

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background. The nodes are 3D cubes, and the lines are thin, glowing blue tubes.

Botswana

Regulation

FUNDS AND FUND MANAGEMENT 2009

2.1 Type of funds

Collective investment funds can be organized in the form of trusts or investment companies.

2.2 Laws

The following laws and regulations govern funds in Botswana:

- Income Tax Amendment Act 1999 (Act no. 15 of 1999)
- Bank of Botswana 1999 (Act no.19 of 1999)
- Collective Investment Undertakings Act 1999 (Act no.20 of 1999)
- International Financial Services Centre Certification Committee Order 1999
- Collective Investment Undertakings regulations, 2001

2.3 Managers, trustees, and custodians

No single company can act as the management company and the trustee. A holding company or subsidiary company or associated enterprises cannot act as both management company and trustee. The management company and the trustee have a fiduciary duty towards the unitholders and must act independently and solely in the interests of the unitholders.

Managers

A management company is defined as an incorporated body responsible for the establishment, promotion, management, and administration of a collective investment undertaking. In order for a collective investment undertaking to be licensed, the regulatory authority must approve the management company, the trust deed, the choice of trustees, and its name. The management company will have its registered office and head office in Botswana. It must have sufficient financial resources to conduct its business and to meet liabilities.

The remuneration and expenditure which a manager or trustee can charge to a unit trust and the method of calculation must be contained in the trust deed. There is no mention of a maximum limit.

Any increase to the fee, as per the trust deed, charged by the management company needs to be approved by a majority of the votes cast at a general meeting. A reasonable notification period needs to be provided by the scheme to enable unitholders to redeem their units prior to the implementation of the increase.

A management company cannot charge any fees or costs for transactions relating to a unit trust's units where some of the unit trust's assets are invested in the units of another unit trust managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding.

Trustees

A trustee can be:

- a licensed bank, established under the Banking Act, no.13 of 1995;
- a company which is wholly owned by such a licensed bank, the liabilities of which are wholly guaranteed by the licensed bank; or
- a company incorporated in Botswana which is
 - wholly owned by a credit institution approved by the Regulatory authority, and on condition that the liabilities of the trustees are guaranteed by the credit institution;
 - wholly owned by an institution in another country which is deemed by the Regulatory authority to be the equivalent of a credit institution (as set out above) on condition that the liabilities are guaranteed by the parent institution; or
 - wholly owned by an institution or company in another country which is deemed by the Regulatory authority to be an institution or company which provides unitholders with protection equivalent to that provided by the trustees and provided the liabilities of the company acting as trustee are guaranteed by the parent company or institution.

A trustee must satisfy the regulatory authority that it has the appropriate expertise and experience to carry out its functions under the Act.

The minimum paid up share capital for the credit institution or guarantor of liabilities at the time of this report is provisionally set at BWP 25 million.

2.4 Investment restrictions

A scheme must reach a minimum viable size within a specified period after the launch. The minimum size as specified will be defined in the prospectus. If the minimum requirements are not met then the subscriptions must be returned to the unitholders.

The investment objectives and policies of the scheme must be clearly defined in the prospectus with sufficient information to enable unitholders to be fully aware of the risks they are entering into.

- A scheme may not invest more than 10 percent of its net assets in securities which are not traded in or dealt in on a market which is provided for in the trust deed or articles of association. Restrictions in respect of markets may be imposed by the regulatory authority on a case by case basis.
- A scheme may invest no more than 10 percent of its net assets in securities issued by the same institution.
- No more than 10 percent of the scheme's net assets may be kept on deposit with any one institution; this limit is increased to 30 percent for deposits with or securities evidencing deposits issued by or securities guaranteed by the following:
 - An European Union credit institution
 - A bank authorized in a Member State of the European Economic Area
 - A bank authorized by a signatory state to the Basle Capital Convergence Agreement of July 1988
 - The trustee
 - A bank that is an associated or related company of the trustee, on a case by case basis.
- Related companies/institutions are regarded as a single issuer for the purposes set out in this paragraph.
- A scheme may not hold more than 10 percent of any class of security issued by any single issuer. This does not apply to investments in other collective investment schemes of the open ended type, or venture or development capital schemes.
- An investment company or a management company acting in connection with all of the schemes which it manages, may not acquire any shares carrying voting rights which would enable it to exercise significant

influence over the management of an issuing body; this does not apply to venture or development capital schemes.

- A scheme may, subject to authorization from the regulatory authority, invest up to 100 percent of its assets in transferable securities issued by or guaranteed by any state, its constituent states, its local authorities, or public international bodies of which one or more states are members. Full disclosure must be made in the prospectus indicating the states, local authorities, and public international bodies in the securities of which it is intended to invest more than 10 percent of the assets in accordance with the provision of the preceding sentence.
- A scheme may acquire the units of other open ended collective investment schemes subject to the following:
 - a scheme may not invest more than 20 percent of net assets in such schemes;
 - where a scheme invests in units of a collective investment scheme managed by the same management company or by an associated or related company, the manager of the scheme in which the investment is being made must waive the preliminary/initial charge which it is entitled to charge for its own account in relation to the acquisition of units; and
 - where a commission is received by the manager of the scheme by virtue of an investment in the units of another collective investment scheme, this commission must be paid into the property of the scheme.
- The regulatory authority may allow derogations from the limits to a scheme investing in other collective investment schemes or companies which are authorized or incorporated in another state and where such collective investment schemes or companies invest their assets in the securities of issuing bodies which have their registered offices in that state and where under the legislation of that state such a holding represents the most effective way in which the scheme can invest in the securities of that state.
- The regulatory authority may authorize a scheme to wholly own the shares of a limited company which would in turn, invest in investments which are permitted under these notices for reasons which the regulatory authority is satisfied are justified as being in the interests of unitholders.
- Limits on investments apply at the time of purchase. If the limits are subsequently exceeded for reasons beyond the control of the scheme or as a result of the exercise of subscription rights the scheme must remedy the situation taking into account the interests of the unitholders.

- A scheme can employ techniques and instruments for the purposes of efficient portfolio management and to provide protection against movement in exchange rates risk under the conditions and within the limits set by the regulatory authority.
- Leverage to a limited extent is permitted. The net maximum potential exposure created should not exceed 25 percent of the net asset value of the undertaking. The intention to engage in leverage must be disclosed in the prospectus
- A scheme can hold ancillary liquid assets.
- A scheme cannot sell transferable securities when such securities are not in the ownership of the scheme.
- A scheme can invest in warrants on transferable securities. These warrants must be traded in a market which is provided for in the trust deed or articles of association.
- Other schemes may not invest more than 5 percent of their net assets in such warrants.
- The following risk warning must be included in a prominent place in the prospectus.

An investment in the scheme should not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors.

2.5 Borrowing

Subject to the provisions of the trust deed or memorandum and articles of association a collective investment undertaking may borrow, and such borrowings can be secured by the assets of the scheme. Borrowings cannot exceed 25 percent of the net assets. There can be no offset of credit balances when determining this ratio.

Money can be borrowed for investments in a range of currencies by means of a back to back loan agreement. Such borrowings will not be subject to the borrowing restriction provided that the offsetting deposit:

- is denominated in the base currency of the scheme; and
- equals or exceeds the value of the foreign currency loan outstanding.

If the foreign currency borrowing exceeds the value of the back to back deposit, any excess will be considered as a borrowing under the borrowing restriction provision.

Full disclosure must be made in the prospectus where it is envisaged that borrowing may be undertaken.

2.6 Accounts and prospectus

A collective investment undertaking must publish an annual report and a half-yearly report covering the first six months of the financial year. The regulations set out the minimum information required and the time limits for publishing the reports.

The accounting information in the annual report must be audited.

An undertaking must be audited at the date of replacement of a management, administration or trustee company.

A collective investment undertaking must publish a prospectus which must be dated and the essential elements must be kept up to date. There must be sufficient information for an investor to make an informed judgment. Material changes to the prospectus must be notified to the unitholders in subsequent periodic reports.

The prospectus and any amendments thereto must be submitted to the regulatory authority for their prior approval.

2.7 Supervision

The supervisory authority for collective investment undertakings:

Bank of Botswana
Private Bag 154
Gaborone
Botswana

2.8 Fund ownership

There are no restrictions on the percentage of funds which can be held by one person or by a group of persons. There is no minimum number of unitholders.

2.9 Fund structure

Funds of funds schemes and umbrella schemes are allowed as are various other types of schemes. Each such scheme needs to be approved by the regulatory authority.

A fund of funds scheme cannot invest in units of another fund of funds scheme.

Examples of the types of funds, though not exclusive, are:

- Feeder schemes
- Venture or development capital schemes
- Futures and options schemes – capital protected
- Leveraged futures and options schemes
- Money market schemes
- Property schemes
- Closed-ended schemes
- Schemes marketing solely to professional investors

Under the Collective Investment Undertaking legislation Section 52(1) refers to the issue of registered certificates or bearer certificates which will be signed by the management company or the investment company and by the trustee.

2.10 Stock exchange

Collective investment undertakings are allowed to be quoted on the local stock exchange. Foreign funds are also allowed to register on the local stock exchange.

2.11 Bank secrecy

There is currently no specific money laundering laws. Proposals are in place to bring existing legislation in line with international conventions. The regulator has the authority to enquire into any particular fund's details and disclose this information to other regulators.

There are no particular restrictions or requirements with regard to funds.

2.12 Fund set-up

It is too early to give accurate details as to time and costs. However an estimated set up time of between six to eight weeks can be assumed. There are no government charges involved in the set up of a fund but other costs such as company formation can be estimated as BWP 4,000.

2.13 Foreign funds

A non-resident collective investment scheme which has received its license from the regulatory authority in its country of residence will be allowed to

market its units in Botswana on condition that it is in compliance with the provisions of the Botswana Collective Undertakings Act no. 20 of 1999.

There are no exchange control restrictions.

2.14 Bearer shares

Under the existing Companies Act bearer shares are not permitted.

Under the Collective Investment Undertaking legislation section 52(1), registered certificates or bearer certificates can be issued and will be signed by the management company or the investment company and by the trustee.

2.15 Use of the internet

So long as the collective investment undertaking has obtained the prior approval of the regulatory authority for its prospectus there are no restrictions on the use of the internet for marketing purposes.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.