - (b) the trustee of a scheme whose affairs have been investigated in terms of this Part;
- all or any of the expenses necessarily incurred by it in connection with the investigation.
- (2) In any proceedings in a court for the recovery of any expenses referred to in subsection (1), a certificate purporting to be signed by the Chief Executive Officer and setting out the amount of the expenses concerned shall be *prima facie* proof of their amount.

[section substituted by Act 2 of 2013]

Part VIII – General

33. Restrictions on promotion of registered schemes

- (1) Except in such circumstances as may be prescribed, no person shall—
- (a) issue any advertisement in Zimbabwe which—
 - (i) invites persons to become or offer to become participants in a registered internal scheme or a registered external scheme; or
 - (ii) contains information calculated to lead, directly or indirectly, to persons becoming or offering to become participants in a registered internal scheme or a registered external scheme;
- or

- (b) advise or procure any person in Zimbabwe to become or offer to become a participant in a registered internal scheme or a registered external scheme;
- unless—
- (i) he is the manager of the scheme concerned or an agent of the manager; and
- (ii) the advertisement or the advice or procurement, as the case may be, complies with such conditions as may be prescribed.
- (2) Except in such circumstances as may be prescribed, no person shall—
- (a) issue any advertisement in Zimbabwe which—
- (i) invites persons to become or offer to become participants in a registered professional scheme;
- or
- (ii) contains information calculated to lead, directly or indirectly, to persons becoming or offering to become participants in a registered professional scheme; or
- (b) advise or procure any person in Zimbabwe to become or offer to become a participant in a registered professional scheme:
- unless the advertisement or the advice or procurement, as the case may be, complies with such conditions as may be prescribed.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- [subsection amended by section 4 of Act 22 of 2001]*
- (4) For the purpose of this section, an advertisement shall be treated as issued in Zimbabwe if it is directed to persons in Zimbabwe or is made available to them otherwise than in—
- (a) a newspaper, journal or other periodical publication published and circulating principally outside Zimbabwe;
- or
- (b) a sound or television broadcast or in some other electronic medium transmitted principally for reception outside Zimbabwe.

34. Unsolicited calls

- (1) In this section—
- "unsolicited call" means a personal visit or oral communication, including a telephone call, made—
- (a) to a person in Zimbabwe; or
- (b) from Zimbabwe to a person outside Zimbabwe;
- otherwise than at the express invitation of that person.
- (2) The Commission may, in rules referred to in section forty-two, prescribe the circumstances in which unsolicited calls may be made on persons for the purpose of inducing them—
- (a) to become participants in a registered scheme; or
- (b) to exercise or refrain from exercising any of their rights as participants in a registered scheme.

[subsection amended by Act 2 of 2013]

- (3) If a court is satisfied that—
- (a) as a result of an unsolicited call made in contravention of regulations referred to in subsection (2), any person was induced—
 - (i) to enter into a contract whereby he became or agreed to become a participant in a registered scheme; or
 - (ii) to exercise or refrain from exercising any of his rights as a participant in a registered scheme;
 - and
 - (b) the person has suffered or is likely to suffer any form of loss as a consequence of the contract or exercise or non-exercise of his rights referred to in paragraph (a);
- the court may, on the application of the person concerned, grant an order providing for any one or more of the following—
- (i) cancelling the whole or any part of the contract;
 - (ii) revoking the exercise of the applicant's rights or declaring that he is deemed to have exercised his rights, as the case may be;
 - (iii) ordering any money or property to be restored to the applicant;
 - (iv) compensating the applicant for any loss suffered by him.
- (4) A court shall not make an order under subsection (3) unless it is satisfied that something said or done during or in consequence of the unsolicited call materially influenced the applicant to enter into the contract concerned or to exercise or refrain from exercising his rights, as the case may be.

35. Duty of disclosure towards participants in registered schemes

- (1) Subject to subsection (3), any person who negotiates the sale of a unit in a registered scheme shall ensure that, before the purchaser becomes a participant in the scheme, he is made aware of all material facts which, at the time of the sale, affect or are likely to affect the scheme's performance and the dividends, returns or profits accruing to its participants.
- (2) A failure to comply with the duty referred to in subsection (1) shall render any contract relating to the sale or acquisition of the unit concerned voidable at the instance of the person who bought or acquired it.
- (3) It shall be sufficient compliance with the duty referred to in subsection (1) for the purchaser to be provided with a prospectus, advertisement or other document setting out the material facts referred to in that subsection.

36. Right of action by participants against manager of registered schemes

Notwithstanding anything to the contrary in any trust deed or contract whereby a person becomes a participant in a registered scheme, every participant in such a scheme shall be entitled to enforce his rights against the manager of the scheme in any competent court registered in Zimbabwe.

37. Secrecy to be observed by Chief Executive Officer and other officers

- (1) Except in the performance of his functions under this Act or when required to do so by a court or in terms of any other enactment, neither the Chief Executive Officer nor any inspector or officer referred to in section four shall disclose any information which he has acquired in the performance of his functions under this Act and which relates to the affairs of a licensed person or registered scheme:

Provided that this subsection shall not apply to any such information that is generally known to members of the public or a substantial section of the public.

- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[subsection amended by section 4 of Act 22 of 2001]

- (3) Any person referred to in subsection (1) who, in the course of his official duties, has acquired information relating to the affairs of a licensed person or registered scheme and who uses that information for personal gain, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[subsection inserted by section 4 of Act 22 of 2001 and section amended by Act 2 of 2013]

38. Annual reports of Chief Executive Officer

- (1) As soon as possible after the end of every calendar year, the Chief Executive Officer shall submit to the Minister a report on collective investment schemes in Zimbabwe during that year.
- (2) The Minister shall lay a copy of any report submitted to him in terms of subsection (1) before Parliament on one of the fourteen days on which Parliament next sits after he has received it.

[section amended by Act 2 of 2013]

39. Appeals

- (1) Subject to this section, any person who is aggrieved by—
 - (a) a decision of the Chief Executive Officer not to register a collective investment scheme in terms of subsection (3) of section seven or not to issue a licence to him in terms of subsection (3) of section thirteen; or
 - (b) a proposal by the Chief Executive Officer to cancel the registration of a collective investment scheme in terms of subsection (1) of section eight or to cancel his licence in terms of subsection (1) of section fourteen; or
 - (c) a refusal by the Chief Executive Officer to cancel the registration of a collective investment scheme in terms of subsection (5) of section eight or to cancel his licence in terms of subsection (4) of section fourteen; or
 - (d) any term or condition of a licence issued to him in terms of section thirteen; or
 - (e) the suspension of his licence in terms of section fifteen; or
 - (f) the suspension of the registration of an external scheme in terms of section twenty-two or of a professional scheme in terms of section twenty-six; or
 - (g) any other decision or action of the Chief Executive Officer in terms of this Act;may appeal to the Commission against the decision, proposal or action concerned.

[subsection amended by Act 2 of 2013]

- (2) An appeal in terms of subsection (1) shall be made in the form and manner prescribed and shall be lodged with the Commission—
 - (a) within thirty days after the appellant was notified of the decision, proposal or action appealed against; or

- (b) where a notice was published in terms of the proviso to subsection (3) of section eight or the proviso to subsection (2) of section fourteen, within thirty days after the publication of the notice.

[subsection amended by Act 2 of 2013]

- (3) In an appeal in terms of subsection (1), the Commission may conduct or cause to be conducted such inquiry into the matter as it thinks appropriate and may confirm, vary or set aside the decision, proposal or action appealed against:

Provided that the Commission shall ensure that the appellant and the Chief Executive Officer are given an adequate opportunity to make representations in the matter.

[subsection amended by Act 2 of 2013]

- (4) The Commission shall ensure that the appellant and the Chief Executive Officer are notified of any decision reached by it in terms of subsection (3).

[subsection amended by Act 2 of 2013]

- (4a) Any person who is aggrieved by a decision, proposal or action of the Commission, whether on an appeal in terms of subsection (1) or otherwise, may appeal against the decision to the Minister.

[subsection inserted by Act 2 of 2013]

- (4b) An appeal in terms of subsection (4a) shall be made in writing and lodged with the Minister—

(a) within thirty days after the appellant was notified of the decision, proposal or action appealed against; or

(b) where a notice was published in terms of the proviso to section 8(3) or the proviso to section 14(2), within thirty days after the publication of the notice.

[subsection inserted by Act 2 of 2013]

- (4c) In an appeal in terms of subsection (4a), the Minister may conduct or cause to be conducted such inquiry into the matter as he thinks appropriate and may confirm, vary or set aside the decision, proposal or action appealed against:

Provided that the Minister shall—

(i) ensure that the appellant and the Commission are given an adequate opportunity to make representations in the matter;

(ii) deliver his or her decision in the appeal within thirty days after it was lodged.

[subsection inserted by Act 2 of 2013]

- (4d) The Minister shall ensure that the appellant and the Commission are notified of his or her decision in an appeal in terms of subsection (4a).

[subsection inserted by Act 2 of 2013]

- (4e) Any person who is aggrieved by the Minister's decision in an appeal in terms of subsection (4a) may appeal against the decision to the Administrative Court within the time and in the manner prescribed in rules of court.

[subsection inserted by Act 2 of 2013]

- (4f) In an appeal in terms of subsection (4e), the Administrative Court may confirm, vary or set aside the decision, proposal or action appealed against and give such other order, whether as to costs or otherwise, as the Court considers just

[subsection inserted by Act 2 of 2013]

- (5) The lodging of an appeal against—
- (a) the suspension of a licence in terms of section fifteen; or
 - (b) the suspension of the registration of an external scheme or a professional scheme in terms of section twenty-two or twenty-six;

shall not have the effect of suspending the suspension pending the determination of the appeal, but Commission, the Minister or the Administrative Court, as the case may be, shall ensure that all necessary steps are taken to determine the appeal as quickly as possible.

[subsection amended by Act 2 of 2013]

40. Evidence

- (1) Any document purporting to be certified by the Chief Executive Officer as a document lodged with or furnished to the Chief Executive Officer in terms of this Act or to be a copy of such a document shall be *prima facie* presumed to be such a document or copy, as the case may be, and shall be admissible in evidence in any court on its production by any person.
- (2) A document purporting to be signed by the Chief Executive Officer and stating that—
- (a) a collective investment scheme is or is not registered under this Act; or
 - (b) a person is or is not licensed under this Act as a manager or trustee of a registered scheme;
- shall be admissible in any proceedings in any court on its production by any person, and shall be *prima facie* proof of the facts stated therein.

[subsection amended by Act 2 of 2013]

41. False statements etc.

- (1) Any person who, in a statement, return, report, certificate, balance sheet or other document required by or for the purposes of this Act, makes a statement that is false in any material particular, knowing the statement to be false or not having reasonable grounds for believing it to be true, shall be guilty of an offence.
- (2) Any person who, with intent to defraud or deceive—
- (a) destroys, mutilates, alters or falsifies any book, paper or security belonging to or vested in a registered scheme; or
 - (b) makes or is a party to the making of a false or misleading entry in any register, book of account or other document belonging or relating to a registered scheme;
- shall be guilty of an offence.
- (3) Any person who is guilty of an offence in terms of subsection (1) or (2) shall be liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[subsection amended by section 4 of Act 22 of 2001]

42. Rules

- (1) The Commission may make rules in terms of section 118 of the Securities and Exchange Act *[Chapter 24:25]* providing for all matters which in terms of this Act are required or permitted to be prescribed or which, in the Commission's opinion, are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

[subsection substituted by Act 2 of 2013]

- (2) Regulations made in terms of subsection (1) may provide for—
- (a) the operations and activities of registered schemes, including restrictions and conditions as to the investments that may be made by or on behalf of such schemes and the number of persons that may participate in such schemes;
 - (b) the functions and responsibilities of licensed managers and trustees;
 - (c) the qualifications of persons who may be employed by licensed managers and trustees to promote or manage registered schemes;
 - (d) the rights and functions of participants in registered schemes, including—
 - (i) the information to be supplied to them regarding the operations and activities of their schemes; and
 - (ii) the redemption of their units and the price at which their units may be redeemed;
 - (e) accounts and other records to be kept in relation to the operations and activities of registered schemes;
 - (f) information to be supplied to the Chief Executive Officer in regard to the operations and activities of registered schemes and licensed persons;
 - (g) the inspection of books and records of registered schemes and licensed persons;
 - (h) the minimum issued and paid-up share capital required for the licensing of a company referred to in subparagraph (iii) of paragraph (f) of subsection (2) of section thirteen:
Provided that regulations made for such a purpose shall not come into operation sooner than five years after the fixed date;
 - (i) the control and regulation of advertisements issued in respect of collective investment schemes;
 - (j) fees and charges payable in respect of anything done by or on behalf of the Chief Executive Officer in terms of this Act;
 - (k) fees or surcharges payable by any person in respect of his failure to file or submit any document or information within the time prescribed;
 - (l) the management, operations and activities of collective investment schemes that are provisionally registered in terms of section forty-three;
 - (m) the winding up of collective investment schemes;
 - (n) exempting—
 - (i) any collective investment scheme which is established by or on behalf of the State or for a public purpose; and
 - (ii) the manager and trustee of such a scheme;
from all or any of the provisions of this Act;
 - (o) any matter which may be provided for in rules in terms of section 118 of the Securities and Exchange Act [Chapter 24:25]
- [subsection amended and paragraph (o) inserted by Act 2 of 2013]*
- (3) *[subsection repealed by Act 2 of 2013]*

43. Transitional provisions: existing schemes

- (1) Section five shall not apply in relation to advertisements issued, advice given or other things done in relation to a collective investment scheme operating substantially as—
 - (a) an internal scheme, where such things were done before the date of commencement of Part IV; or
 - (b) an external scheme, where such things were done before the date of commencement of Part V; or
 - (c) a professional scheme, where such things were done before the date of commencement of Part VI.
- (2) Any person who, on the date of commencement of—
 - (a) Part IV, is carrying on the business of a collective investment scheme operating substantially as an internal scheme; or
 - (b) Part V, is carrying on the business of a collective investment scheme operating substantially as an external scheme; or
 - (c) Part VI, is carrying on the business of a collective investment scheme operating substantially as a professional scheme;shall, within three months after that date, apply to the Chief Executive Officer for the provisional registration of his scheme.
- (3) During the three-month period referred to in subsection (2) and pending the final determination of his application for provisional registration, a person referred to in that subsection may continue to carry on the business of his collective investment scheme.
- (4) Sections seven, twenty and twenty-four shall apply, *mutatis mutandis*, in relation to an application for provisional registration in terms of subsection (2).
- (5) The provisional registration of a collective investment scheme shall last for one year or for such longer period as the Chief Executive Officer may for special reasons allow, and during that period—
 - (a) the manager of the collective investment scheme shall take such steps as are necessary to secure the registration of the scheme; and
 - (b) subject to such terms and conditions as may be prescribed, the provisions of this Act relating to registered schemes shall apply, *mutatis mutandis*, in relation to the scheme:
Provided that the manager and trustee of the scheme need not be licensed.