

CHAPTER 14:33 INDIGENISATION AND ECONOMIC EMPOWERMENT ACT

Act 14/2007, 5/2011 (s. 9), 11/2014 (s. 27), 3/2016 (Part LV), 1/2018 (s. 42).

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AN ACT to provide for support measures for the further indigenisation of the economy; to provide for support measures for the economic empowerment of indigenous Zimbabweans; to provide for the establishment of the National Indigenisation and Economic Empowerment Board and its functions and management; to provide for the establishment of the National Indigenisation and Economic Empowerment Fund; to provide for the National Indigenisation and Empowerment Charter; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement : 17th April, 2008.]

PART I

PRELIMINARY

1 Short title and date of commencement

This Act may be cited as the Indigenisation and Economic Empowerment Act [*Chapter 14:33*].

2 Interpretation

(1) In this Act—

“appropriate designated entity” means any of the following entities (and such other entities as may be designated by the line Minister by notice in the *Gazette*)—

- (a) the Zimbabwe Mining Development Corporation established in terms of the Zimbabwe Mining Development Corporation [*Chapter 21:08*], and any company or other entity incorporated by the Zimbabwe Mining Development Corporation or by the Republic of Zimbabwe for the purposes of section 3(2b); or
- (b) the Zimbabwe Consolidated Diamond Company, being a wholly Government-owned private limited company involved predominantly or exclusively in the extraction for profit of diamonds, that was incorporated on the 11th May, 2015; or
- (c) the National Indigenisation and Economic Empowerment Fund;

[Definition inserted by Act 1 of 2018]

“approve”, in relation to a transaction referred to in section 3(1)(b), (c), (d) or (e), means approve in terms of section 4;

“Board” means the National Indigenisation and Empowerment Board established in terms of section 7(1);

“business” means any company, association, syndicate or partnership of persons that has for its object the acquisition of gain by the company, association, syndicate or partnership, or by the individual members thereof, whether the business is registered in terms of the Companies Act [*Chapter 24:03*] or otherwise;

“business association” means any voluntary organisation representing the interests of any class of business;

“chairperson” means chairperson of the Board appointed in terms of section 7(2);

“Charter” means the National Indigenisation and Economic Empowerment Charter set out in the Fourth Schedule;

“certificate of compliance” means a final or provisional certificate issued for the purposes of section 3(8);

[Definition inserted by Act 11 of 2014]

“community share ownership scheme” means a scheme referred to in section 14B of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in Statutory Instrument 21 of 2010, subject to any amendment or replacement of that section or those regulations from time to time;

[Definition inserted by Act 1 of 2018]

“designated extractive business” means a company, entity or business referred to in section 3(1);

[Definition inserted by Act 1 of 2018]

“line Minister” means the Minister to whom a party or parties to a transaction referred to in section 4 shall refer their application for assessment in terms of section 4, being the Minister responsible for the sector or subsector of the economy to which the business subjected to this Act belongs;

[Definition inserted by Act 11 of 2014]

“chief executive officer” means the chief executive officer of the Board appointed in terms of section 9;

“controlling interest”, in relation to—

- (a) a company, means the majority of the voting rights attaching to all classes of shares in the company;
- (b) any business other than a company, means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the business;

“employee share ownership scheme or trust” means an arrangement the dominant purpose or effect of which is to enable employees of a company or group of companies to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the stock, shares or debentures of the company or group of companies concerned:

Provided that such stock, shares or debentures are held on behalf of the employees in a trust or in the form of units in an employee unit trust scheme registered or exempted in terms of the Collective Investment Schemes Act [Chapter 24:19] (No. 25 of 1997);

“empowerment” means the creation of an environment which enhances the performance of the economic activities of indigenous Zimbabweans into which they would have been introduced or involved through indigenisation;

“fixed date” means the date fixed in terms of section 1(2) as the date of commencement of this Act;

“Fund” means the National Indigenisation and Economic Empowerment Fund, established in terms of section 12;

“indigenisation” means a deliberate involvement of indigenous Zimbabweans in the economic activities of the country, to which hitherto they had no access, so as to ensure the equitable ownership of the nation’s resources;

“indigenous Zimbabwean” means any person who, before the 18th April, 1980, was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person, and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of the members or hold the controlling interest;

“member” means a member of the Board;

“Minister” means the Minister to whom the President assigns the administration of this Act;

[Definition amended by Act 1 of 2018]

“prescribed register” means the register prescribed in regulations made under section 21 and kept by the Board on behalf of the Minister assigned the administration of this Act, wherein particulars of the certificates referred to in section 3(8) and 4(5) are recorded;

[Definition inserted by Act 11 of 2014]

“reserved sector of the economy” means the sector comprising those kinds of businesses reserved for citizens of Zimbabwe under the First Schedule;

[Definition inserted by Act 1 of 2018]

“sector of the economy”, “subsector of the economy” and “sectoral” refer to a prescribed sector or subsector of the economy;”;

[Definition inserted by Act 11 of 2014]

“private company” means a company as defined in section 33(1) of the Companies Act [Chapter 24:03];

“public company” means a company which is not a private company or a company licensed under section 26 of the Companies Act [Chapter 24:03];

sector of the economy”, “subsector of the economy” and “sectoral” refer to a prescribed sector or subsector of the economy;”;

“Unit” means the National Indigenisation and Economic Empowerment Unit referred to in section 6A;

[Definition inserted by Act 1 of 2018]

“vice-chairperson” means the vice chairperson of the Board appointed in terms of section 7(2).

(2) A reference to “Minister” in this Act shall, wherever appropriate, be construed as a reference to “line Minister”.

(3) The appropriate line Minister shall be responsible for prescribing by notice in a statutory instrument anything that may be prescribed under section 3(4):

Provided that any such notice which is in force on the date of commencement of the Finance (No. 3) Act, 2014, shall remain in force until the appropriate line Minister prescribes his or her own notice, in which event the notice in force shall, to the extent of any inconsistency with the second-mentioned notice, be deemed to have been repealed.

[Subsections (2) and (3) inserted by Act 11 of 2014]

2A Application of Act

For the avoidance of doubt it is declared that this Act shall not apply to any business in the national economy other than those specified in section 3(1) and those in the reserved sector of the economy, and that accordingly any person is free to invest in, form, operate, and acquire the ownership or control of any business not included in section 3(1) or in the reserved sector of the economy.

[Section inserted by Act 1 of 2018]

PART II

INDIGENISATION AND ECONOMIC EMPOWERMENT: GENERAL OBJECTIVES AND MEASURES

3 Objectives and measures in pursuance of indigenisation and economic empowerment

(1) The State shall, by this Act, or through regulations under this Act or any other law secure that at least fifty-one *per centum* of the shares or other ownership interest of every designated extractive business, that is to say a company, entity or business involved in the extraction of—

- (a) diamonds; or
- (b) platinum;

shall be owned through an appropriate designated entity (with or without the participation of a community share ownership scheme or employee share ownership scheme or trust, or both).

(2) No—

- (a) merger or restructuring of the shareholding of two or more related or associated designated extractive businesses; or
- (b) acquisition by a person of a controlling interest in a designated extractive business;

that requires to be notified to the Competition Commission in terms of Part WA of the Competition Act [*Chapter 14:28*] shall be approved unless—

- (c) a fifty-one *per centum* of the shares or other ownership interest in the merged or restructured business is held in the case of a designated extractive business, by an appropriate designated entity:

Provided that some part of the fifty-one *per centum* here referred to may be held by a community share ownership scheme or employee share ownership scheme or trust, or both;
and

- (d) the appropriate designated entity is equitably represented in the governing body of the merged or restructured entity.

(3) No unbundling of a designated extractive business or demerger of two or more such businesses shall, if the value of any business resulting from the unbundling or demerger is at or above a prescribed threshold, be approved unless—

- (a) fifty-one *per centum* in any such resulting business is held by an appropriate designated entity (with or without the participation of a community share ownership scheme or employee share ownership scheme or trust, or both); and
- (b) the appropriate designated entity referred to in subparagraph (c) is equitably represented in the governing body of any such resulting business.

(4) No relinquishment by a person of a controlling interest in a designated extractive business, if the value of the controlling interest is at or above a prescribed threshold, shall be approved unless the controlling interest is relinquished to an appropriate designated entity (with or without the participation of a community share ownership scheme or employee share ownership scheme or trust, or both).

(5) No projected or proposed investment in a prescribed sector of the economy available for investment by domestic or foreign investors for which an investment licence is required in terms of the Zimbabwe Investment Authority Act [*Chapter 14:30*] shall be approved unless, in the case of a designated extractive business, a controlling interest in the investment is reserved for an appropriate designated entity (with or without the participation of a community share ownership scheme or employee share ownership scheme or trust, or both).

(6) In the case of a designated extractive business the Minister may permit the business in writing to do either of the following—

- (a) to comply with this Act within such period as may be prescribed by the Minister so that indigenisation and empowerment quota can be achieved; or
- (b) to achieve the indigenisation and empowerment quota through the use of the credits and within and for such period as the Minister shall prescribe.

[Section substituted by Act 1 of 2018]

3A Reserved sectors of the economy

(1) Subject to subsections (2) and (10), only a business owned by a person who is a citizen of Zimbabwe may operate in the reserved sector of the economy.

(2) Every business owned by a person who is not a citizen of Zimbabwe that, before the 1st January, 2018, commenced operating in the reserved sector of the economy may continue to operate if—

- (a) it registers itself with—
 - (i) the Zimbabwe Revenue Authority;
 - (ii) the Unit, in accordance with subsection (3);
 and

- (b) it opens and maintains a bank account in accordance with the Bank Use Promotion Act [*Chapter 24:24*].

(3) For the purpose of benefiting from, and evidencing, the exception granted to a business under subsection (2)—

- (a) the business in question shall, no later than the 1st July, 2018, notify the Unit by affidavit that—
 - (i) it commenced operating in the reserved sector of the economy before the 1st January, 2018; and
 - (ii) it has registered for tax purposes with the Zimbabwe Revenue Authority, and has opened, and continues to maintain, a bank account with a named banking institution in accordance with the Bank Use Promotion Act [*Chapter 24:24*];
 and

and

(b) the Unit shall open and maintain a register wherein shall be recorded relevant particulars of every business referred to in paragraph (a), and furnish to every such business at its request, free of charge, a certificate that it has been registered for the purpose of subsection (2).

(4) Any person who is not a Zimbabwean citizen and who, after the 1st January, 2018, wishes to operate a business in the reserved sector of the economy shall seek the permission of the Minister referred to in subsection (10).

(5) Any person who is not a Zimbabwean citizen and who—

(a) after the 1st July, 2018, fails to comply with subsections (2) and (3); or

(b) after the 1st January, 2018, begins to operate a business referred to in subsection (1) without the permission of the Minister given under subsection (10);

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) In addition, the Minister may direct any licensing authority to revoke, suspend or cancel the operating licence of a business operating in contravention of subsections (2) and (3) or (5).

(7) Any official of the Unit and any law enforcement agent and any other person bearing the authority of the Minister, in writing, may access any premises of any business operating in a reserved sector, on production of the written authority by the Minister, and demand any relevant documents for purposes of verifying compliance with this section by such business.

(8) The official referred to in subsection (7) may take copies of documents or any other material that may be used as proof of compliance or non-compliance with this section.

(9) Any person who interferes with or obstructs an official referred to in subsections (7) and (8) in the execution of their functions shall be guilty of an offence and liable to fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(10) Subject to subsection (11), a person who is not a Zimbabwean citizen may, after the 1st January, 2018, invest in a business in the reserved sector of the economy if that business meets such criteria or threshold as the Minister will prescribe based on the following objectives—

(a) significant and sustainable employment creation in Zimbabwe;

(b) the transfer of skills and technology for the benefit of the people of Zimbabwe;

(c) the creation of sustainable value chains;

(d) other prescribed socially and economically desirable objectives.

(11) For the purpose of subsection (10)—

(a) the proposed investor in question shall lodge a written application with the Unit illustrating how it meets or intends to meet the applicable criteria or threshold prescribed under subsection (10);

(b) the Unit shall, within seven days of receiving the application or such longer period as the Unit and the proposed investor may agree, forward the application, together with its recommendations thereon, to the Minister; and

(c) the Minister shall, after considering the application, grant or refuse it, and if the Minister grants it, shall furnish to the applicant, free of charge, a permit allowing it to undertake the investment:

Provided that the grant of any such permit and the name of the proposed investor in question shall be published by notice in the *Gazette*.

[Section inserted by Act 1 of 2018]

4 Power of Minister to review and approve indigenisation and empowerment arrangements

(1) With effect from the date that the Minister, by notice in a statutory instrument, prescribes what is required to be prescribed for the purposes of section 3(1)(b)(iii), (1)(c)(i), (1)(d) or (e), no transaction referred to in section 3(1)(b), (c), (d) or (e) shall be concluded unless—

(a) notice thereof is given to the Minister within the prescribed time and in the prescribed manner by either or both of the parties to the transaction (in this section called “the notifying party”); and

(b) the Minister—

(i) approves the transaction in writing to the notifying party; or

(ii) does not indicate approval or disapproval of the transaction in writing to the notifying party;

within forty-five days from the date when notification of the transaction is made within the prescribed time and in the prescribed manner as provided in paragraph (a):

Provided if the Minister, at any time before the expiry of the forty-five days referred to in this paragraph, indicates in writing to the notifying party that he or she requires more time to consider the transaction, the Minister shall have a further forty-five days to indicate his or her approval or disapproval of the transaction.

(2) The Minister may, within forty-five days from the date when notification of the transaction is made within the prescribed time and in the prescribed manner as provided in subsection (1)(a), or within the further pe-

riod referred to in the proviso to subsection (1)(b), disapprove the transaction in writing to the notifying party, in which event subsection (3) shall apply to such transaction:

Provided that the Minister shall not disapprove of a transaction referred to in subsection (1) except on the grounds that the transaction does not comply with the objectives specified section 3(1)(b), (c), (d) or (e), as the case may be.

(3) Where the Minister indicates his or her disapproval of a transaction in terms of subsection (2), he or she shall have a further ninety days to specify in writing to the notifying party what must be done in order for the transaction to comply with the objectives specified in section 3(1)(b), (c), (d) or (e), as the case may be:

Provided that the Minister shall not require anything to be done under this subsection which will result in the transaction in question being concluded on less favourable terms than those originally notified to him or her under subsection (1)(a).

(4) The Minister shall, in the exercise of his or her powers under this section, have access to all public records relating to business shareholdings and controlling interests, notwithstanding anything to the contrary contained in any other law.

(5) Where, following the approval by the line Minister of a transaction in terms of this section, the notifying party so requests in writing, the line Minister, shall issue a certificate of approval of the transaction no later than fourteen working days after such request is received by the line Minister, and the line Minister shall without delay transmit a copy thereof to the Board for inclusion in the prescribed register.

(6) A statement issued by the Secretary to the Board as custodian of the prescribed register as to the existence or otherwise and contents of a certificate referred to in subsection(S) shall be conclusive as to the existence or otherwise of the certificate and its contents.

[Subsections (5) - (6) inserted by Act 11 of 2014]

5

PART III

NATIONAL INDIGENISATION AND ECONOMIC EMPOWERMENT UNIT

[Part III (sections 6-11A) substituted by Act 1 of 2018]

6 Establishment, composition and location of Unit

There shall be a Unit in the Ministry responsible for the administration of this Act, known as the National Indigenisation and Economic Empowerment Unit, having the following special features, namely that—

- (a) it shall be headed by a Director whose post shall be a post in the Civil Service; and
- (b) it shall consist of such other members of staff as may be necessary for the performance of its functions, who shall be civil servants.

7 Functions of Unit

(1) The functions of the Unit shall be—

- (a) to administer the Fund in terms of section 15; and
- (b) to perform such other functions as may be imposed or conferred upon the Unit under this Act or any other enactment.

(2) The Director and all members of staff and agents of the Unit shall perform their functions under this Act in an impartial, clear and, subject to section 11 (“Confidentiality”), open manner.

(3) Before reaching a decision under this Act which affects or is likely to affect the rights or interests of any person, the Director and all members of staff and agents of the Unit shall, to the fullest extent practicable—

- (a) give the person due and clear notice of the nature of the decision that is to be made and of the factors that are likely to be taken into consideration when making it; and
- (b) subject to section 11 (“Confidentiality”), allow the person reasonable access to the information available to the Director or the member of staff or agent concerned in regard to the matter under consideration; and
- (c) give the person as full an opportunity as circumstances allow to make representations in the matter; and
- (d) take into account any representations that the person may make in the matter;

and generally observe due process and the rules commonly known as the rules of natural justice.

(4) Subject to section .11 (“Confidentiality”), where the Director or any member of staff or agent of the Unit has made a decision or taken any action that adversely affects the rights or interests of any person, the Director or the staff member or agent concerned shall provide that person, promptly on demand, with full written reasons for the decision or action.

(5) The Minister may give the Director general directions of policy to be adopted by the Unit in the performance of its functions.

(6) Directions under subsection (5) shall be given in writing and kept by the Director at the Unit’s principal office, where they may be inspected free of charge by members of the public at all reasonable times during office hours.

8 Further provisions on the Director, staff, agents and inspectors of Unit

(1) The Director must be a person experienced or qualified in economics, banking, accounting, law or who possesses any other appropriate qualification or experience.

(2) Subject to this Act, the Director shall be responsible for directing, managing and controlling the activities of the Unit and its staff and agents.

(3) The Director may, when necessary, appoint any—

- (a) police officer; or
- (b) employee of the Zimbabwe Anti-Corruption Commission established by the Constitution; or
- (c) employee of the Reserve Bank; or
- (d) employee of the Zimbabwe Investment Authority; or
- (e) person employed by any other institution or authority that the Director considers appropriate;

to be an agent of the Unit for the purpose of exercising any of the Unit's functions in terms of this Act:

Provided that any such appointment shall be made with the approval of the Minister and, in the case of—

- (a) a police officer, with the approval of the Commissioner-General of Police;
- (b) an employee of the Zimbabwe Anti-Corruption Commission, with the approval of the chairperson of the Commission;
- (c) an employee of the Reserve Bank, with the approval of the Governor of the Reserve Bank;
- (d) an employee of the Zimbabwe Investment Authority, with the approval of the chairperson of the Authority;
- (e) an employee of any other institution or authority, with the approval of the governing body of that institution or authority.

(4) With the approval of the Minister, the Director may delegate to any member of the Unit's staff any function conferred or imposed upon him or her by this Act.

9 Inspectors and their powers

(1) The Director may appoint any member of the Unit's staff and any agent of the Unit to be an inspector for the purposes of this Act.

(2) The Director shall furnish each inspector with a certificate stating that he or she has been appointed as an inspector, and the inspector shall, on demand, exhibit the certificate to any person affected by the exercise of the inspector's powers.

(3) An inspector may, without previous notice and at all reasonable times, enter premises of any business referred to in section 3(1) or a business operating or purporting to operate in the reserved sector of the economy, and, after informing the person in charge or control of the premises of the purpose of his or her visit, may do any or all of the following—

- (a) make such examination and inquiry as he or she considers appropriate;
- (b) question any person who is employed in or at the premises;
- (c) require any person who is employed in or at the premises to produce any book, account, notice, record, list or other document;
- (d) require from any person an explanation of any entry made in any book, account, notice, record, list or other document found upon any person or premises referred to in paragraph (c);
- (e) examine and make copies of any book, account, notice, record, list or other document;
- (f) take possession of any book, account, notice, record, list or other document:

Provided that such book, account, notice, record, list or other document shall be retained only so long as may be necessary for the purpose of any examination, investigation, trial or inquiry arising out of any contravention of this Act;

where there are reasonable grounds for believing that such action is necessary—

- (g) for the prevention, investigation or detection of an offence in terms of this Act, for the seizure of any property which is the subject-matter of such an offence or evidence relating to such an offence, or for the lawful arrest of a person.

(4) In a search under subsection (3), an inspector may be accompanied and assisted by one or more police officers or other persons, and those persons shall have the same powers as the inspector under that subsection.

(5) Every person whose premises have been entered in terms of subsections (3) and (4), and every employee or agent of that person in or on those premises, shall forthwith provide the inspector and his or her assistants with whatever facilities the inspector may reasonably require for the exercise of the powers conferred on them by those subsections.

(6) Nothing in this section shall be taken to require a legal practitioner to disclose any privileged communication made to him or her in that capacity.

(7) Any person who—

- (a) hinders or obstructs an inspector or his or her assistant in the exercise of his or her powers under this section; or

- (b) without just cause, fails or refuses to comply with a lawful request of an inspector or his or her assistant in terms of this section;

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

(8) A court convicting a person of failing to give information or to produce any document when required to do so under this section may require the person, within such period as the court may specify, to give the information or to produce the document, as the case may be.

10 Unit to have access to information

(1) For the proper performance of its functions, the Unit shall have power to obtain from any—

- (a) financial institution; or
- (b) person carrying on a designated extractive business or reserved business; or
- (c) law enforcement agency; or
- (d) public authority or public officer; or
- (e) corporate body of a public character; or (f) public company;

any information, whether specific or general, that the Director considers necessary to carry out its functions.

(2) Where, in the exercise of the power under subsection (1), the Director or an employee, inspector or agent of the Unit requests information from a person referred to in subsection (1), the information shall be provided within such reasonable time and in such manner as may be specified in writing by the Director or by the employee, inspector or agent concerned.

(3) This section shall not be construed as—

- (a) limiting the powers of inspectors under section 9 (“Inspectors and their powers”); or
- (b) precluding the Unit from obtaining information from any other person or entity, whether in accordance with the Access to Information and Protection of Privacy Act [*Chapter 10:27*] or otherwise.

(4) Nothing in this section shall be taken to require a legal practitioner to disclose any privileged communication made to him or her in that capacity.

11 Confidentiality

(1) Any information reported to the Unit or gathered or discovered by any employee, inspector or agent of the Unit in the course of exercising his or her functions under this Act shall be confidential to the Unit, and no person shall disclose any such information to other person or body except—

- (a) in the course of exercising his or her functions under this Act; or
- (b) to a judicial officer for the purposes of any legal proceedings under this Act; or
- (c) in accordance with the order of any court; or
- (d) for the purposes of any prosecution or criminal proceedings;

or where the disclosure is authorised or required by or under this Act or any other law.

(2) Any officer, employee, inspector or agent of the Unit who discloses any information referred to in subsection (1) otherwise than in accordance with that subsection, or makes use of it for personal gain, shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

(3) The Director shall ensure that the Unit maintains adequate systems and procedures to maintain the confidentiality of information referred to in subsection (1).

11A Reports of Unit

(1) As soon as possible after—

- (a) the 31st March, the 30th June, the 30th September and the 31st December in each year, the Director shall submit to the Minister a report on the Unit’s activities during the three months preceding the date concerned;
- (b) the 31st December in each year, the Director shall submit to the Minister a consolidated report on the Unit’s activities during that year.

(2) As soon as practicable after receiving a consolidated report in terms of subsection (1)(b), the Minister shall lay it before the Senate and the National Assembly.

PART IV

NATIONAL INDIGENISATION AND ECONOMIC EMPOWERMENT FUND

12 Establishment and objects of National Indigenisation and Economic Empowerment Fund

(1) There is hereby established a fund, to be known as the National Indigenisation and Economic Empowerment Fund.

(2) Subject to this Act, the objects of the Fund shall be—

- (a) to provide financial assistance to indigenous Zimbabweans for any of the following purposes—
 - (i) the financing of share acquisitions; and

- (ii) the warehousing of shares under employee share ownership schemes or trusts; and
 - (iii) management buy-ins and buy-outs;
- and
- (b) to provide finance for business start-ups, rehabilitation and expansion; and
 - (c) to finance market research in connection with the objectives of the Act; and
 - (d) to finance capacity-building projects on behalf of indigenous Zimbabweans; and
 - (e) any other purpose which the Minister considers will promote the economic empowerment of indigenous Zimbabweans.

13 Unit Trust Account of National Indigenisation and Economic Empowerment Fund

(1) Subject to this section, the National Investment Trust of Zimbabwe (hereafter in this section called “the Trust”) established by a Notarial Deed of Trust on the 18th July, 1999, and registered in the Deeds Registry (No. MA635/2000) is, with effect from the transfer date referred to in section 22, revoked and all its assets and liabilities are transferred to a special account of the National Indigenisation and Economic Empowerment Fund called the “Unit Trust Account”.

(2) Notwithstanding subsection (1)—

- (a) units held by unit holders or investors in the Trust on or before the transfer date shall, on and after the transfer date, be deemed to be units held by those unit holders or investors in the Unit Trust Account of the Fund;
 - (b) the provisions of the Notarial Deed of Trust of the National Investment Trust of Zimbabwe (hereafter in this section called “the Trust Deed”), as incorporated in the Second Schedule with such consequential amendments as are required to bring it into compliance with this section, shall continue to apply to existing and future unit holders or investors in the Unit Trust Account of the Fund.
- (3) For the purposes of subsection (2)(b)—
- (a) references to the “Trust” in the Trust Deed are substituted in the Second Schedule by references to the Unit Trust Account of the Fund;
 - (b) references to the “Trustees” in the Trust Deed are substituted by references to the Board in the Second Schedule;
 - (c) references to the “managers” in the Trust Deed shall be construed as references to the managers of individual unit portfolios within the Unit Trust Account of the Fund, except insofar as the functions of any manager are assumed and exercised by the chief executive officer on behalf of the Board.

(3) Subject to paragraph 55 of the Second Schedule, the Minister may, on the recommendation of or after consultation with the Board, amend the Second Schedule by notice in a statutory instrument:

Provided that no such amendment shall impose upon any unit holder any obligation to make any further payment in respect of his or her unit or to accept any liability in respect thereof.

14 Composition of Fund

The Fund shall consist of—

- (a) any moneys that may be payable to the Fund from moneys appropriated for the purpose by Act of Parliament; and
- (b) any moneys that the Fund may obtain, with the approval of the Minister and the Minister responsible for finance, by way of donations, loans or other financial assistance; and
- (c) levies, together with any interest or surcharge payable thereon, paid in terms of Part V; and
- (d) any moneys that may vest in or accrue to the Fund, whether in terms of this Act or otherwise.

15 Administration of Fund

(1) Subject to this Act, the Fund shall be administered by the Minister through the Director of the Unit who shall act on behalf of and in accordance with any instructions of the Minister.

(2) With the approval of the Minister, the Director of the Unit shall open one or more banking accounts into which all moneys received on behalf of the Fund shall be paid.

(3) Further provisions governing the administration of the Fund are set out in the Third Schedule.

[Section substituted by Act 1 of 2018]

16

[Section repealed by Act 1 of 2018]

PART V

LEVIES

17 Imposition of levies

(1) The Minister may, with the approval of the Minister responsible for finance and subject to subsection (3), by statutory instrument, impose one or more levies on any private or public company and any other business in Zimbabwe specified in the statutory instrument.

(2) Subject to this Part, in regard to a levy imposed in terms of subsection (1), the Minister may, by statutory instrument, prescribe—

- (a) the persons who shall be responsible for the payment of the levy; and
- (b) the persons who shall be responsible for the collection and remittal of the levy; and
- (c) the manner in which and the times at which the levy shall be paid, collected and remitted; and
- (d) the period for which the levy shall be imposed; and
- (e) the imposition of interest and additionally, or alternatively, a surcharge if the levy is not paid within the time prescribed; and
- (f) the registration of companies and businesses for the purpose of the levy; and
- (g) the books and records to be kept and the returns and information to be furnished to the Minister and the Board or any other person for the purpose of the levy.

(3) A statutory instrument may not be made in terms of subsection (1) or (2) unless a draft has been laid before and approved by resolution of Parliament.

(4) All levy payments shall be remitted to the Fund.

18 Failure to pay, collect or remit levies

(1) Any person who, being under an obligation to do so, without lawful excuse, fails or refuses to pay, collect or remit any levy or any interest or surcharge connected therewith 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.

(2) The court convicting a person of an offence in terms of subsection (1) may, on the application of the prosecutor, and in addition to any penalty that it may impose, give summary judgment against the convicted person in favour of the Board, in its capacity as administrator of the Fund, for the amount of any levy, interest or surcharge which the person concerned has been convicted of failing or refusing to pay, collect or remit.

PART VI

GENERAL AND TRANSITIONAL

19 Minister may request information

(1) Every company or business to which the provisions of this Act apply shall, on the written request of the Director of the Unit, furnish to him or her a copy of the company's share register or other document recording the shareholdings or similar interests of the members of that company or owners of that business.

[Subsection amended by Act 1 of 2018]

(2) Any company and any other business which, without reasonable excuse, refuses, fails, or neglects to comply with the request made in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five.

20 Appeals

(1) If any person is aggrieved by—

- (a) any decision or action of the Unit, he or she may, within thirty days after being notified of the decision or of the action being taken, appeal to the Minister against such decision or action; or
- (b) a decision by the Minister to refuse a permit referred to in section 3A(11)(c), or a decision of the Minister made on appeal to him or her under paragraph (a) of this subsection, or any other decision or action of the Minister in terms of any provision of this Act, he or she may, within thirty days after being notified of the decision or of the action being taken, appeal to the Administrative Court.

[Section substituted by Act 1 of 2018]

(2) The noting of an appeal in terms of this section shall not, pending the determination of the appeal, suspend the decision, order or other action appealed against unless the Administrative Court directs otherwise.

21 Regulations

(1) The Minister, may make regulations providing for any matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be provided for in order to carry out or give effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for offences and penalties which may be imposed for contraventions of the regulations, which penalties shall not exceed a fine of level twelve or imprisonment for a period not exceeding five years or both such fine and such imprisonment.

22 Transfer of assets, obligations, etc. of National Investment Trust to Fund

(1) In this section and section 23—

“National Investment Trust” means the National Investment Trust of Zimbabwe referred to in section 13(1);

“transfer date” means the date fixed in terms of subsection (2);

“Unit Trust Account” means the Unit Trust Account of the Fund referred to in section 13(1).

(2) The assets and rights of the National Investment Trust together with any liabilities or obligations attaching to them, shall be transferred to the Unit Trust Account in right of the Fund with effect from such date as the Minister specified by notice published in the *Gazette*.

(3) All bonds, hypothecations, deeds, contracts, instruments, documents and working arrangements which subsisted immediately before the relevant transfer date in relation to any asset, right or liability or obligation transferred in right of the Fund under this section and to which the National Investment Trust was party shall, on and after that date, be as fully effective and enforceable against or in favour of the Fund as if the Fund had been named therein.

(4) For the avoidance of doubt it is declared that all the rights held by unit holders or investors in the National Investment Trust on or before the transfer date shall continue to be held in the Unit Trust Account without diminution after that date by those unit holders or investors.

23 Transfer of employees of National Investment Trust to Board and conditions of service of transferred employees

(1) With effect from the transfer date every person employed by the National Investment Trust immediately before that date shall, with his or her consent, be transferred to the service of the Board on terms not less favourable than those enjoyed by him or her immediately prior to his or her transfer.

(2) Until such time as conditions of service are drawn up by the Board, the terms and conditions of service applicable to employees of the National Investment Trust shall continue to apply to every employee transferred to the Board as if every such person were still in the service of the National Investment Trust.

FIRST SCHEDULE (Section 3A(1))

[Schedule substituted by Act 1 of 2018]

RESERVED/THRESHOLD SECTORS

1. Transportation: passenger buses, taxis and car hire services.
2. Retail and wholesale trade.
3. Barber shops, hairdressing and beauty saloons.
4. Employment Agencies.
5. Estate Agencies.
6. Valet services.
7. Grain milling.
8. Bakeries.
9. Tobacco grading and packaging.
10. Advertising Agencies.
11. Provision of local arts and craft, marketing and distribution.
12. Artisanal mining.

SECOND SCHEDULE (Section 13(2)(b))

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PART 1

DEFINITIONS

1. *Definitions*

In this Schedule, unless inconsistent with the context, the following words shall have the meanings stated below.

- 1.1 “Accounting date” means in each year the 31st day of December, or, in the case of the final accounting period, the date on which the moneys required for the distribution account are transferred to the distribution account;
- 1.2 “Accounting period” means a period commencing from the end of the last or final accounting period (as the case may require) and ending on an accounting date;
- 1.3 “The auditors” means a qualified accountant or firm of qualified accountants appointed by the chief executive officer with the approval of the Board;
- 1.4 “Authorised Investment” means any investment for the time being authorised by law and which the chief executive officer or the managers, with the approval of the Board, may select for the purpose of investment of the deposited property;
- 1.5 “Certificate” means a certificate issued by the Board to a unit holder in terms of this Schedule;
- 1.6 “Conversion offer” means any offer to exchange units or sub-units of another trust for units of the Unit Trust Account;
- 1.7 “Deal note” means the form of receipt which shall be issued by the managers to the purchasers of units on the purchase of such units and to the sellers of units on the sale of such units;
- 1.8 “Dealing day” means the day of each week on which managers deal with applications for units, and on which they will redeem units, being any business day excluding Saturdays;
- 1.9 “Deposited property” means all the assets for the time being held or deemed to be held in trust in terms of this Schedule excluding any amount for the time being standing to the credit of the distribution account, to be constituted as provided in Part 8;
- 1.10 “Distribution account” means the distribution account referred to in paragraph 40.2, and “distribution statement” means the distribution statement referred to in paragraph 43.1;
- 1.11 “Equalisation payment” means—
 - 1.11.1 as regards a unit issued by the Board, the sum deemed by the managers, after consulting the auditors, to represent amounts included in the issue price of such unit for income of the Unit Trust Account accrued up to the close of business on the grouping date;
 - 1.11.2 as regards a unit surrendered for value and subsequently re-sold, a sum equivalent to the equalisation payment which would relate to a unit sold by the Board on the same date;
- 1.12 “Grouping date” means, in relation to a unit issued by the Board or to a unit surrendered for value and subsequently resold, the last business day of the previous calendar month;
- 1.13 “Investor” means any person who may buy units in the Unit Trust Account, but shall not include a person who is not a citizen of Zimbabwe or a company, whether foreign or local;
- 1.14 “Investment” means any investment of any nature whatever and includes, without derogating from the generality of the foregoing, any share, stock, bond, debenture, debenture stock or other security;
- 1.15 “Middle market price” shall be ascertained by reference to the Zimbabwe Stock Exchange share prices on the relevant day and shall be:
 - 1.15.1 the sales price where a sales price is stated;
 - 1.15.2 where there is no sales price stated, the average of the buyer and seller prices rounded up to the nearest cent;
 - 1.15.3 where the buyer price only is stated, the buyer price, provided that if the price is—
 - 1.15.3.1 less than 1000 cents per share then 5 cents shall be added to the price;
 - 1.15.3.2 not less than 1000 cents but less than 5000 cents per share, then 50 cents shall be added to the price;
 - 1.15.3.3 not less than 5000 cents per share, then 200 cents shall be added to the price;
 - 1.15.4 where the seller price only is stated, the seller price, provided that if the price is—
 - 1.15.4.1 less than 1000 cents per share, then 5 cents shall be added to the price;
 - 1.15.4.2 not less than 1000 cents but less 5000 cents per share, then 50 cents shall be subtracted from the price;
 - 1.15.4.3 not less than 5000 cents per share, then 200 cents shall be subtracted from the price;

- 1.15.5 where on the same day the sales price, the seller price or the buyer price changes, the price last quoted on that day shall apply;
- 1.16 “Minister” means the Minister responsible for the administration of this Act;
- 1.17 “Public Service” means persons employed in the Public Service as members of any body corporate established directly by or under an Act of Parliament;
- 1.18 “Qualified accountant” means an accountant who is a member of the Zimbabwe Society of Accountants;
- 1.19 “Registrar” means the Registrar of Collective Investment Schemes;
- 1.20 “The Unit Trust Account” means the Unit Trust Account of the National Indigenisation and Economic Empowerment Fund referred to in section 13;
- 1.21 “Unit” means one undivided share in the Unit Trust Account;
- 1.22 “Unit holder” means the registered holder for the time being of a certificate, whether issued to him or her or not, including persons jointly registered;
- 1.23 “Value”, except where otherwise expressly stated, means:
- 1.23.1 with reference to shares listed on the Zimbabwe Stock Exchange at any given time the middle market price;
- 1.23.2 in respect of immovable property the market value, which shall be what a willing buyer and a willing seller might pay for the immovable property given a reasonable period in which to negotiate the sale;
- 1.23.3 with reference to all other property and investments, the price as determined by the managers in consultation with experts when necessary and approved by the Board;
- 1.24 “Year” means calendar year.

PART 2

THE UNIT TRUST ACCOUNT

2. Beneficiaries of the Unit Trust Account

The beneficiaries of the Unit Trust Account shall be the indigenous Zimbabweans.

2.1 Objectives of Unit Trust Account

The Unit Trust Account shall have the following objectives:

- 2.1.1 to provide a medium to enable investors in Zimbabwe to obtain undivided participation in a diversified portfolio of financially sound investments approved by the managers, chief executive officer and Board;
- 2.1.2 to increase, enhance and facilitate the involvement and participation in the national economy of indigenous Zimbabweans.

2.2 Achievement of objectives of Unit Trust Account.

In order to achieve these objectives the Board shall be entitled to:

- 2.2.1 create and issue an unlimited number of units in a unit portfolio;
- 2.2.2 acquire, receive and stand possessed of any property and donations of whatever nature;
- 2.2.3 acquire, receive, purchase or hold an interest in any shares, bonds, stocks, equities and/or securities of whatever nature in accordance with the provisions of this Schedule;
- 2.2.4 establish different unit portfolios in order to provide investors with investment opportunities in more than one group of securities and other forms of investment;
- 2.2.5 raise funds for the benefit of the Unit Trust Account.

3. This Schedule to bind all holders

The terms and conditions of this Schedule, as amended in accordance with section 13(3) of the Act from time to time, shall be binding on each unit holder and all persons claiming through him or her.

4. Copies of this Schedule and amendments

A copy of this Schedule and of any amendment thereto shall be available for inspection at the offices of the chief executive officer or of any manager at all times during normal business hours and shall be supplied by the chief executive officer or any manager to any person on application at a charge to be specified by the chief executive officer with the approval of the Board.

PART 3

RESPONSIBILITIES OF THE BOARD IN RELATION TO UNIT TRUST ACCOUNT

5. Legal proceedings

All legal proceedings in relation to the Unit Trust Account shall be instituted by or against the Board.

6. Liability of Board

6.1 In relation to the Unit Trust Account, the Board shall not be under any liability on account of anything done or suffered by the Board in good faith in accordance with any request or advice of the chief executive officer or the managers. Whenever any certificate, notice, instruction or other communication is to be given by the chief executive officer or any manager to the Board, the Board may accept as sufficient evidence thereof a document signed or purporting to be signed on behalf of the chief executive officer or any manager by any two persons whose signatures the Board is, for the time being, authorised by the chief executive officer to accept.

6.2 The chief executive officer may accept as sufficient evidence of any fact and in particular of the value of any investment or the cost price or sale price thereof or of any Stock Exchange quotation a certificate by the chief executive officer or any manager or by a stockbroker approved by the Board.

6.3 The Board shall not be responsible for any misconduct, mistake, oversight, error of judgment, forgetfulness or want of prudence on the part of the chief executive officer or any manager, legal practitioner, banker, liquidator, agent or other persons acting hereunder as agent or adviser of the Board, the chief executive officer or any manager.

7. Conduct of business and meetings

7.1 Meetings of the Board in relation to the Unit Trust Account must be held at least once every two months.

7.2 Paragraph 6 of the First Schedule shall apply to the procedure to be followed by the Board at meetings held in relation to the Unit Trust Account.

8. Powers of Board

8.1 The Board shall have all powers necessary to protect the interests of unit holders and shall, save as otherwise provided in this Schedule, have all powers necessary to carry out the functions and purposes of the Unit Trust Account and secure the fulfilment of the objectives of the Unit Trust Account.

8.2 Except as herein provided, the Board shall have absolute and uncontrolled discretion as to the exercise of the trust, powers, authorities and discretion vested in it, whether in relation to the manner or as to the mode of and time for the exercise thereof and, in the absence of gross negligence and fraud, the Board shall not be in any way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

8.3 The Board shall be entitled to raise money on behalf of the Unit Trust Account, provided that such power shall only be exercised if the Board is satisfied that the borrowing will not prejudice unit holders.

8.4 The Board may contract or enter into any financial, banking or other transaction with the managers or any unit holder or any company or body whose shares or securities form part of the deposited property or may be interested in any such contract or transaction.

8.5 The Board shall not be required to make any payment to the unit holders except out of the deposited property held by it for that purpose in terms of this Schedule.

8.6 The Board shall not be liable to account to any unit holder or otherwise for any payment made or suffered by the Board in good faith to any duly empowered fiscal authority of Zimbabwe or elsewhere for taxes or other charges in any way arising out of or relating to any transaction under this Schedule, notwithstanding that any such payment is not due or need not have been done.

8.7 The Board may act and shall not be liable for anything done or omitted or suffered by it upon the advice and statements of or information obtained from legal practitioners (whether consulted by the Board, the chief executive officer or any manager), bankers, accountants, brokers or other persons believed by the Board in good faith to be experts in relation to the matters upon which they are consulted.

8.8 Subject as herein provided, the Board shall be entitled for the purpose of indemnity against any actions, costs, claims, damages, expenses or demands to which it may be put as the Board, to have recourse to the deposited property or any part thereof.

8.9 The Board may limit the maximum number of units that the individual unit holders may buy in the Unit Trust Account at any given time and may alter this number from time to time as the need may arise.

PART 4

THE CHIEF EXECUTIVE OFFICER AND MANAGERS

9. Powers of managers

The managers shall be a company or a consortium of companies, appointed by the Board, who are responsible to the unit holders for the management and control of the Unit Trust Account and for the issue and redemption of units of the scheme.

Subject to this Schedule the managers, in their own name and in the name of the Unit Trust Account, shall have power to do all such things and enter into all such arrangements as are necessary to achieve the provisions, intentions and objects of the Unit Trust Account in such manner as in the opinion of their proper officers may be

most advantageous to the unit holders and, without prejudice to the generality of the foregoing, shall have the following powers:

- 9.1 to purchase movable and immovable property and provide services and carry on business of any kind in such manner as the managers could do if they were the beneficial owners thereof;
- 9.2 to expend Unit Trust Account funds on the maintenance, construction, improvement, alteration or demolition of buildings on land owned by the Unit Trust Account in right of the Fund;
- 9.3 subject to the approval of the Board, to invest moneys in such manner as their officers may think fit and vary such investments from time to time;
- 9.4 to borrow money and if necessary mortgage immovable property or grant any other form of legal hypothecation as security therefor;
- 9.5 to let and hire property;
- 9.6 to pay all rates, taxes, imposts and charges lawfully levied or imposed upon the Unit Trust Account assets and any other expenses incurred in connection with the administration of the Unit Trust Account;
- 9.7 to engage the services of accountants, legal practitioners, architects, quantity surveyors, land surveyors, valuers, agents, brokers or other professional advisers as they may consider necessary to transact all or any other business of whatsoever nature required to be done under this Schedule;
- 9.8 to appoint an agent or agents to represent them for any specific purpose, and to perform such powers and duties on their behalf as they may deem expedient;
- 9.9 to institute proceedings in any court of law for the recovery of amounts due to the Unit Trust Account or to compel the fulfilment of obligations in their favour;
- 9.10 to defend any proceedings which may be instituted against the Unit Trust Account;
- 9.11 to allow time for payment of debts due to the Unit Trust Account and to compromise claims by the Unit Trust Account in the discretion of their officers;
- 9.12 to compromise and settle for such consideration and upon such terms and conditions as their officers may deem advisable all matters arising in relation to the Unit Trust Account, and all such compromises and settlements shall be final and binding upon all unit holders;
- 9.13 to enter into indemnities, guarantees or suretyships of every description, either gratuitously or for consideration, which in their absolute discretion they may deem fit;
- 9.14 with the approval of the Board, to purchase, select, sell, exchange or alter any of the deposited property, provided that nothing in this paragraph shall impose any liability on them to bear the expenses of stamping any certificate or any transfer relating to the deposited property.

10. Duties of managers

10.1. It shall be the duty of the managers to:

- 10.1.1 prepare all cheques, warrants, statements and notices which the Board has to issue, send or serve as provided;
- 10.1.2 stamp the documents referred to in paragraph 10.1.1 and deposit them together with the necessary stamped addressed envelopes with the Board so as to afford the Board ample time to examine and check them and sign such cheques, warrants, statements and notices and dispatch them on the day on which they ought to be dispatched;
- 10.1.3 prepare all certificates required to be issued and to deposit them with the Board for signature.

10.2 The managers shall keep or cause to be kept proper books of accounts and records in which shall be entered all transactions effected by the managers for the Unit Trust Account and shall permit the Board on demand to examine and take copies of or extracts from any such books of accounts or records.

10.3 The fees and expenses of the auditors shall be paid by the managers out of the deposited property.

11. Liability of managers

11.1 If for any reason it becomes impossible or impracticable to carry out the provisions of this Schedule, the managers shall not be under any liability therefor or thereby, and the managers shall not incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done by them in good faith hereunder.

11.2 The managers shall not be under any liability except such liability as may be expressly assumed by them under this Schedule nor shall the managers, save as provided in this Schedule, be liable for any act or omission of the Board nor for anything except their own wilful breach of duty hereunder.

PART 5

GENERAL PROVISIONS RELATING TO THE BOARD AND MANAGERS

12. Liability of Board and managers

12.1 Neither the Board nor the managers shall incur liability in respect of any action taken or thing suffered by them in reliance upon any notice, resolution, direction, consent, certificate, affidavit, statement, stock, plan or

reorganisation or other paper or document believed to be genuine and to have been passed, sealed or signed by the proper parties including themselves or their officers.

12.2 Neither the Board nor the managers shall incur liability for doing, or failing to do, any act or thing which by reason of any provision of any present or future law or regulation, or of any decree, order or judgment of any court, or by reason of any direction, request, announcement or similar action (whether of binding legal effect or not) which may be taken or made by any person or body acting with, or purporting to exercise the authority of, any government, whether legally or otherwise.

13. Verification of signatures

The Board or the managers shall be entitled to require that the signature of any unit holder or joint unit holder to any document required to be signed by him or her under or in connection with this Schedule shall be verified by a banker or broker or other responsible person or otherwise authenticated to its or their reasonable satisfaction.

14. Indemnities

Any indemnity expressly given to the Board or to the managers in this Schedule is in addition to and without prejudice to any indemnity allowed by law.

15. Dealing by Board and managers

15.1 Neither the Board nor the managers nor any company or subsidiary company of either of them shall sell or deal as principals in the sale of investments to the Unit Trust Account for the account of the Unit Trust Account otherwise than through a recognised Stock Exchange or in terms of a conversion offer made generally to all holders of units or another unit trust. Provided that the Board or the managers or any such subsidiary company may buy, hold or deal in any investments upon their respective individual accounts notwithstanding that similar investments may be held under this Schedule as part of the deposited property.

15.2 The managers shall not be entitled to buy, sell, hold or deal in units of the Unit Trust Account, but the Board or any associated company or any employee, shareholder or director of the Board or the managers may become the owners of certificates and hold, dispose of or otherwise deal with them with the same rights as any other unit holder.

PART 6

UNITS

16. Issue of units

16.1 The managers in consultation with the Board shall issue new units on behalf of the Unit Trust Account.

16.2 The managers in consultation with the Board may make arrangements for the issue of units to provide the initial portfolio and may determine the price at which such units are to be issued.

16.3 Subsequent issues of new units shall be made at prices ascertained in accordance with paragraph 17.

16.4 The managers may also from time to time, with the approval of the Board, make arrangements for the issue of units by way of exchange to the holders of units or sub-units of one or more other unit trusts for such units or sub-units or the cash or other property represented thereby upon such terms (including provision for paying out of the deposited property the costs, fees and expenses of such exchange and a preliminary charge not exceeding that permissible in the case of units issued for cash) as the managers may think fit, provided that the Board is satisfied that the price at which such units, sub-units, cash or other property are taken into the Unit Trust Account and the other terms shall not be such as are likely to result in any prejudice to the existing unit holders.

16.5 The managers may also from time to time, with the approval of the Board, make arrangements for the issue of bonus units to the holders of units upon such terms as the managers may think fit, provided that the Board is satisfied that such issue shall not result in any prejudice to any existing unit holders.

16.6 The managers shall furnish to the Board on demand a statement of all issues of units and of the terms on which they are issued and of any investments and immovable property which is held by the Unit Trust Account or which they intend to purchase for the account of the Unit Trust Account, and also a statement of any investments and immovable property which in accordance with the powers given to them in this Schedule they intend to sell for the account of the Unit Trust Account, and any other information which may be necessary so that the Board may be in a position to ascertain at any moment the value of the deposited property.

16.7 The Board shall be entitled to refuse to authorise the issue of a certificate if at any time the Board is of the opinion that the provisions of this paragraph in regard to the issue of units are being infringed; but nothing in this clause or elsewhere in this Schedule shall impose upon the Board any responsibility for satisfying itself before issuing certificates that the managers have complied with the conditions of this paragraph.

16.8 No issue of units shall be made so as to increase the number of units issued and outstanding, or deemed to be issued and outstanding, beyond the amount agreed in writing from time to time by the Board and the managers.

17. Price of units

17.1 The price at which any issue of units (save for those providing the initial portfolio) is made shall be ascertained by dividing the value at the date of such issue of the deposited property by the number of units then in issue; by adding thereto such sum as the managers may consider represents the appropriate provision for fiscal and purchase charges; by further adding thereto the charge as provided in paragraph 16 and adjusting the resulting total upwards by not more than 1 cent per unit.

17.2 Notwithstanding paragraph 17.1, the managers shall be entitled from time to time to publish in newspapers, circulars and other forms of advertising media having a substantial circulation throughout Zimbabwe, an invitation to the public approved by the Board to apply for new units at a "fixed price" not exceeding the price ascertained under paragraph 17.1 which shall be ruling on the dealing day immediately preceding the date of publication of such invitation. Such fixed price shall apply for so long a period as the invitation shall remain open. New units may be issued at the fixed price provided that a new unit shall be deemed to be issued on the day on which the application to subscribe for that unit is received by the managers.

17.3 The managers shall be entitled, notwithstanding paragraphs 17.1 and 17.2, upon receipt of an application for units sent from a place other than Harare, to issue such units at a price greater than that ascertained under paragraph 17.1 or 17.2, provided that such price is not more than five per centum (5%) higher than the price so ascertained ruling at the date of such issue.

17.4 In the event of arrangements being made by the managers for the issue of units for delivery in any country outside Zimbabwe, the price at which such units may be issued may, at the discretion of the managers, include as an addition to the price of issue a further amount sufficient to cover any additional stamp duty or taxation whether national, municipal or otherwise leviable in that country in respect of such issue or of the delivery or issue of certificates in connection therewith, or the remittance of money to Zimbabwe.

17.5 The price of all units shall be paid in the manner required by the managers.

17.6 All cheques, bills of exchange, promissory notes and other negotiable instruments shall be made in favour of the Unit Trust Account and all cash received shall be paid into an account opened in the name of the Unit Trust Account and the signing powers over which have been approved by the Board.

18. Subdivision of units

18.1 The managers may, with the approval of the Board, determine that each unit be subdivided into two or more units and thereupon each unit shall be subdivided accordingly and the number of units shall be increased accordingly.

18.2 The managers shall forthwith send to every unit holder a certificate representing the additional number of units to which the unit holder has become entitled as a result of the subdivision.

19. Realisation of units

19.1 The managers shall have the exclusive right by notice in writing to the Board to effect reduction of the Unit Trust Account by the surrender of certificates to the Board for cancellation or by requiring the Board to cancel units in respect of which no certificate is outstanding.

19.2 Such notice shall state the number of units to be cancelled and the amount payable to the managers thereof. Before giving notice to exercise such right, it shall be the duty of the managers to ensure that the deposited property includes (or will upon the completion of the sale of investments or immovable property agreed to be sold include) sufficient cash to pay the amount payable to the managers upon such reduction.

19.3 In respect of any such cancellation of units the managers shall be entitled to receive out of the deposited property an amount per unit ascertained by dividing the value of the deposited property at the time of such notice by the number of units then deemed to be in issue, deducting therefrom such sum as the managers may consider represents the appropriate allowance for fiscal and sale charges in relation to the realisation of the deposited property, and adjusting the resulting total downwards by not more than 11 cents per unit.

19.4 Such amount shall be payable to the managers on or as soon as practicable against surrender to the Board of particulars of the units to be cancelled in respect of which no certificate is outstanding. Upon such payment and surrender the units in question shall be deemed to have been cancelled and withdrawn from issue.

19.5 The Board shall check the calculation of the amount payable to the managers and may require the managers to justify the amount.

20. Surrender of units for value

A unit holder shall be entitled at any time during the life of the Unit Trust Account, by a request in writing to the managers or their duly authorised agent accompanied by his or her certificate with the endorsement thereon duly completed, to surrender for value all or any part of the units comprised in his or her certificate at a surrender value per unit ascertained by dividing the value of the deposited property at the time of such surrender by the number of units then deemed to be in issue; by deducting therefrom such a sum as the managers may consider represents the appropriate allowance for fiscal and sale charges in relation to any realisation of the deposited property; and by adjusting the resulting total downwards by not more than 1 cent per unit, provided that:

- 20.1 no person shall be entitled to surrender part only of the units comprised in a certificate if such surrender would result in his or her being the holder of less than 10 units or such lesser number as the managers may decide with the approval of the Board;
- 20.2 on surrender of part only of the units comprised in a certificate the managers shall cause to be issued a balance certificate for the balance of such units;
- 20.3 the managers may at their option dispense with the production of any certificate which has become lost, stolen or destroyed upon compliance by the unit holder with the like requirements to those arising in the case of an application by him or her for the replacement thereof;
- 20.4 the surrender value shall not be payable to the unit holder until the expiration of seven (7) days after termination of the customary period for the realisation of investments on the Zimbabwe Stock Exchange, and any moratorium which may at any time be applied to payments in respect of stock exchange transactions shall apply equally to the payment by the managers of the surrender value;
- 20.5 it shall be the duty of the managers to ensure that the moneys required for payment of the surrender value of any units surrendered as aforesaid are made available either out of the proceeds of re-sale of such units or otherwise out of the deposited property.

PART 7

PROVISIONS AS TO CERTIFICATES

21. Form of certificates

Certificates shall be in such form as may from time to time be agreed between the managers and the Board. A certificate shall bear a distinctive number and shall specify the number of units represented thereby and the name of the unit holder.

22. Denomination of certificates

Certificates may be issued in any denomination provided that no certificate shall be issued for a number of units less than ten (10) or such lesser number as the managers may decide with the approval of the Board.

23. Preparation, signature and issue of certificates

23.1 The certificates may be engraved on lithographed or printed as the managers may from time to time, with the approval of the Board, determine, and shall be signed on behalf of the Board by a duly authorised officer of the Board. Every such signature may be autographic or may be affixed lithographically or by other mechanical means. No certificate shall be of any force or effect until so signed. Signed certificates shall be valid and binding notwithstanding that before their issue the Board or any person whose signature appears thereon as a duly authorised officer of the Board ceased to be a member of the Board or, as the case may be, an officer so authorised.

23.2 The Board shall sign and deliver to the order of the managers or their nominees, certificates in such denominations as may be required for units, but the Board shall deliver certificates only against payment or transfer to the Board of the cash or other property receivable by the Unit Trust Account in respect of the issue of the units concerned.

23.3 The Board shall also from time to time sign and deliver any other certificates required to be issued in terms of this Schedule upon due compliance with any applicable conditions.

24. Holders entitled to recognition

The holder of a certificate shall be the only person recognised by the Board or by the managers as having any right in such certificate and the Board and the managers shall recognise such unit holder as the absolute owner thereof and shall not be bound by any notice to the contrary save those expressly provided in this Schedule, or as by the order of any court of competent jurisdiction.

25. Units held by Board

The Board shall be deemed to be the holder of each unit during such time as there is no other person entitled to be regarded as the registered holder of the unit.

26. Exchange or replacement of certificates

26.1 Subject to the provisions of this Schedule and in particular to the limitations of the denominations of certificates set out in paragraph 22 and subject to any regulations from time to time made by the managers in consultation with the Board, every unit holder may exchange any or all of his or her certificates for one or more of such denominations as he or she may require representing the same aggregate number of units. Before any such exchange is carried out the unit holder must surrender to the Board the certificate or certificates to be exchanged and shall pay to the Board all moneys payable hereunder in respect of the issue of the new certificate or certificates.

26.2 Where any certificate becomes mutilated or defaced, the Board in its discretion may issue to the unit holder, against surrender to the Board of the mutilated or defaced certificate, a new certificate representing the same aggregate number of units.

26.3 Where any certificate is lost, stolen or destroyed, the Board may in its discretion issue to the unit holder a new certificate in lieu thereof.

26.4 No such new certificate shall be issued unless the applicant has:

- 26.4.1 furnished to the managers and the Board evidence satisfactory to them of the mutilation, defacement, loss, theft or destruction of the original certificate; and
- 26.4.2 paid all expenses incurred in connection with the investigation of the facts; and
- 26.4.3 in the case of defacement or mutilation, produced and surrendered to the Board the defaced or mutilated certificate; and
- 26.4.4 if so required by the managers or the Board furnished to the managers or the Board such indemnity as the managers or the Board may require. Neither the managers nor the Board shall incur any liability for any action which they may take in good faith under the provisions of this subparagraph.

27. Registration of holders

27.1 A register of the unit holders shall be kept, subject to the control of the Board, by the managers who shall enter in the register :

- 27.1.1 the names and addresses of the unit holders;
- 27.1.2 the number of units held by every such person and the distinctive number of the certificate or certificates;
- 27.1.3 the date on which the name of every such person was entered in respect of the units standing in his or her name.

27.2 Any unit holder shall immediately notify the Board of any change of name or address on his or her part and once the Board is satisfied thereof, and on compliance with such formalities as it may require, it shall alter the register or cause it to be altered accordingly.

27.3 The register shall (subject to such reasonable restrictions as the managers may impose) be open during business hours to the inspection of any unit holder without charge.

27.4 The register may be closed at such times and for such periods as the managers may, with the approval of the Board, determine, provided that it shall not be closed for more than 30 days in any one year, and if the managers decide to close the register, they shall at their expense give notice by advertisement in a widely circulated newspaper published in Zimbabwe.

27.5 No notice of any trust or interest, express, implied or constructive, shall be entered in the register in respect of any unit.

27.6 Upon the re-sale of any units which are not cancelled in terms of paragraph 19, the Board shall enter the name of the purchaser in the register as the unit holder thereof and shall issue a certificate therefor in his or her favour.

28. Transfer of units

28.1 Every unit holder shall be entitled to transfer the units or any of the units held by him or her by an instrument in writing in such form as the Board may from time to time approve. Provided that no transfer shall be registered if the registration thereof would result in the transferor or the transferee being a registered holder of less than ten units or such lesser number as the managers may decide with the approval of the Board.

28.2 Every instrument of transfer must be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of the units transferred until the name of the transferee is entered in the register in respect thereof.

28.3 Every instrument of transfer must be duly stamped and left with the Board for registration accompanied by the certificate or certificates relating to the units to be transferred and such other evidence as the Board may require to prove the title of the transferor or his or her right to transfer the units. The Board may dispense with the production of any certificate which has become lost, stolen or destroyed upon compliance by the transferor with the like requirement to those arising in the case of an application by him or her for the replacement thereof.

28.4 All instruments of transfer which are registered shall be retained by the Board.

28.5 The Board may charge a fee as agreed with the managers from time to time for the registration of each transfer and the issue of a new certificate in the name of the transferee and a balance certificate, if necessary, in the name of the transferor and, if required by the Board, such fee must be paid before the registration of the transfer.

28.6 The receipt of the unit holder for any moneys payable in respect of the units represented by such certificate shall be a good discharge to the Board and if several persons are registered as joint unit holders or in consequence of the death or insolvency of a unit holder are entitled so to be registered, any one of them may give valid receipts for any such moneys.

29. Death of unit holder

29.1 In the event of the death of a unit holder the executor or administrators of a deceased unit holder shall be the only persons recognised by the Board as having title to the units represented thereby until such a time as the estate has been distributed.

29.2 Any person entitled to a unit in consequence of the death of any unit holder may upon producing such evidence as to his or her title as the Board requires either be registered himself or herself as the unit holder of such unit upon giving to the Board notice in writing of such desire, or transfer such unit to some other person. All the provisions of this Schedule relating to transfer shall be applicable to any such notice or transfer as if the death had not occurred and such notice or transfer were a transfer executed by the unit holder.

29.3 A person becoming entitled to a unit in consequence of death as aforesaid may give a discharge for all moneys payable in respect of the unit but he or she shall not be entitled to receive notices of or to attend or vote at any meeting of unit holders until he or she has been registered as the unit holder of such a unit.

29.4 In respect of the registration of any letters of administration, power of attorney, marriage or death certificate, order of court, notarial deed of change of name or other document relating to or affecting the title to any unit there shall be paid to the Board such fee as may be agreed with the managers from time to time.

30. Retention of payments

The Board may retain any moneys payable in respect of any units of which any person is entitled to be registered as the unit holder or which any person is entitled to transfer until such person is registered as the unit holder of such units or has transferred them.

31. Cancellation of certificates

In the case of a surrender of units for value in terms of paragraph 20, the Board shall cancel the certificate or certificates in respect of the units surrendered and remove the name of the unit holder from the register, provided that such removal shall only be treated for the purposes of this Schedule as a cancellation of the units and as withdrawing them from issue if the managers fail to effect a resale before the termination of the customary period for the realisation of investments on the Zimbabwe Stock Exchange.

32. Restrictions on issue of certificates

Notwithstanding the provisions relating to certificates the managers shall only be obliged to issue certificates to those unit holders who request them, and if a unit holder does not request a certificate, any deal note issued by the managers shall be deemed a certificate for the purpose of this Schedule.

33. Transaction statements

The managers shall if required by any unit holder furnish to that unit holder a quarterly transaction statement confirming all the details which could be derived from the certificate if issued.

PART 8

DEPOSITED PROPERTY

34. Deposited property

The deposited property shall include:

- 34.1 property in the hands of the Board;
- 34.2 the value of any cash or other property to be received in respect of units agreed to be issued by the managers after deducting therefrom or providing thereout in the case of units agreed to be issued pursuant to a conversion offer, any moneys payable out of the deposited property pursuant to the terms of the arrangements under which such conversion offer is made;
- 34.3 where investments have been agreed to be purchased or sold but such purchase or sale has not been completed, such investments shall be included or excluded in the deposited property and the net purchase or sale consideration shall be excluded or included, as the case may require, as if such purchase or sale had been duly completed;
- 34.4 where notice of a reduction of the Unit Trust Account by the cancellation of units has been given by the managers to the Board but such cancellation has not been completed the units to be cancelled shall not be deemed to be in issue and the value of the deposited property shall be reduced by the amount payable to the managers upon such cancellation.

PART 9

INVESTMENT OF DEPOSITED PROPERTY

35. Transfer of property to Board

35.1 Subject to the provisions of this Schedule, all cash and other property which ought in accordance with the provisions of this Schedule to form part of the deposited property shall be paid or transferred to the Board and all cash shall, except in so far as such cash may in the opinion of the managers be required for transfer to the dis-

tribution account, be applied at the discretion of the managers (but subject always to the provisions of this Schedule) in the acquisition of authorised investments and immovable property. Provided that all or any amount of cash may during such time or times as the managers may think fit be retained in cash or on deposit with any banker or building society approved by the Board and the managers.

35.2 The Board shall be entitled at any time at its entire discretion and without assigning any reason to give notice to the managers that it is not prepared to accept the transfer of any property which in the opinion of the Board infringes the terms of this Schedule and the Board shall be entitled to require the managers to deposit in place of any such property other property acceptable to the Board.

36. Realisation of investments

36.1 Any investment comprised in the deposited property may at any time be realised at the discretion of the managers either in order to provide cash required for the purpose of any provision of this Schedule or in order to retain the proceedings of sale in cash or on deposit as aforesaid or partly one and partly the other.

36.2 Investments and immovable property comprised in the deposited property shall be realised by the managers, if so required by the Board, and the net proceeds of realisation shall be applied in accordance with the provisions of this Schedule, but the managers may postpone realisation of any such investment or immovable property for such period as they may determine to be in the interest of the unit holders, unless the Board requires them to be realised without delay.

37. Mode of realisation

Any sale of an investment for the account of the Unit Trust Account shall be made by the managers or their nominee on the instruction of the managers with the approval of the Board, and in the event of the managers receiving a share of any commission payable to the brokers the managers shall be at liberty to retain it without being liable to account therefor.

38. Limit upon investments

The value of the Unit Trust Account's holding of investments in any one company or body shall be as determined by the managers and the Board from time to time.

39. Partly paid investments

39.1 The managers shall not be entitled without the consent of the Board to apply any part of the deposited property in the acquisition of any investments or immovable property which are for the time being partly paid only or otherwise in the opinion of the Board likely to involve the Board in any liability. Provided that the selection of all investments or immovable property, whether partly paid or not, shall in all respects be the responsibility of the managers solely and not of the Board. If the Board consents to the acquisition of any partly paid investment or immovable property it shall in all respects be the responsibility of the managers solely and not of the Board. If the Board consents to the acquisition of any partly paid investment or immovable property, the Board shall be entitled to appropriate and set aside cash or other property approved by managers and acceptable to the Board sufficient to provide for paying up such investment in full or for meeting such liability.

39.2 The cash or other property so appropriated shall form part of the deposited property but shall not be available for application without the consent of the Board in any way otherwise than as may be required for paying up the investments in respect of which the appropriation was made, so long as and to the extent that such investments remain part of the deposited property or any liability (contingent to otherwise) exists in respect thereof.

39.3 The Board shall be entitled at any time at their entire discretion and without assigning any reason to give notice to the managers that they are not prepared to accept the transfer of any property which in the opinion of the Board infringes this Schedule and the Board shall be entitled to require the managers to deposit in place of any such property other property acceptable to the Board.

PART 10

DISTRIBUTION

40. Distribution

40.1 On the 31st of December in each year, or as soon after such date as the audited statement referred to in paragraph 43.1 is available, the Board shall distribute among the unit holders rateably in accordance with the number of units represented by the certificates held by them respectively on the last preceding accounting date the amount available for distribution to unit holders as certified in accordance with paragraph 43.1 in respect of the accounting period ending on such accounting date, adjusted to the nearest amount not involving the distribution of a fraction of a cent per 10 units.

40.2 As at each accounting date the amount of cash required to effect such distribution shall be transferred to a special account to be entitled "distribution account" and the amount to the credit of the distribution account shall not be treated as part of the deposited property held by the Board upon trust to distribute as provided.

41. Computation of distribution

41.1 The proceeds of sales of rights and all other receipts deemed by the managers, after consulting the auditors, to be in the nature of capital accruing from investments and immovable property shall not be regarded as available for distribution but shall be retained as part of the deposited property.

41.2 The amount available for distribution in respect of any accounting period shall be assessed by deducting the management participation from the total net amount received by the Board in the accounting period of all interest, dividends and other receipts deemed by the managers, after consulting the auditors, to be in the nature of income and by making such adjustments as the managers, after consulting with the auditors, may think fit. Permitted adjustments shall be:

41.2.1 addition or deduction of a sum by way of adjustment to allow for the effect of sales or purchases cum dividend;

41.2.2 addition of a sum representing any interest or dividends accrued but not received by the Board at the end of the accounting period and deduction of a sum representing (to the extent that an adjustment by way of addition has been made in respect of any previous accounting period) any interest or dividends accrued at the end of the previous accounting period;

41.2.3 addition of a sum representing amounts included in the price of the new units for income accrued prior to the date of issue and deduction of a sum representing participation in income distributed upon the liquidation of units surrendered and cancelled during the accounting period.

41.3 The distribution statement relating to each period with the auditor's report annexed shall be filed with the Board and shall be conclusive and binding and copies thereof shall be open for inspection during usual business hours by any unit holder at the offices of the managers. The Board and the managers shall be absolutely protected in relying on, and shall act on, such an audited statement.

42. Equalisation payment

42.1 The first distribution to be made in respect of a unit following issue thereof shall include a capital sum equal to the equalisation payment in respect of such unit.

42.2 In respect of units surrendered for value under paragraph 20 and subsequently re-sold the Board shall, on or before the date of distribution under Part 10, in respect of the relevant accounting period, place to the credit of the distribution account the equalisation payments applicable to such unit.

43. Distribution statements

43.1 The Board shall on or before the 31st day of August in each year, or as soon as possible thereafter, cause the managers to make up a distribution statement certified by the auditors covering the distribution in respect of the accounting period ending on the accounting date last preceding the date aforesaid and such statements shall show:

43.1.1 the gross income per unit for the accounting period to which the statement relates, the amount of income tax, if any, to be deducted therefrom, and the corresponding net amount;

43.1.2 the amount per unit of a capital nature distributable and its source;

43.1.3 the amount per unit charged in respect of management participation for the accounting period in question;

43.1.4 the net amount per unit brought forward from the previous accounting period and that carried forward to the following accounting period distinguishing in each case between income and capital;

43.1.5 the gross and net amount per unit to be distributed to the unit holders distinguishing between income and capital;

43.1.6 if in the opinion of the Board and the auditors the amount to be distributed to unit holders has been increased or decreased by reason of the sale or purchase of securities cum dividend, the net amount of such increase or decrease shall be stated unless the Board and the auditors agree that it is not material and does not substantially affect the amount to be distributed to unit holders;

43.1.7 the percentage of the total value of the deposited property on the accounting date in question represented by each investment and the percentage representing cash, other than cash to be transferred to the distribution account in respect of the accounting period;

43.1.8 the bid price of units (ex dividend) on the accounting date.

44. Payment of distributions

44.1 Any moneys payable by the Board to a unit holder under this Schedule shall be paid by cheque or warrant sent through the post to the registered address of such unit holder.

44.2 Every such cheque or warrant shall be made payable to the order of the person to whom it is delivered or sent, and payment of the cheque or warrant shall be a satisfaction of the moneys payable.

44.3 Where an authority in that behalf has been received by the Board in such form as the auditors consider sufficient, the Board shall pay the amount distributable to the unit holder to his or her bankers or other agent and the receipt of such bankers or other agent shall be a good discharge therefor.

45. Tax certificates

45.1 In respect of each distribution payment the Board shall issue to the unit holder concerned a tax certificate to be prepared by the auditors or by the managers in a form to be approved by the Board.

45.2 In the case of any distribution made on liquidation of the Unit Trust Account, each tax certificate shall show what proportion of the distribution represents capital and what proportion represents income.

46. Accounts

46.1 The managers shall forward to unit holders not less frequently than once a year but not more than six months after the end of the accounting period to which it relates an account containing such information as may be required by the Board in consultation with the managers.

46.2 The account shall be audited by independent auditors of a reputable firm, and shall be accompanied by a certificate of the auditors to the effect that the account has been examined with the books and the records of the Unit Trust Account and of the managers in relation thereto and that the auditors have obtained all the explanations and information they have required. The auditors shall further report whether the account is in their opinion properly drawn up in accordance with such books and records to disclose the profits or losses accruing to the managers from the Unit Trust Account.

46.3 The managers shall forward to the Minister of Finance once every year, audited accounts of the Unit Trust Account within six months of the end of the financial year.

PART 11

MEETINGS OF UNIT HOLDERS

47. Calling of meetings

A meeting of unit holders may be called at any time by:

47.1 the Board on its own account; or

47.2 on the request of unit holders holding not less than twenty-five *per centum* (25%) of the units then in issue; or

47.3 the managers.

48. Notice of meetings

48.1 Not less than twenty-one (21) days notice, inclusive of the day on which the notice is served or is deemed to be served and of the day for which the notice is given, shall be given by the person calling the meeting to the unit holders, the Board and managers as provided in Part 15.

48.2 The notice shall specify the place and time of the meeting and the terms of any resolutions to be proposed.

48.3 The accidental omission to give notice to or the non-receipt of a notice by any of the unit holders shall not invalidate the proceedings at any meeting.

49. Quorum

49.1 The necessary quorum shall be sufficient persons present in person or proxy representing not less than fifteen *per centum* (15%) of all units then in issue, and no business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

49.2 If within an hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned to a day not less than fifteen (15) days thereafter, at a time and place appointed by the chairperson of the meeting and at such adjourned meeting the unit holders present in person or by proxy shall be a quorum.

49.3 Notice of any adjourned meeting shall be given in the same manner as for the original meeting and the notice shall state that the unit holders present at the adjourned meeting, whatever their number and the number of units held by them, will be a quorum.

49.4 The managers shall not be counted in the quorum of any meeting.

50. Procedure at meetings

50.1 The Board shall nominate in writing a person, who need not be a unit holder, to preside at any meeting, and if no person is nominated or if at any meeting the nominated chairperson is not present within 15 minutes after the appointed time, the unit holders present shall choose one of their number to be the chairperson.

50.2 The chairperson may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

50.3 At any meeting all resolutions put to the vote of the meeting shall be decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by the chairperson, or by one or more unit holders present in person or by proxy and holding or representing one-hundredth of the number of issued units.

50.4 Unless a poll is demanded, a declaration by the chairperson that a resolution has been carried or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

50.5 If a poll is demanded, it shall be taken in the manner directed by the chairperson and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

50.6 A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken at the time and place directed by the chairperson.

50.7 The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll was demanded.

50.8 On a poll votes may be given either personally or by proxy.

50.9 On a show of hands every unit holder who, being an individual, is present in person or by proxy, shall have one vote, and on a poll every unit holder who is present in person or by proxy shall have one vote for every unit held by him or her.

50.10 In the case of joint unit holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of unit holders.

50.11 The managers shall not be entitled to vote at any meeting.

50.12 The managers shall ensure that proper minutes of all resolutions and proceedings at every meeting are properly made and kept. Such minutes and records shall be kept at the office of the managers and shall be open to inspection by unit holders during normal business hours.

51. Proxies

51.1 The instrument appointing a proxy shall be in writing and signed by the appointer or his or her agent, duly authorised in writing.

51.2 The instrument of proxy shall be in the form approved by the Board.

51.3 The instrument of proxy and the power of attorney or other authority under which it is signed, or a notarially authenticated copy of such power of attorney, shall be deposited at such place as the Board, or the managers with the approval of the Board, may specify in the notice convening the meeting or, if no place is appointed, then at the registered office of the managers not less than 48 hours before the time appointed for holding the meeting or adjourned meeting, or, in the case of a poll, before the time appointed for the taking of the poll and in default the instrument of proxy shall be deemed invalid.

51.4 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or authority under which the proxy was executed or the transfer of units in respect of which the proxy is given, provided that no transfer has been registered by the Board before the commencement of the meeting or adjourned meeting at which the proxy is used.

52. Power of Meeting

52.1 A meeting of unit holders duly convened and held in accordance with this Part shall be competent by extraordinary resolution to:

52.1.1 sanction any amendment, alteration or addition to the provisions of this Schedule which have been agreed by the Board and the managers as provided in Part 14;

52.1.2 require the resignation of the managers;

but shall not have any further powers.

52.2 For the purpose of this paragraph, an extraordinary resolution means a resolution passed by a majority consisting of not less than seventy-five *per centum* (75%) of the total number of votes cast for and against the resolution.

PART 12

VOTING RIGHTS

53. Voting rights on deposited property

53.1 Except as otherwise expressly provided, all rights of voting conferred by any of the deposited property shall be exercised in such manner as the managers may in writing direct, and the managers may refrain at their own discretion from the exercise of any voting rights and no unit holder shall have any right to interfere or complain.

53.2 The Board shall upon written request by the managers, and at its expense, from time to time execute and deliver or cause to be executed or delivered to the managers or their nominees sufficient powers of attorney or

proxies, in such name or names as the managers may request, authorising such attorneys and proxies to vote, consent or otherwise act in respect of all or any part of the deposited property.

53.3 The managers shall be entitled to exercise such rights in what they may consider to be the best interests of the unit holders, but neither the managers nor the Board shall be under any liability or responsibility in respect of the management of the investment in question or in respect of any vote, action or consent given or taken or not given or taken by the managers whether in person or by proxy or power of attorney, nor shall they incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted to be done by the Board or managers or by the holder of such proxy or power of attorney under this Schedule.

53.4 The phrase “rights of voting” or the word “vote” used in this paragraph shall be deemed to include not only a vote at a meeting but any consent to or approval of any arrangement, scheme or resolution or any alteration in or abandonment of any rights attaching to any part of the deposited property and the right to requisition or join in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement.

PART 13

ADVERTISING

54. Advertisements

No advertisement, circular or other document of that nature containing any statement with reference to the issue price of units or the yield therefrom or containing any invitation to buy units shall be issued by or on behalf of the managers until the Board has approved the terms of the document.

PART 14

AMENDMENT OF SECOND SCHEDULE

55. Amendment

Unless the Board certifies in writing that in its opinion such amendment is required only to enable the provisions of this Schedule to be more conveniently or economically managed or otherwise to benefit the unit holders, and that it does not prejudice the interests of the unit holders or any of them and does not alter the fundamental provisions or objects of the Unit Trust Account or operate to release the Board or the managers from any responsibility to unit holders, no such amendment shall be made without the sanction of an extraordinary resolution of a meeting of the unit holders duly convened and held in accordance with Part 11.

PART 15

NOTICES

56. Service of notice

The following provisions shall apply to the serving of notices—

- 56.1 Any notice required to be served upon a unit holder shall be deemed to have been duly given if sent by post to, or left at his or her address as appearing in the register. Any notice served by post shall be deemed to have been served on the fifth day following that on which the letter is posted, and in proving such service it shall be sufficient to prove that the letter was properly addressed, stamped and posted.
- 56.2 Service of a notice or document on any one of several joint unit holders shall be deemed effective service on the other joint unit holders.
- 56.3 Any notice or document sent by post to, or left at, the registered address of a unit holder shall notwithstanding that such unit holder is dead or insolvent and whether or not the Board or the managers have notice of his or her death or insolvency be deemed to have been duly served and such service shall be deemed a sufficient service on all persons interested (whether jointly with, or as claiming through or under him or her) in the unit concerned.

THIRD SCHEDULE (Section 15(3))

PROVISIONS APPLICABLE TO THE ADMINISTRATION OF THE FUND

1. Application of Fund

Moneys in the Fund shall be applied to the purposes referred to in section 12 and to the cost of administering the Fund.

2. Financial year of Fund

The financial year of the Fund shall be the period of twelve months ending on the 31st December each year.

3. Financial management of Fund

(1) All monies received on behalf of the Fund shall be paid into a banking account and no money shall be withdrawn therefrom except by means of cheques signed by such persons as are authorised by the Board.

(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Board may determine.

4. Books of account and audit of Fund

(1) The Board shall ensure that—

- (a) proper accounts and other records relating thereto are kept in relation to all the financial transactions of the Fund; and
- (b) in respect of each financial year—
 - (i) a balance-sheet; and
 - (ii) a statement of the transactions referred to in paragraph (a);are prepared without undue delay.

(2) The accounts of the Fund shall be audited by the Auditor-General, who shall have all the powers conferred upon him or her by section 9 of Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) as though the assets of the Fund were public moneys or State property and persons employed by the Board were employees of the State.

FOURTH SCHEDULE (Section 16)

[Schedule repealed by Act 1 of 2018]