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(November 1, 2008 - June 2, 2013) This version applies from November 1, 2008, i.e. from the date of the Financial Services Act's inception on November 22, 2008 to June 2, 2013, the day before the Financial Markets Act began. COLLECTIVE INVESTMENT SCHEMES CONTROL ACT 45 OF 2002 (newspaper No. 24182 of December 13, 2002. Start date: March 3, 2003, Proc. No.R.18, Gazette No.25007 (English text signed by the President.) (As of December 9, 2002.) In accordance with the amendments (The Income Act 35 of 2007 - newspaper No. 30656 of January 9, 2008. Start date: July 1, 2008, Gazette No. 30656) (Act on amending the Taxation Act 3 of 2008 - newspaper No. 31267 of July 22, 2008. Start date: July 1, 2008, Gazette No. 31267) (Financial Services Laws General Amendments to Act 22 of 22 of 2008 - newspaper No. 314171 September 30, 2008. Start date: November 1, 2008. Notice No.1170, Gazette No.31561) ACT Regulation and Control of collective investment schemes; Amending or repealing some laws; and to provide random questions. BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: ARRANGEMENT OF SECTIONS PART I COLLECTIVE INVESTMENT SCHEMES Principles of Administration of the Collective Investment Scheme Disclosure of Information Duties Manager Requirement for The Administration of Collective Investment Schemes Prohibition of misleading names and acts Registrar and Deputy Registrar of Collective Investment Schemes Collective Investment Schemes Advisory Committee Appointment Committee Relating to the authority of the Registrar's Authority of the Registrar after the investigation cancellation or suspension of the registration of the Registrar's manager may object to certain documents The Power of the Registrar to impose fines the authority of the registrar to request an audit of the Attendance of the Meetings of the Association and the provision of certain documents to the registrar of the Declaration of certain practice as irregular or undesirable exceptions Annual Report registrar Appeals Part III ASSOCIATION OF INVESTMENT SCHEME by implying a link with the Association Delegation functions executive committee Suspension of the Administration of the Collective Investment Scheme Rules association of the Court authorities to declare a member voluntary dissolution of the Association Of Winding-Up Association by court court Association Appointment of a Judicial Manager or Liquidator Report Association Registrar PART IV COLLECTIVE INVESTMENT SCHEMES IN SECURITIES Definition of Securities or Securities Classes Restrictions on the Administration of Collective Investment Scheme in Securities Registration Registration Of the Scheme of Collective Investment in Securities Changing the Name of the Manager, Portfolio or Collective Investment Scheme in Securities and The Change of Equity Or Directors and Directors in the portfolio of PART V COLLECTIVE INVESTMENT SCHEMES IN PROPERTY Definitions of Restrictions on the Administration of the Foreign Country's Collective Real Estate Investment Scheme, in which the collective real estate investment scheme can invest listing interest participation by exchanging certain provisions of Part IV apply against the manager of the collective property investment scheme PART VI COLLECTIVE INVESTMENT SCHEMES IN THE FREE participation of bond-holding restrictions on the business of the collective investment scheme in the participation of the bond manager Participation interests rank in preferences simultaneously Restrictions on the rights of the nominal company collateral security in respect of the participation of bonds PART VII DECLARED COLLECTIVE INVESTMENT SCHEMES Determining the declaration of a particular type of business as a collective investment scheme for the purposes of the Act Some provisions applicable to the declared collective investment scheme PART VIII FOREIGN COLLECTIVE INVESTMENT SCHEMES Restrictions on the scheme of foreign collective investment for doing business in the Republic Of Mutual Withdrawal of approval of the foreign collective investment scheme PART IX Custodian Of The Proxy and Registration of the Trustee or Custodian of the Duty of the Trustee or Custodian Of Asset Status Responsibility of the Trustee or Custodian in connection with the loss of assets PART X AUDITOR The purpose of the Auditor's duty to disclose the infringement or undesirable practices of PART XI CONVERSION OF COLLECTIVE INVESTMENT SCHEME Definition of the Conversion Scheme of Collective Investment Application for approval by the Registrar Consideration of the Application Of the Investor's Application Registration Memorandum and Articles of the Association Registrar of Companies Certificate of Registration who were investors in the former collective investment scheme PART XII Restrictions on assets that can be included or lent by the portfolio of the collective investment scheme Business Capacity Manager Definition capital requirement, which manager must maintain the Capital Requirement Obligation and the inability or inability to comply with financial statements and other information that will be provided by the Manager of Exercise Voting Power Manager Unauthorized winnings received from the acquisition of assets Allowable deductions from the portfolio Price calculation and limitation of the amount of rounding interest only by paying the full purchase price and limiting the lending or borrowing of money Power Manager borrow money to overcome the shortfall of liquid assets portfolio Issues that should be provided in the case void of the case and amendments to the case Of Uniting Business collective investment schemes or portfolios and cessation, transfer or take over the rights of investors Content Price List, advertising, brochure and similar document Of the Head Office and Public Servant in the Republic of Rolling Portfolio Collective Investment Schemes to deal with the trust property, Trustee or Custodian of the Separation of Funds of Investors and Other Persons False or Misleading Statements Deceptively inducing a person to purchase or transaction in the interest of participation Evidently Responsible for the Loss of Certain Written Matters to bear the names of certain persons Applying the Companies Act to the Manager Delegation of Functions Exemption from Act 57 1989 Ministerial Regulation and notify the Registrar of Offences fines to repeal or amend the laws and save the Short Name of SCHEDULE 1 MATTERS THAT MUST BE FOR THE DEED COLLECTIVE INVESTMENT SCHEME IN SECURITIES (SECTION 97)SCHEDULE 2 MATTERS THAT MUST BE PROVIDED IN THE CASE OF THE COLLECTIVE INVESTMENT SCHEME IN PROPERTY (SECTION 97)SCHEDULE 3 LAWS ARE REPEALED OR AMENDED BY THIS ACT (SECTION 117) SCHEDULE 4 QUESTIONS TO BE PROVIDED FOR IN THE RULES OF ASSOCIATION (SECTION 32) PART I COLLECTIVE INVESTMENT SCHEMES IN THIS ACT unless the context indicates otherwise - the administration means any function performed in connection with the collective investment scheme, including - (a) management or control over the collective investment scheme; Receiving, paying or investing cash or other assets, including income accrual, for the collective investment system; (c) The sale, buy-off, issuance or cancellation of participation in the collective investment scheme and the provision of advice or disclosure on any of these matters to investors or potential investors; and (d) buying and selling assets or transferring them to a guardian or guardian for safe detention advisory committee means Collective Collective The Advisory Committee schemes mentioned in section 8; Assets mean investments that include or make up the portfolio of a collective investment scheme and include any accrual of income received or derived from portfolio investments that are held or must be received by investors in that portfolio; Association means association licensed under section 26; the auditor is a person registered under the Public Accountants and Auditors Act 1991 (Act 80 1991) and appointed by the Manager under section 73; An authorized agent means a person authorized by a manager to request investments in a portfolio from members of the public or to perform the functions provided in the definition of the administration; The Board refers to the Financial Services Council, established under section 2 of the Financial Services Council Act 1990 (Act 97 1990); a close corporation means a close corporation registered under the Close Corporations Act 1984 (Act 69 of 1984); A collective investment scheme means a scheme, in any form, including an open investment company, in which members of the public are encouraged or allowed to invest money or other assets in a portfolio, and from the point of view of which - a) two or more investors contribute money or other assets and have a stake in the portfolio scheme through shares, units or any other form of interest participation; and (b) Investors share the risk and benefit of investments in proportion to their participation in the scheme portfolio or on any other basis determined in the case, but not in the collective investment scheme permitted by any other Act; The company means a company registered or registered under the Companies Act 1973 (Act 61 of 1973); the court means any separation of the High Court of South Africa, under jurisdiction; the custodian means the custodian appointed under article 68; the case refers to an agreement between the manager and the trustee or custodian, or a registration document, which establishes a collective investment scheme and from the point of view of which it is managed, and includes the case of the management company, which just before the act of the Act was the management company in terms of any law abolished by the Act; exchange refers to an exchange licensed under the Stock Exchange Control Act 1985 (Act 1 of 1985), the Financial Markets Control Act 1989 (Act 55 of 1989) or an exchange outside the Republic referred to in section 45; exchange securities mean securities that are listed and authorized to be listed on the exchange, and the prices for which are listed in the list issued for Such a stock exchange; accruing income means any dividend or interest or any other income for distribution received by the trustee, custodian or manager on behalf of the In the portfolio during any period of income distribution or transfer from any previous period of income distribution or in relation to such investors in relation to dividends or interest or any other declarations of income made but not yet distributed; Investor means holder of portfolio participation in the Republic; The manager means a person authorized under the Act to manage the collective investment scheme; members of the public include - (a) representatives of any part of the public, regardless of whether the clients, members, shareholders, employees or former employees of the person is invited to participate in the portfolio; and (b) a financial institution governed by any law but excluding persons limited to a limited number of persons of common interest who are invited in circumstances that may be appropriately considered as an internal or private enterprise between those persons and the person issuing an invitation; The Minister means Minister of Finance; an open investment company means a company with authorized equity, which is structured in such a way that it provides for the issuance of different classes of shares to investors, each class of shares, which is a separate portfolio with a separate investment policy; Interest participation means any interest, undivided share or share, regardless of whether the participation is an interest, unit or any other name, and whether the value of such interest, unit, undivided share or share remains constant or changes from time to time, which can be purchased by the investor in the portfolio; a portfolio refers to a group of assets, including any amount of cash in which members of the public are invited or allowed by the manager to purchase, under the collective investment scheme, the interest of participation or participation of a particular class, which as a result of its specific characteristics differs from another class of interest; prescribed means prescribed by the regulation; Registrar means registrar or deputy registrar of collective investment schemes mentioned in section 7; regulation means a provision enacted under the Act; The rule refers to the rule referred to in section 32. Sell or buy back includes exchange; extortion means any action to encourage investment by members of the public in a collective investment scheme; this law includes regulation, notification, rule and any other measure that has the force of law made under the Act; a trustee means a trustee appointed under rule 68; Principles of management of the collective investment scheme (1) The Manager must implement a collective investment scheme honestly and skill, care and prudence and in the interests of investors and the collective investment industry. (2) Investor assets must be protected by the principle of segregation and identification. Disclosure of information before entering into a transaction with the investor - (a) information about the investment objectives of the collective investment scheme, calculation of the value of assets and transaction prices, fees, risk factors and distribution of income accruals should be disclosed to the investor; and (b) The information necessary for the investor to make an informed decision should be provided to the investor in a timely and understandable manner. (1) The manager should avoid conflict between the interests of the manager and the interests of the investor. (2) The Manager must disclose to investors the interests of his directors and management. (3) The Manager must maintain sufficient financial resources to meet his obligations and manage the risks to which his collective investment system is subjected. (4) The Manager must - a) responsibly organize and supervise the collective investment scheme; Maintain proper records; (c) Hire and properly supervise properly trained staff. Have well-defined compliance procedures. (e) Maintain an open and cooperative relationship with the registrar's office and immediately inform the office of everything that might reasonably be expected to be disclosed to such an office; and (f) to encourage investor education, either directly or through the association's initiatives. Requirement to manage collective investment schemes No person may take any action or enter into any agreements or transactions to administer a collective investment scheme if such a person - (a) is not registered by the registrar as a managing or authorized agent; or (b) exempted from the provisions of this Act by notifying the newspaper. Prohibition of misleading names and acts (1) subject to subsection (2), no person may, except in cases where registered as a manager under the Act, or with the specific permission of the registrar before filing and ordering the person's application to register as a manager under the Act, or prior to the change of the name of his or her business, to include in or have as part of the name of his business or in any description of his business investment, open investment company, participation interest, portfolio, unit, mutual fund or mutual fund or any derivative of them, and no person who is not registered as a manager or trustee under this law or is not an authorized agent may perform any action designed for the participation of the public to believe that any business that is being carried out by such a person is or is associated with the administration of a collective investment scheme. (2) Registrar a person who is required to change (1) allows such a person to change under conditions and for a period not exceeding 6 months determined by the registrar. (3) A person who contradicts subsection (1) is guilty of a crime. The Registrar and Deputy Registrar of Collective Investment Schemes Executive Director and Deputy Executive Director, referred to in Section 1 of the Financial Services Council Act 1990 (Law 97 of 1990), are the registrar and deputy registrar of collective investment schemes, respectively. The Group's Advisory Committee on Collective Investment Schemes (1) the Advisory Committee on The Group's Trusts, established under section 28 of the Group Trust Control Act 1981 (Act 54 1981), continues to exist despite the repeal of the Act by Article 117. 2) From the outset of this Act, the Advisory Committee on The Group's Trusts, referred to in subsection (1), is known as the Advisory Committee on Collective Investment Schemes (in this Act referred to by the Advisory Committee of the Advisory Committee on The Group's Trusts in any law should, if this is clearly inappropriate, be interpreted as a reference to the Advisory Committee on Collective Investment Schemes. (3) Members of the Advisory Committee on The Group's Trusts who were in office as such just before the Act began, remain in office until the end of their term or until their membership is terminated under the Act. (2) The Minister must appoint as members of the advisory committee - (a) one person who knows about collective investment schemes in securities; (b) One person who knows about collective real estate investment schemes; (c) One person who knows about collective investment schemes in participation bonds; (d) One person, aware of other collective investment schemes; and (e) one person representing the interests of investors. (3) A member of the advisory committee has been in office for three years and is entitled to reassignment at the end of his term of office, provided that, if the term of the member's reappointment or appointment of a new member expires, the former member must remain in office until the appointment. (4) The Minister may terminate the membership of a member of the advisory committee for other reasons after he has given the member sufficient opportunity to show why his membership should not be terminated. The advisory committee (1) Advisory Committee may, on its own initiative, and must investigate and report or advise on any policy, administrative, technical or oversight of collective investment at the request of the Minister or registrar. (2) The Advisory Committee should advise the Minister or registrar on any matter referred to him by the Minister or registrar. (3) The Registrar may submit to the advisory committee any information to which he is involved, which is relevant to any matter under investigation or considered by the advisory committee. (4) The Commissions Act 1947 (Act 8 of 1947) applies to any investigation of the advisory committee and witnesses and their evidence, as if the advisory committee were the commission to which the law was applied and the chairman of the advisory committee was the secretary of such a commission. (5) The Advisory Committee may call on anyone to assist or investigate collective investment schemes. (6) Officials or staff in the registrar's office appointed by the registrar must perform administrative work that is random with the functions of the advisory committee and its subcommittees. The advisory committee (1) of the Advisory Committee is to determine the date and place of its meetings. (2) The President may, at any time, convene an extraordinary meeting of the advisory committee, which will be held at the time and place determined by him or her. (3) The Advisory Committee sets its own procedure for holding its meetings. (4) The majority of its members are the ovrum for the advisory committee meeting. (5) The decision of the majority of the advisory committee members present at any of them was the decision of the advisory committee, and in the event of equal votes, the President had the right to vote in addition to his deliberative voice. Subcommittees of the Advisory Committee (1) The Advisory Committee may appoint one or more subcommittees that may serve as an advisory committee, as the advisory committee can determine. (2) The subcommittee consists of as many members of the advisory committee or as many others as the advisory committee deems necessary, and the advisory committee may dissolve or reinstate the subcommittee at any time. (3) The Advisory Committee must appoint a member of the subcommittee as chairman, and if the chairman is absent from the subcommittee meeting, the members present must elect the person presiding over the meeting. (4) The Advisory Committee may produce rules on how sub-committee meetings should be held, procedures for holding such meetings, functions and quorums for such meetings, and how the minutes of such meetings should be kept. Remuneration and expenses of members of the advisory committee (1) Member of the advisory committee, who does not work full-time in the state or council, must be paid such remuneration and allowances any costs incurred in the performance of the advisory advisory how this can be determined by the Council. (2) The costs associated with the functions of the advisory committee must be paid from the Funds of the Council, whose approval must be obtained for all costs that are proposed to be incurred or in fact incurred by the advisory committee. PART II FUNCTIONS OF REGISTRAR Special provision relating to the authority of the registrar (1) Registrar may investigate the activities of a person registered or authorized under the Act or not who is involved in the management of a collective investment scheme or attracting investment in a collective investment scheme. (2) For the purposes of the investigation from the point of view of subsection (1) the registrar may in writing direct such person to - a) provide him with any information, document or record of such business; (b) To appear before him at a certain time and place if the registrar has reason to believe that such a person is contrary to or not complying with the Act. (3) In addition to the powers and responsibilities vested in or imposed on him by the Act, the registrar has all the powers and responsibilities vested in him or her under the Financial Institutions Verification Act 1998 (Act 80 of 1998). 4) The reference in this Act to a directive, investigation or inspection carried out under this section is interpreted as a reference to a directive, investigation or inspection under the Financial Institutions Inspection Act 1998. The authority of the registrar after the investigation (1) If the registrar, after conducting an investigation or verification under article 14, considers that the interests of investors of the collective investment scheme or members of the public, as required, he or she can - a) go to court under section 346 of the Companies Act 1973 (Law 61 of 1973) to wind down a manager or a collective investment scheme, as if he or she were a creditor. (b) To go to court under section 427 (2) of the Companies Act 1973 in connection with a court order against the manager or the collective investment scheme, as if he or she were their creditor. (c) To apply to the court under section 5 of the Financial Institutions (Protection of Funds) Act 2001 (Law 28 of 2001), to appoint a curator for the activities of the manager or for the business portfolio; (d) Require the manager to appoint, in accordance with the instructions of the registrar, a competent person appointed by the registrar in place of the custodian or guardian; (e) Require the Manager to take action in accordance with the registrar's instructions and the provisions of section 102 in connection with the winding down of the portfolio of his collective investment scheme, as well as for the sale of assets and the distribution of net from them together Any accrual of income or other cash available for distribution to investors in proportion to their respective participation interests; (f) To sue the supervisor or the trustee or custodian for any action or to refrain from taking any action in order to stop or eliminate any violations or undesirable practices or conditions disclosed during the investigation or inspection; provided that the registrar cannot issue an order under section 6D (2) (b) of the Financial Institutions (Protection) Act (2001 (Act 28 of 2001). (g) To instruct the manager to withdraw from the management of the collective investment scheme, after which the trustee or guardian must, in accordance with the registrar's instructions, but under the Act to arrange for another management of the collective investment scheme; or (h) if a person manages a collective investment scheme in violation of this Act, apply to the court to liquidate the collective investment scheme, in which case the court may issue any ruling it deems appropriate to wind down the collective investment system. (Section 15 (1) with amendments to Section 63 of Act 22 of 2008) (2) The Registrar may oppose any application under the Companies Act 1973 (Act 61 1973), with respect to - (a) the winding down of the manager; (b) A court order against the manager; or (c) the winding down of the collective investment system's portfolio under section 102. (3) Any person who intends to submit an application provided in subsection (2) must give a notice of such a statement to the registrar in time. 4) A person who refuses or fails to comply with the request or instructions mentioned in paragraphs (e), (e) or (g) subsection (1), guilty of a crime and conviction, shall be fined or imprisoned for a maximum of one year or a fine and such imprisonment. Cancellation or suspension of the registration of the manager (1) The Registrar may, subject to subsection (2), revoke the registration of the manager under the Act if - (a) he or she is satisfied that the manager has violated or failed to comply with any provision of this law, or any referral or requirement given or imposed under the Act, and that such a breach or failure has resulted or may cause serious harm to the public interest or investors; (b) At the conclusion of an investigation or inspection under article 14, he or she is



