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**Tel: [263] [4] 794478 Fax & Messages [263] [4] 793592  
E-mail: veritas@mango.zw**

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Act 14 of 2007

Gazetted: Friday 7th March 2008

Commencement: date to be fixed in terms of section 1(2)

**INDIGENISATION AND ECONOMIC EMPOWERMENT ACT, 2007**

*Act 14/2007*

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# 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.

ENACTED by the President and the Parliament of Zimbabwe.

## PART I

### PRELIMINARY

#### **1 Short title and date of commencement**

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

(2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

#### **2 Interpretation**

(1) In this Act—

"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;

“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 Minister of State for Indigenisation and Empowerment or any other Minister to whom the President may, from time to time, assign the administration of this Act;

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

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

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

## PART II

### INDIGENISATION AND ECONOMIC EMPOWERMENT: GENERAL OBJECTIVES AND MEASURES

#### **3 Objectives and measures in pursuance of indigenisation and economic empowerment**

(1) The Government shall, through this Act or regulations or other measures under this Act or any other law, endeavour to secure that—

(a) at least fifty-one *per centum* of the shares of every public company and any other business shall be owned by indigenous Zimbabweans;

(b) no—

(i) merger or restructuring of the shareholding of two or more related or associated businesses; or

(ii) acquisition by a person of a controlling interest in a business;

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

(iii) fifty-one *per centum* (or such lesser share as may be temporarily prescribed for the purposes of subsection (5)) in the merged or restructured business is held by indigenous Zimbabweans; and

(iv) the indigenous Zimbabweans referred to in subparagraph (iii) are equitably represented in the governing body of the merged or restructured entity;

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

(i) fifty-one *per centum* (or such lesser share as may be temporarily prescribed for the purposes of subsection (5)) in any such resulting business is held by indigenous Zimbabweans; and

(ii) the indigenous Zimbabweans referred to in subparagraph (i) are equitably represented in the governing body of any such resulting business;

(d) no relinquishment by a person of a controlling interest in a business, if the value of the controlling interest is at or above a prescribed threshold, shall be approved unless the controlling interest (or such lesser share thereof as may be temporarily prescribed for the purposes of subsection (5)) is relinquished to indigenous Zimbabweans; and

(e) 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 a controlling interest in the investment (or such lesser share thereof as may be temporarily prescribed for the purposes of subsection (5)) is reserved for indigenous Zimbabweans;

(f) all Government departments, statutory bodies and local authorities and all companies shall procure at least fifty *per centum* of their goods and services required to be procured in terms of the Procurement Act [*Chapter 22:15*] from businesses in which a controlling interest is held by indigenous Zimbabweans;

(g) where goods and services are procured in terms of the Procurement Act [*Chapter 22:14*] from businesses in which a controlling interest is not held by indigenous

Zimbabweans, any subcontracting required to be done by the supplier shall be done to the prescribed extent in favour of businesses in which a controlling interest is held by indigenous Zimbabweans.

(2) For the purposes of subsection (1)(d), the relinquishment of a controlling interest in a business—

- (a) does not include the donation or disposal otherwise than for value of a business to—
  - (i) a member of the family of the person relinquishing it; or
  - (ii) any other partner or shareholder of the business, in the case of a business that is a private company or partnership;
- (b) includes the disposal by the liquidator of a company or other body corporate or the trustee of an insolvent estate of an insolvent estate of a business or of a subsidiary, unit or division of a business that is capable of being operated as a separate business.

(3) The objectives or measures specified in subsection (1) may be implemented by the Government specifically on behalf of any one or more of the following groups of indigenous Zimbabweans—

- (a) women; and
- (b) young persons under a prescribed age; and
- (c) disabled persons as defined in the Disabled Persons Act [*Chapter 17:01*].

(4) The Minister may, by notice in a statutory instrument, prescribe anything that may be prescribed under subsection (1) or (3):

Provided that the Minister shall not prescribe anything for the purposes of—

- (a) subsection (1)(b), except after consultation with the Minister for the time being responsible for the Competition Act [*Chapter 14:28*];
- (b) subsection (1)(e), except after consultation with the Minister for the time being responsible for the Zimbabwe Investment Authority Act [*Chapter 14:30*];
- (c) subsection (1)(f) and (g), except after consultation with the Minister for the time being responsible for the Procurement Act [*Chapter 22:14*].

(5) The Minister may prescribe that a lesser share than fifty-one *per centum* or a lesser interest than a controlling interest may be acquired by indigenous Zimbabweans in any business referred to in subsections (1)(b)(iii), (1)(c)(i), (1)(d) and (e) in order to achieve compliance with those provisions, but in so doing he or she shall prescribe the general maximum timeframe within which the fifty-one *per centum* share or the controlling interest shall be attained.

(6) In order to ensure that the Government's policies and objectives of indigenisation and economic empowerment are implemented, the Minister shall carry out an indigenisation and empowerment assessment rating of every company, which rating shall be done in the prescribed manner.

#### **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), 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 in 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 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 Enforcement of notification and approval requirements**

(1) In this section—

“licensing authority” means—

- (a) in respect of public service vehicles, the Commissioner of Road Transport referred to in section 3 of the Road Motor Transportation Act [*Chapter 24:19*] (Act No. 1 of 1997) or any Assistant Commissioner of Road Transport;
- (b) in respect of any financial institution, that is, any body or association licensed or registered under any law relating to asset managers, banks, building societies, unit trust schemes, insurers or pension funds, the licensing or registering authority appointed under that law;
- (c) in respect of the trades and businesses required to be licensed in terms of the Shop Licences Act [*Chapter 14:17*], the licensing authority as defined in that Act;

- (d) in respect of the persons who own, conduct or operate designated tourist facilities as defined in the Tourism Act [*Chapter 14:20*] or who provide or assist in providing any services which are such designated tourist facilities, the licensing authority as defined in that Act;
- (e) any other statutory person, body or authority charged with licensing any business or activity;

“non-compliant business” means a business referred to in section 3(1)(b), (c), (d) or (e) in respect of which it is alleged that any transaction was concluded without either or both of the parties to the transaction timeously notifying the Minister in accordance with section 4(1)(a).

(2) Subject to this section and section 20, the Minister may, issue a written order to the licensing authority of any non-compliant business ordering that the licensing authority concerned decline to renew the licence, registration or other authority to operate of the business concerned, or, where the licence, registration or other authority concerned is granted for an indefinite term, ordering that the licence, registration or other authority concerned be terminated no later than six months from the date when the Minister issued the order to the licensing authority concerned.

(3) Before taking any action in terms of subsection (2), the Minister shall notify the non-compliant business in writing of his or her intention to issue an order in terms of subsection (2), and the reasons for doing so, and shall in such notice—

- (a) call upon the non-compliant business to show just cause, within such reasonable period as may be specified in the notice, why such order should not be issued; and
- (b) if no just cause exists or can be shown as provided in paragraph (a)—
  - (i) require the non-compliant business to do, or not to do, such things as are specified in the notice for the purpose of rectifying or avoiding any contravention of section 4(1)(a); and
  - (ii) stipulate the period within which any requirement referred to in subparagraph (i) shall be commenced and completed.

(4) If, at the expiry of any period specified in the notice given in terms of subsection (3), and after considering any representations made by the non-compliant business, the Minister is satisfied that he or she must issue an order in terms of subsection (2), the Minister shall notify the non-compliant business in writing accordingly and publish the notice in such manner as the Minister considers appropriate to draw the attention of other persons affected or likely to be affected by it.

(5) If, within thirty days after the Minister has written to the parties in terms of section 3(3) (or such longer period as the Minister may, for good cause, allow), the parties have not complied with any thing the Minister has required them to do under that provision, the Minister may, without further notice to the parties concerned, issue a written order to the licensing authority of the business in question, to decline to renew the licence, registration or other authority in question to operate the business concerned or where the licence, registration or other authority is for an indefinite term, ordering that the licence, registration or other authority concerned be terminated no later than six months from the date when the Minister issued the order.



(6) An order issued by the Minister to a licensing authority in terms of subsection (2) or (5) shall have effect notwithstanding anything to the contrary contained in any law under which the licensing authority operates.

## **6 Referral to Minister of proposed notifiable transactions in respect of which no counterparties have yet been identified**

(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), any person wishing to identify an indigenous Zimbabwean or Zimbabweans to acquire a controlling interest in his or her business, whether—

- (a) directly through the relinquishment of his or her business; or
- (b) as the result of the proposed merger or restructuring of the shareholding of two or more related or associated businesses, or the unbundling of a business or demerger of two or more businesses;

may give notice thereof to the Minister within the prescribed time and in the prescribed manner, requesting the assistance of the Minister to identify the indigenous Zimbabwean or Zimbabweans concerned.

(2) Upon receipt of a notice in terms of subsection (1), the Minister shall endeavour within a reasonable time to identify a suitable indigenous Zimbabwean or Zimbabweans to acquire a controlling interest in the business concerned.

### PART III

#### ESTABLISHMENT AND FUNCTIONS OF THE NATIONAL INDIGENISATION AND ECONOMIC EMPOWERMENT BOARD

## **7 Establishment and appointment of the National Indigenisation and Economic Empowerment Board**

(1) There shall be a Board to be known as the National Indigenisation and Economic Empowerment Board, consisting of the chief executive officer *ex officio* and not less than eleven and not more than fifteen members appointed by the Minister after consultation with the President, of whom—

- (a) one member shall be the Secretary of the Ministry for which the Minister is responsible; and
- (b) at least one member shall represent any organisation which the Minister considers to be representative of women or women's organisations; and
- (c) at least one member shall represent any organisation which the Minister considers to be representative of youths or youths organisations; and
- (d) at least one member shall represent any organisation which the Minister considers to be representative of disabled persons or disabled persons' organisations; and
- (e) at least one member shall be a legal practitioner registered as such in terms of the Legal Practitioners Act [Chapter 27:07]; and
- (f) at least two members shall be persons whom the Minister considers to be knowledgeable or experienced in issues of indigenisation and economic empowerment;

- (g) three shall be nominated by the heads of Ministries that the Minister considers to be the most important Ministries for the purposes of advancing indigenisation and economic empowerment.

(2) The Minister shall designate one member to be the chairperson of the Board and another to be the vice-chairperson, and the vice-chairperson shall exercise the functions and powers and perform the duties of the chairperson during any period that the chairperson is unable to act.

(3) The First Schedule applies to the qualifications of members of the Board, their terms and conditions of office, vacation of office, suspension and dismissal, and the procedure to be followed by the Board at its meetings.

## **8 Functions of Board**

The functions of the Board shall be—

- (a) to advise the Minister on the Government's indigenisation and economic empowerment strategies; and
- (b) to advise the Minister on appropriate measures for the implementation of the objectives of this Act; and
- (c) to administer the Fund in terms of section 15; and
- (d) to oversee compliance with the Charter; and
- (e) to perform such other functions as may be imposed or conferred upon the Board under this Act or any other enactment.

## **9 Chief executive officer and staff of Board**

(1) The Board shall appoint, on such terms and conditions as it may fix, a person to be the chief executive officer of the Board and such members of staff as will enable the Board to carry out its functions in terms of this Act:

Provided that the Minister, with the approval of the Public Service Commission, may assign persons employed in his or her Ministry to act as the chief executive officer and staff of the Board.

(2) Without the authority of the Minister, no person shall be appointed by the Board as chief executive officer and no person shall be qualified to hold office as chief executive officer if he or she would be disqualified in terms of paragraph 1 of the First Schedule had that paragraph applied to him or her.

(3) The appointment of the chief executive officer shall terminate if he or she would be required in terms of paragraph 3 of the First Schedule to vacate his or her office had that paragraph applied to him or her:

Provided that his or her appointment shall not terminate on the ground that he or she has ceased to be a citizen of Zimbabwe or ordinarily resident in Zimbabwe, if the Minister has granted authority under subsection (2).

(4) The chief executive officer shall, subject to the Board's directions, supervise and manage the Board's staff, activities, funds and property and perform such other functions on behalf of the Board as the Board may assign to him or her.

(5) Any assignment of functions in terms of subsection (4)—

- (a) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board may determine;
- (b) may be revoked by the Board at any time;
- (c) shall not preclude the Board itself from exercising those functions.

## **10 Reports of Board**

(1) The Board—

- (a) shall, as soon as possible after the 31st December in each year, submit to the Minister an annual report upon matters the Board has dealt with during the previous year;
- (b) may at any time submit to the Minister a special report on any matter upon which the Board considers it desirable to report; and
- (c) shall submit to the Minister such other report as the Minister may require.

(2) The Minister shall lay before Parliament the annual report submitted to him or her in terms of subsection (1)(a).

## **11 Minister may give Board directions in national interest**

(1) The Minister may give to the Board such policy directions in writing relating to the exercise by it of its functions as appear to the Minister to be requisite in the national interest.

(2) The Board shall, with all due expedition, comply with any direction given to it in terms of subsection (1).

(3) Where the Board has been given a direction in terms of subsection (1), it shall ensure that the direction and any views it has expressed thereon are set out in its annual report submitted in terms of the Audit and Exchequer Act [*Chapter 22:03*] and section 10(1)(a).

## 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;

(c) to finance market research in connection with the objectives of the Act;

(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 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 Board through the chief executive officer acting on behalf of and in accordance with any instructions of the Board.

(2) With the approval of the Minister, the Board 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.

## **16 National Indigenisation and Economic Empowerment Charter**

It shall be a condition of any financial assistance provided through the Fund that the beneficiary shall comply to the best of his or her ability with the framework for ethical and good business conduct contained in the National Indigenisation and Economic Empowerment Charter set out in the Fourth Schedule.

## **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 Minister, 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.

(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) a decision by the Minister to disapprove a transaction in terms of section 4(2); or
- (b) an order issued by the Minister in terms of section 5(2), (4) or(5); or
- (c) his or her liability to pay any levy imposed under Part V;

he or she may, within thirty days after being notified of the decision or of the action being taken, appeal to the Administrative Court.

(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 after consultation with the Board, 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 20—

“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 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 7(3))**

### **PROVISIONS APPLICABLE TO BOARD AND COMMITTEES**

#### *Paragraph*

1. Disqualification for appointment as member.
2. Terms and conditions of office of members.
3. Vacation of office by appointed members of Board.
4. Suspension of members.
5. Filling of vacancies of Board.
6. Meetings and procedure of Board.
7. Committees of Board.
8. Minutes of proceedings of Board and committees.
9. Validity of decisions and acts of Board and committees.

#### *Disqualification for appointment as member*

- 1.(1) Subject to this Act, a person shall not be qualified for appointment as a member if—
  - (a) he or she not is a citizen of Zimbabwe ordinarily resident in Zimbabwe; or
  - (b) he or she has, in terms of a law in force in any country—

- (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
- (ii) made an assignment or composition with his or her creditors which has not been rescinded or set aside;

or

- (c) within the period of five years immediately preceding his or her proposed appointment, he or she has been sentenced in any country by a competent court to a term of imprisonment imposed without the option of a fine, whether or not any portion thereof has been suspended, and has not received a free pardon; or
- (d) he or she is a member of Parliament; or
- (e) he or she is absent without leave from three consecutive meetings of the Board.

(2) A person shall not be qualified for appointment as a member, nor shall he or she hold office as a member, if he or she is a member of two or more other statutory bodies.

(3) For the purposes of subparagraph (2)—

- (a) a person who is appointed to a board, commission or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;
- (b) “statutory body” means—
  - (i) any commission established by the Constitution; or
  - (ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, Vice-President, a Minister or any other statutory body or by a commission established by the Constitution.

#### *Terms and conditions of office of members*

2. (1) A member, other than one referred to in section 7(1)(a) or (g), shall hold office for such period, not exceeding three years, as the Minister may fix at the time of his or her appointment.

(2) On the expiry of the period for which a member has been appointed, he or she shall continue to hold office until he or she has been re-appointed or his or her successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for more than six months.

- (3) A person who ceases to be a member shall be eligible for re-appointment.
- (4) Members shall hold office on such conditions as the Minister may fix.

#### *Vacation of office by members*

3.(1) An member referred to in paragraph 2(1) shall vacate his or her office and his or her office shall become vacant—

- (a) one month after the date he or she gives notice in writing to the Minister of his or her intention to resign his or her office or after the expiry of such other period of notice as he or she and the Minister may agree; or



- (b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine—
  - (i) in Zimbabwe, in respect of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

or

- (c) if he or she becomes disqualified in terms of paragraph 1 to hold office as a member.

(2) The Minister may require a member referred to in paragraph 2(1) to vacate his or her office if the member—

- (a) has been guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
- (b) has failed to comply with any condition of his or her office fixed in terms of paragraph 2(4); or
- (c) is mentally or physically incapable of efficiently performing his or her duties as a member.

(3) The Minister, on the recommendation of the Board, may require a member referred in paragraph 2(1) to vacate his or her office if the Minister is satisfied that the member has been absent without the consent of the chairperson from three consecutive meetings of the Board, of which he or she has been given at least seven days' notice, and that there was no just cause for the member's absence.

#### *Suspension of members*

4. The Minister may suspend from office a member, other than one referred to in section 7(1)(a) or (g), against whom criminal proceedings are instituted for an offence involving dishonesty and, whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member.

#### *Filling of vacancies on Board*

5. On the death of, or the vacation of office by, a member other than one referred to in section 7(1)(a) or (g), his or her office shall be filled within three months in accordance with section 7.

#### *Meetings and procedure of Board*

6.(1) The Board shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet at least once every three months.

(2) The chairperson—

- (a) may convene a special meeting of the Board at any time; and
- (b) shall convene a special meeting of the Board on the written request of the Minister or not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

(a) such business as may be determined by the chairperson, where he or she convened the meeting in terms of subparagraph 2(a); or

(b) the business specified in the request for the meeting, where the chairperson convened the meeting in terms of subparagraph 2(b).

(5) The chairperson or, in his or her absence, the vice-chairperson, shall preside at all meetings of the Board:

Provided that, if the chairperson and vice-chairperson are both absent from any meeting of the Board, the members present may elect one of their number to preside at that meeting as chairperson.

(6) A majority of members shall form a quorum at any meeting of the Board.

(7) All acts, matters or things, authorised or required to be done by the Board may be decided by a majority vote at any meeting of the Board at which a quorum is present.

Provided that in the event of an equality of votes the chairperson or person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(8) With the Board's approval, the chairperson of the Board may invite any person to attend a meeting of the Board or a committee, where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Board or the committee, as the case may be, at that meeting.

(9) A person invited to attend a meeting of the Board or of a committee in terms of subparagraph (8) may take part in the proceedings of the Board or the committee as if he or she were a member thereof, but he or she shall not have a vote on any question before the Board or committee, as the case may be.

(10) Any proposal circulated among all members and agreed to in writing by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the members and shall be incorporated into the minutes of the next succeeding meeting of the Board:

Provided that if a member requires that such a proposal be placed before a meeting of the Board, this subparagraph shall not apply to the proposal.

#### *Committees of Board*

7.(1) For the better exercise of its functions the Board may establish one or more committees in which the Board may vest such of its functions as it considers appropriate:

Provided that the vesting of any function in a committee shall not divest the Board of that function, and the Board may amend or rescind any decision of the committee in the exercise of that function.

(2) On the establishment of a committee in terms of subparagraph (1), the Board—

- (a) shall appoint at least one member of the Board as a member of the committee, and that member or one of those members, as the case may be, shall be chairperson of the committee; and
  - (b) may appoint as members of the committee persons who are not members of the Board and may fix terms and conditions of their appointment.
- (3) Meetings of a committee may be convened at any time and at any place by the chairperson of the Board.
- (4) If the chairperson of a committee is absent from any meeting of the committee, the members present may elect one of their number to preside at that meeting as chairperson.
- (5) A majority of members of a committee shall form a quorum at any meeting of a committee.
- (6) Anything authorised or required to be done by a committee may be decided by a majority vote at a meeting of the committee at which a quorum is present.
- (7) At all meetings of a committee each member present shall have one vote on each question before the committee:
- Provided that in the event of an equality of votes the chairperson or person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.
- (8) Subject to this paragraph, the procedure to be followed at any meeting of a committee shall be as fixed by the Board.

*Minutes of proceedings of Board and committees*

- 8.(1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board and of every committee to be entered in books kept for the purpose.
- (2) Any minutes referred to in subparagraph (1) which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned.
- (3) The Board and any committee of the Board shall cause copies of all minutes that have been signed as provided in subparagraph (2) to be sent to the Minister for his or her information.

*Validity of decisions and acts of Board and committees*

9. No decision or act of the Board or a committee or act that is authorised by the Board or a committee shall be invalid solely because there was a vacancy in the membership of the Board or the committee or because a disqualified person purported to act as a member of the Board or the committee, as the case may be, at the time the decision was taken or the act was done or authorized.

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

### RULES OF UNIT TRUST ACCOUNT OF FUND

#### PART 1

#### DEFINITIONS

1. 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 on 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 40.1
- 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 and 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 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 a member 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 of the Act;
- 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 not, including persons jointly registered;

- 1.23 “Value” except where otherwise expressly stated means:
- 1.23.1 with reference to shares listed on the Stock Exchange at any given time then 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

#### *Beneficiaries of the Unit Trust Account*

2. The Beneficiaries of the Unit Trust Account shall be the indigenous people of Zimbabwe.

#### **2.1 Objects of the 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 objects of the Unit Trust Account**

In order to achieve these objects 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 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.

#### *This Schedule to bind all holders*

3. 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.

*Copies of this Schedule and amendments*

4. 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

*Legal proceedings*

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

*Liability of the 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 signature the Board are, 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 of the cost price or sale price thereof or of any Stock Exchange quotation 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 judgement, 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 advice of the Board, the chief executive officer or any manager.

*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.

*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 to secure the fulfilment of the objects 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

#### *Powers of managers*

9. 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 owner 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 obligation 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 on 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.

*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.

#### *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

#### *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 judgement of any court, or by reason or any direction, request, announcement or similar action (whether of binding legal effect or not) which may be taken by or made by any person or body acting with, or purporting to exercise the authority of, any Government, whether legally or otherwise.

#### *Verification of signatures*

13. 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 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.

#### *Indemnities*

14. 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.

#### *Dealing by the 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 holder of units or another unit trust. Provided that the Board or the managers or any such subsidiary company may buy, hold or deal

inn 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

#### *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 clause 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 paragraph or elsewhere in this Schedule shall impose upon the Board any responsibility for satisfying themselves 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 outstanding, beyond the amount agreed in writing from time to time by the Board and the managers.

*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 change 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, Zimbabwe, 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 arrangement 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.

*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.

### *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.

### *Surrender of units for value*

20. 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 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 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

#### *Form of certificates*

21. 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.

#### *Denomination of certificates*

22. 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.

#### *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 case 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.

#### *Holders entitled to recognition*

24. The holder of a certificates 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.

#### *Units held by Board*

25. 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.

#### *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 may surrender to the Board the certificate or certificates to be exchange 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 lie thereof.

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

- 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;
- 26.4.2 paid all expenses incurred in connection with the investigation of the facts;
- 26.4.3 in the case of defacement or mutilation, produced and surrendered to the Board the defaced or mutilated certificate;
- 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.

#### *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 they 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 on 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.

### *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.

### *Death of a 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 shall not be entitled to receive notices of or to attend or vote at any meeting of unit holders until he 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.



*Retention of payments*

30. 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.

*Cancellation of certificates*

31. 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.

*Restrictions on the issue of certificates*

32. 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.

*Transaction Statements*

33. 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

*The deposited property*

34. 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

#### *Transfer of property to the 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 distribution 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.

#### *Realization 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 require them to be realised without delay.

#### *Mode of realization*

37. 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.

#### *Limit upon investments*

38. 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.

#### *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 or 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 of 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 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.

## PART 10

### DISTRIBUTION

#### *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.

#### *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 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 such an audited statement.

#### *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.

#### *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.

*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.

*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.

*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 hereto 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

*Calling of meetings*

47. 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 percent (25%) of the units then in issue; or

47.3 the managers.

#### *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 14.

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.

#### *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.

#### *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.

#### *Proxies*

51.1 The instrument appointing a proxy shall be in writing and signed by the appointer of 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 commencement of the meeting or adjourned meeting at which the proxy is used.

#### *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 percent (75%) of the total number of votes cast for and against the resolution.

## PART 12

### VOTING RIGHTS

#### *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

#### *Advertisements*

54 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 have approved the terms of the document.



PART 14

AMENDMENT OF SECOND SCHEDULE

*Amendment*

55 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

*Service of notice*

56. 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 FUND

*Application of Fund*

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

*Financial year of Fund*

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

*Financial management of the Fund*

3.(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.

*Books of account and audit of Fund*

4.(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 Comptroller and Auditor-General, who shall have all the powers conferred upon him or her or her by section 9 of the Audit and Exchequer Act [*Chapter 22:03*] 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)**

NATIONAL INDIGENISATION AND ECONOMIC EMPOWERMENT CHARTER

*Paragraph*

1. Principles of the Charter
2. Objectives of the Charter
3. Code of ethics.
4. Monitoring and evaluation mechanisms.

*Principles of the Charter*

1. This Charter shall be premised on the following fundamental principles:
  - (a) good corporate governance;
  - (b) development of a highly competitive, sustainable and industrialised economy benefiting from the country's endowments including its natural resources;
  - (c) equal opportunities for all, including gender sensitive ownership and participation in the economy by indigenous Zimbabweans;
  - (d) accelerated rural development;
  - (e) development and utilisation of modern science and technology; and
  - (f) sustainable natural resource utilisation.

### *Objectives of the Charter*

2. The objectives of the National Empowerment Charter are to:
- (a) promote ethical business conduct;
  - (b) promote equitable access to the wealth of the economy by indigenous Zimbabweans;
  - (c) enhance employee and management stakeholderhood in business;
  - (d) promote the use of local raw materials and value addition in economic activities;
  - (e) promote local research and development;
  - (f) promote technology transfer;
  - (g) utilise indigenous knowledge systems;
  - (h) nurture and develop a skills base for the economic empowerment of indigenous Zimbabweans; and
  - (i) provide a generic framework for the development of sector-specific charters.

### *Code of Ethics*

3. In order to achieve the objectives stated above, all stakeholders undertake to abide by the following:

#### **Corporate Governance**

- (a) All businesses that are companies are committed to good corporate governance, which incorporates the following elements: regular Board meetings, representation of shareholders' interests on the Board, appointment of appropriately qualified persons as members of the Board, the setting by the Board of policies and processes to govern its operations, the compliance by the Board with best business and other practices, and regular reporting by the Board to its shareholders;
- (b) all businesses must encourage employee/management participation in decision-making through such expedients as employee share ownership schemes or trusts and/or management buy-ins;

#### **Behavioural Responsibility**

- (a) All businesses shall ensure that the principles of fairness, honesty, sincerity, transparency, accountability, efficiency, commitment, professionalism, confidentiality, integrity, respect and networking apply in their operations in a manner that maintains the corporate reputation of the business locally and internationally, thereby protecting the country's image;
- (b) in particular, all businesses shall seek a fair economic return for their investment and for the supply of their goods and services, and shall not take unfair advantage of their customers through unfair or exploitative pricing practices.

#### **Production Responsibility**

- (a) All businesses have an obligation to produce or manufacture goods that meet national and international standards;
- (b) all business operations shall be conducted in a cost-effective manner;
- (c) businesses shall, to the extent possible, utilise locally available resources and promote value addition;

- (d) businesses shall utilise indigenous knowledge systems, and promote local research and development as well as promote technology transfer.

**Employment Responsibility**

All businesses shall subscribe to equal employment opportunities for all.

**Safety and Health Responsibility**

All businesses shall create a safe and healthy working environment for their employees.

**Environmental Responsibility**

All businesses shall protect the environment in which they operate in order to ensure sustainable development.

**Legal Responsibility**

Businesses shall, in their operations, abide by the laws, rules and regulations governing the country's economy.

**Social Responsibility**

All businesses should contribute socially to the communities they serve.

*Monitoring and Evaluation*

4.(1) Databases for monitoring and evaluation purposes shall be maintained and regularly updated within Government and sector levels.

(2) The Secretary shall prepare an Annual Report on compliance and non-compliance with the Charter, for consideration by the Minister.