

Statutory Instrument 176 of 1998.

[ACT 25/97

Collective Investment Schemes (Professional Schemes)  
Regulations, 1998

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ARRANGEMENT OF SECTIONS

*Section*

1. Title.
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9. Returns by promoters or managers of professional schemes.
10. Provisional registration of existing professional schemes.

SCHEDULE: FORMS.

IT is hereby notified that the Minister of Finance has, in terms of section 42 of the Collective Investment Schemes Act, 1997, made the following regulations:—

*Title*

1. These regulations may be cited as the Collective Investment Schemes (Professional Schemes) Regulations, 1998.

*Interpretation*

2. In these regulations—

“appropriate fee” means the appropriate fee prescribed in the Collective Investment Schemes (Fees) Regulations, 1998;

“complaint” means a complaint to a promoter, manager or trustee of a professional scheme relating to the scheme, or to the holding or alleged holding of units in such

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scheme, which alleges bad faith, malpractice or impropriety by the manager or trustee, or which the complainant believes on reasonable grounds to be a material complaint;

“form” means one of a series of numbered forms set out in the Schedule;

“qualified person” means a person who qualifies for participation in a professional scheme in terms of section 5.

*Registration of professional schemes*

3. (1) An application to register a professional scheme in terms of sections 7 and 24 of the Act shall be made in Form CIS 5 by—

(a) the promoter of the scheme, being a company every member and director of which is registered as a public accountant, public auditor, legal practitioner or other person qualified in terms of paragraph (b) of subsection (1) of section 5; or

(b) a manager licensed in terms of section 13 of the Act; and be accompanied by a copy of the scheme's trust deed, any prospectus issued or proposed to be issued in respect of the scheme, the appropriate fee, and such other documents and information as the Registrar may reasonably require.

(2) If, after considering an application in terms of subsection (1), the Registrar is satisfied—

(a) that the promoter or manager and trustee of the scheme are separate companies registered and resident in Zimbabwe which comply with the requirements of subsection (2) of section 12 of the Act; and

(b) that, where the applicant is the promoter of the scheme, every member and director of the promoter is registered or qualified as described in paragraph (a) of subsection (1); and

- (c) that the trust deed of the scheme complies with—
  - (i) the requirements of section 11 of the Act; and
  - (ii) the requirements of section 4; and
- (d) that the procedure proposed in the application or the trust deed for dealing with complaints by participants in the scheme is in accordance with subsection (1) of section 6; and
- (e) generally as to the matters mentioned in subsection (2) of section 7 and section 24 of the Act;

he shall register the scheme as a professional scheme.

*Requirements with respect to trust deeds of  
professional schemes*

4. The trust deed of a professional scheme shall—
- (a) restrict the promotion of and participation in the scheme to qualified persons;
  - (b) have no fewer than five or more than 50 participants, whether each participant holds one or more units or, subject to paragraph (b), holds a unit jointly with others; and
  - (c) restrict the number of participants who may hold a unit jointly to not more than four; and
  - (d) fix the minimum subscription for participation by a person, or by persons holding a unit jointly, at a sum not less than \$50 000, and prohibit a participant from transferring or reducing his unit or share in a unit if by so doing his participation in the scheme falls below the minimum required for subscription; and
  - (e) require the manager or other promoter to undertake a valuation on a fair and reasonable basis (such basis to be described in the trust deed) of the assets and liabilities of the scheme and of the participants' units in the scheme at least once in every three months.

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*Persons qualified to participate in professional schemes*

5. (1) The following persons shall, in addition to those mentioned in paragraph (a) of section 23 of the Act, be qualified to participate in a professional scheme—

- (a) a legal practitioner registered in terms of the Legal Practitioners Act [Chapter 27:07];
- (b) such other person who, in the reasonable opinion of the manager of the professional scheme, is experienced in investing in investments of the type or involving the degree of risk undertaken by the scheme and for whom investment in the scheme is suitable.

(2) The promoter or manager of a professional scheme shall make such record and retain such evidence in support of its opinion as to the experience of an investor and the suitability of an investment referred to in paragraph (b) of subsection (1), and shall make such record and evidence available on request for inspection by the Registrar or an inspector.

*Complaint procedure of professional schemes*

6. (1) The promoter or manager of a professional scheme shall institute a procedure for dealing with complaints by participants in the scheme which ensures that—

- (a) every such complaint is attended to within a reasonable time by the promoter or manager or an employee having the authority to effect any remedial action that may be necessary; and
- (b) the complainant is made aware of his right to complain to the Registrar if his complaint is not remedied.

(2) The promoter or manager of a professional scheme shall keep a record of all complaints and make such record available on request for inspection by the Registrar or an inspector.

*Duties of promoter or manager*

7. The promoter or manager of a professional scheme shall—

- (a) ensure compliance with the terms of the scheme's trust deed and the provisions of the Act and these regulations;
- (b) be responsible for the activities of any person in Zimbabwe whom it appoints to act as its agent or representative to promote the sale of units in the scheme or to advise or procure a person to become a participant in the scheme;
- (c) maintain in Zimbabwe records of all agents and representatives referred to in paragraph (b), and of all persons who have ceased to be so appointed, and shall make such records available on request for inspection by the Registrar or an inspector.

*Advertisement and promotion of professional schemes*

8. (1) No advertisement or other promotional material relating to a professional scheme shall be distributed to a participant or potential participant except—

- (a) where the advertisement or material is addressed to a participant or potential participant by name and may only be accepted by him; or
- (b) in response to a request made in writing by the participant or potential participant to the promoter or manager of the scheme.

(2) All advertisements and promotional material relating to a professional scheme shall—

- (a) specify the restrictions applicable to the scheme referred to in section 4;
- (b) state prominently, in a separate paragraph and in type no smaller than that used in the main text of the advertisement or material, that, notwithstanding that the scheme is registered as a professional scheme in terms of the Act, the Registrar and the Government accept no responsibility whatsoever to any participant or other person in respect of or in relation to the scheme.

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*Returns by promoters or managers of professional schemes*

9. The promoter or manager of a professional scheme shall prepare as at the 30th June and the 31st December in each year (hereinafter referred to as the "reporting date") and furnish to the Registrar not later than the fourteenth day of the following month the following information in Form CIS 6 —

- (a) the total gross asset value, liabilities and net asset value of the scheme on the reporting date; and
- (b) the price, or offer and bid prices, or value of a unit or other interest in the scheme on the reporting date; and
- (c) the principal assets held by the scheme on the reporting date, being assets representing at least eighty *per centum* of the gross value, showing the value of each such asset; and
- (d) copies of each report and accounts and any other documentation circulated to participants since the last reporting date or, if such information is being furnished for the first time, since the registration of the scheme; and
- (e) any advertisement or other promotional material issued by the promoter or manager or its agents or representatives since the last reporting date;
- (f) a statement of the number of participants appearing on the register of the scheme and information showing that, since the last reporting date or, if such information is being furnished for the first time, since the registration of the scheme—
  - (i) the number of participants has not exceeded the maximum number permitted by section 4; and
  - (ii) the value of the holding of each participant is not less than the minimum required for subscription in the scheme in terms of section 4; and
- (g) the number and nature of any complaints made of which a record is required to be kept in terms of subsection (2) of section 5 since the last reporting date or, if such

- information is being furnished for the first time, since the registration of the scheme; and
- (h) such other information as the Registrar may require from time to time.

*Provisional registration of existing professional schemes*

10. (1) An application in terms of section 43 of the Act to register a collective investment scheme operating substantially as a professional scheme before the date of commencement of Part IV of the Act (hereinafter referred to as an "existing scheme") shall be made in Form CIS 5 by the trustee, promoter or manager of the scheme within three months of that date, and be accompanied by a copy of the scheme's trust deed, any prospectus issued or proposed to be issued in respect of the scheme, the appropriate fee, a certificate referred to in subsection (2), and such other documents and information as the Registrar may reasonably require.

(2) An application for the provisional registration of an existing scheme shall be accompanied by a certificate signed by a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*] describing in what respects, if any, the scheme's trust deed does not conform to the requirements of section 11 of the Act and section 4 of these regulations.

(3) If, after considering an application in terms of subsection (1), the Registrar is satisfied that the existing scheme in respect of which the application is made was operating substantially as a professional scheme before the date of commencement of Part IV of the Act, he shall, subject to subsection (4), register the scheme provisionally for a period of one year.

(4) The Registrar may, in relation to an existing scheme in respect of which an application is made under this section—

- (a) register the scheme as a professional scheme if he is satisfied that it qualifies in every respect for registration under section 3; or
- (b) require as a condition of provisional registration that, notwithstanding the period of provisional registration, any specific provision be modified or included in the scheme's trust deed, or excluded from its trust deed, if he so deems fit in the interests of the participants.

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SCHEDULE (Section 2)

FORMS

Form CIS 5

COLLECTIVE INVESTMENT SCHEMES  
(PROFESSIONAL SCHEMES) REGULATIONS, 1998

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Application for Registration of a Professional Scheme

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*Please attach annexures where the required information  
cannot be given in the spaces provided*

1. Specify the name of the scheme and the investment objectives of the scheme and, if the scheme has operated substantially as a professional scheme before the date of commencement of Part IV of the Act, the date when the scheme was established: .....
2. Attach a copy of the trust deed of the scheme and identify in the space provided those provisions of the deed concerned with processing of complaints, or attach an annexure describing the procedure proposed to be adopted with respect to complaints: .....
3. If the applicant is a manager licensed under section 6 of the Collective Investment Schemes (Internal Schemes) Regulations, 1998, attach the licence.
4. If the applicant is the promoter of the scheme, specify the names, addresses (physical and postal) professional qualifications and telephone and facsimile numbers of every director of the promoter and every person holding 15 *per centum* or more of the shares in the promoter: .....



.....  
.....  
.....  
.....  
.....  
.....

5. Specify the name, address (physical and postal) and telephone and facsimile numbers of the trustee of the scheme: .....

.....  
.....

6. Give the name and address of the auditor of the scheme: .....

.....

7. Attach a copy of the draft prospectus and other initial advertisement or promotional material relating to the scheme.

WE the undersigned have read and understood the Collective Investment Schemes Act, 1997, and the Collective Investment Schemes (Professional Schemes) Regulations, 1998, in particular section 4 of those Regulations, and undertake that we shall manage the scheme in accordance with their provisions.

We hereby warrant that we will advise the Registrar promptly in event of the breach of any requirement referred to in section 4 of the Collective Investment Schemes (Professional Schemes) Regulations, 1998.

We enclose the application fee of \$[ ] and agree to pay the balance of \$[ ] at the time the scheme is registered.

Signed on behalf of the promoter or manager:

.....  
Managing Director/Chief Executive Officer

Signed on behalf of the trustee:

.....  
Managing Director/Chief Executive Officer

Witnessed by Commissioner of Oaths:

Date: .....

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Form CIS 6

COLLECTIVE INVESTMENT SCHEMES  
(PROFESSIONAL SCHEMES) REGULATIONS, 1998

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Half-yearly Return of Professional Scheme

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*Please attach annexures where the required information  
cannot be given in the spaces provided*

1. Specify the name of the scheme and the date and number of its registration:  
.....
2. Return for the period ending June 30th/December 31st of the year .....  
(the "reporting date").
3. Give number of units in issue at the reporting date: .....  
.....  
.....
4. Give the number of participants of the scheme registered as such at the  
reporting date: .....  
.....
5. Complete the Appendix showing the total gross value, liabilities and net  
asset value of the scheme as at the reporting date.
6. Give the prices, or offer and bid prices, at which units were offered for sale  
and redemption at the reporting date: .....  
.....
7. Please attach a copy of any report and accounts or other documentation  
issued to participants since the last reporting date.
8. Please attach copies of any advertisements and other promotional material  
issued since the last reporting date.
9. Has there been any change—
  - (a) in the composition of the board of directors of the promoter or manager  
of the scheme or of the professional qualifications of any director of the  
promoter? YES/NO; or

- (b) of the persons holding 15 *per centum* or more of the shares in the promoter or of the professional qualifications of any such person, or of the persons holding a controlling interest in the manager? YES/NO.

If "yes" to either or both questions, attach an annexure giving the appropriate details.

10. Attach the following, as applicable---

- (a) the names and addresses and every agent and representative appointed by the promoter or manager since the last half-yearly return to promote the sale of units in the scheme or to advise or procure persons to become a participant in the scheme; and
- (b) the names and addresses of every agent and representative appointed by the promoter or manager of the scheme for the purpose described in subparagraph (a) whose appointment has been terminated since the last half-yearly return, and the reasons for such termination; and
- (c) the number and nature of any complaints by participants concerning the scheme of which a record has been made pursuant to section 6 (2) of the Regulations.

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APPENDIX

Valuation of units of Professional Scheme

<i>i. Investments Equities</i>	<i>ii. Valuation basis<sup>1</sup></i>	<i>iii. Value</i>
1. Company A <sup>2</sup>		[i. x ii.]
2. Company B		
3. Company C		
4. Company D		
5. Company E etc.		
6. Total equities		
7. Bonds		
8. Govt. stock		
9. Total bonds		
10. Other investments: real estate, commodities, any others not given above		
11. Total investments		
12. Cash deposits		
13. Net current assets (liabilities) <sub>3</sub>		
14. (Liabilities) <sup>4</sup>		
15. Income <sup>5</sup>		
16. (Expenses) <sup>6</sup>		
17. Net investment + cash [11+12+13 (13)-14+15- (14+16)]		

The net asset value per share is derived by dividing 16 by the number of units in issue.

Net asset value per unit at last reporting date: .....

Net asset value per unit at current reporting date: .....

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WE hereby undertake that the number of participants in the scheme has not exceeded 50 since the last reporting date and that each such participant has subscribed and maintained the minimum of \$50 000 as required by section 9 (f) (ii) of the Regulations.

Signed:

.....  
Chief Executive/Managing Director  
of promoter/manager

and

.....  
Chief Accounting Officer

Date:.....

<sup>1</sup> Price basis whether current stockmarket price, adjusted price or estimated value.

<sup>2</sup> Number of shares and name of company.

<sup>3</sup> Amounts due to and from market.

<sup>4</sup> Borrowings.

<sup>5</sup> Income from dividends or interest accrued since last distribution date.

<sup>6</sup> Management expenses accrued since last payment.

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