

REPUBLIC OF SOUTH AFRICA

**UNIT TRUSTS CONTROL
AMENDMENT BILL**

(As introduced)

(MINISTER OF FINANCE)

[B1-98]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Unit Trusts Control Act, 1981, so as to deregulate the quantum and method of calculation of charges levied by a unit trust scheme; to empower a management company to include in a unit portfolio, subject to prescribed conditions, units or any other form of participation in other unit portfolios of a unit trust scheme or other similar scheme; to empower the Minister to prescribe the kind of information that must be furnished annually by a management company to the registrar and holders of unit certificates; to empower a trustee to appoint a representative to perform specific functions when it is impracticable for the trustee to perform those functions; and to allow foreign collective investment schemes to promote their business in the Republic with the approval of and subject to the conditions determined by the registrar; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa. as follows:--

Amendment of section 1 of Act 54 of 1981, as amended by section 8 of Act 51 of 1988, section 29 of Act 97 of 1990, section 5 of Act 54 of 1991, section 9 of Act 41 of 1992, section 39 of Act 104 of 1993 and section 1 of Act 53 of 1996

1. Section I of the Unit Trusts Control Act 1981 (hereinafter referred to as the principal Act). is amended--

(a) by the deletion of the definitions of "compulsory charge", " initial charge" and "service charge" ;
(b) by the insertion after the definition of "fixed property company" of the following definition:

" fund of funds' means a unit portfolio that. apart from liquid assets and approved securities consists solely of units or any other form of participation in unit portfolios of unit trust schemes or other similar schemes, other than schemes in property shares;":

(c) by the deletion in the definition of "securities" of the word "and" at the end of paragraph (b) by the insertion of the word and at the end of paragraph (c) and by the addition of the following paragraph:

"(d) except for the purposes of section 6(1), units in a unit portfolio, other than units in a unit portfolio in property shares, managed by a management company under this Act or any other form

of participation in a unit portfolio of a unit trust scheme or other similar scheme, whether called a unit or by any other name and whether listed on a recognized stock exchange or not;".

Amendment of section 6 of Act 54 of 1981, as amended by section 7 of Act 54 of 1991, section 42 of Act 104 of 1993 and section 2 of Act 53 of 1996

2. Section 6 of the principal Act is amended by the addition to subsection (l) of the following paragraph:

"(e) shall, except in the prescribed manner and subject to the prescribed conditions, include in a unit portfolio any unit or any other form of I participation in a unit portfolio of a unit trust scheme or other similar scheme, other than a unit portfolio of a unit trust scheme in property shares."

Substitution of section 10 of Act 54 of 1981

3. The following section is substituted for section 10 of the principal Act:

"Financial statements and other information to be furnished by management company

10. (1) Every management company shall not later than three months after the close of its financial year transmit to the registrar a copy of the duly audited financial statements of such company and of every unit trust scheme managed by it, and on a date prescribed, such other statements and information as may be prescribed: Provided that a management company shall within a period of 30 days after receipt of a written request from the registrar, or within such further period thereafter as the registrar may allow, lodge with the registrar such further information and explanations in connection with the financial and other statements referred to as may be specified in the request.

(2) Every management company shall, not later than three months after the close of the financial year of every unit trust scheme managed by it, transmit to every holder of a unit certificate in such scheme such information relating to the state of affairs and results of the operation of the unit trust scheme as may be prescribed.

(3) Copies of the financial and other statements referred to in subsection (1) shall be kept available at the registered office of the management company for inspection during ordinary office hours by any holder of unit certificates in the unit trust scheme concerned or other person *bona fide* interested in the purchase of unit certificates from the company. (4) Every management company shall, in accordance with the regulations, lodge with the registrar--

(a) copies of all advertisements, brochures and pamphlets published or proposed to be published by the company or any of its authorized agents, and of all proposed additions thereto and variations thereof, signed and certified in the prescribed manner by or on behalf of the directors of the management company: Provided that the registrar may exempt the company to such extent and on such conditions as he or she may deem fit, from the obligation to lodge a copy of any such advertisement, brochure or pamphlet prior to its publication;

(b) a copy of every return or notice which the company is required to furnish to the Registrar of Companies under section 216(2) of the Companies Act, 1973 (Act No. 61 of 1973)."

Amendment of section 12 of Act 54 of 1981

4. Section 12 of the principal Act is amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraph, the existing paragraphs (c) and (d) becoming paragraphs (b) and (c), respectively:

"(a) the charges that may be levied by the management company, the method of calculation and the quantum of those charges and the time when they may be levied;"

Amendment of section 18 of Act 54 of 1981

5. Section 18 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

"(2) (a) Every management company shall at the end of each calendar quarter, within 30 days after the end of such quarter, furnish to the registrar a full list of all underlying securities comprised in any unit portfolio managed by it, reflecting in respect of every unit portfolio, the total market value of each of the several securities included in that unit portfolio, and the value of each of those securities

expressed--

(i) as a percentage of the total value of assets in the unit portfolio concerned; and

(ii) as a percentage of the total amount of securities of that class issued by the concern in which the investment is held, and indicating which of such securities are stock exchange securities and which are not, as well as the amount of liquid assets held in the unit portfolio.

(b) The list referred to in paragraph (a) shall be kept available at the registered office of the management company and at the office of every authorized agent of the management company for inspection during ordinary office hours by any unit certificate holder or other person *bona fide* interested in the purchase of unit certificates from the company."

Amendment of section 21 of Act 54 of 1981

6. Section 21 of the principal Act is amended by the addition of the following subsection:

"(4) (a) When it is impracticable for a trustee under a unit trust scheme to perform the functions pertaining to the registration of securities and the safe custody of documents of title entrusted to it by the trust deed, it may appoint a representative which is independent from the management company and any of its agents, to perform such functions.

(b) A trustee under a unit trust scheme who has appointed a representative as contemplated in paragraph (a), is not divested of the functions referred to in that paragraph."

Amendment of section 22 of Act 54 of 1981

7. Section 22 of the principal Act is amended--

(a) by the deletion of paragraph (h) of subsection (1);

(b) by the substitution for paragraph (i) of subsection (2) of the following 40 paragraph:

"(i) the charges that may be levied and the method of calculation of those charges;"; and

(c) by the insertion in subsection (2) after paragraph (i) of the following paragraph:

"(iA) that not less than three months' written notice shall be given to every holder of unit certificates of any increase in any charge, any change in the method of calculation thereof which could result in an increase thereof and the introduction of any additional charge;".

Insertion of section 37A in Act 54 of 1981

8. The following section is inserted after section 37 of the principal Act:

"Approval of foreign collective investment schemes

37A. (1) No person may--

(a) publish, cause or permit to be published any price list, advertisement, brochure or similar document; or

(b) perform any other act,

to promote the business of or solicit investments in a collective investment scheme carried on outside the Republic unless such scheme--

(i) has, after an application for approval accompanied by the prescribed fee, been approved by the Registrar; and

(ii) complies with the conditions that the Registrar may determine by notice in the *Gazette*.

(2) A scheme approved in terms of subsection (1) shall, for the purposes of section 15A of the Financial Services Board Act, 1990 (Act No. 97 of 1990), be deemed to be a financial institution and the provisions of that section shall apply, with the necessary changes required by the context, to such a scheme.

(3) A scheme approved in terms of subsection (1) shall, for the purposes of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), be deemed to be a financial institution as defined in that Act and the provisions of that Act shall apply, with the necessary changes required by the context, to such a scheme."

Short title and commencement

9. This Act is called the Unit Trusts Control Amendment Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE UNIT TRUSTS CONTROL AMENDMENT BILL, 1998

1. INTRODUCTION

The objects of the Unit Trusts Control Amendment Bill, 1998 ("the Bill") are

- a. to deregulate the quantum and the method of computation of charges levied by a unit trust scheme on a purchaser or holder of units in a unit portfolio;
- b. to empower a management company to create a unit portfolio that consists solely or partially of units in other unit portfolios or other form of participation in a collective investment scheme and to empower the Minister of Finance to prescribe conditions in relation to the inclusion of units or other participations in a unit portfolio;
- c. to empower the Minister of Finance to prescribe the kind of information that must be furnished annually by management companies to the Registrar of Unit Trust Companies and unitholders;
- d. to empower a trustee to appoint a representative to perform specific functions of the trustee when it is impracticable for the trustee to perform those functions; and
- e. to allow foreign collective investment schemes to promote their business in the Republic with the approval of the Registrar of Unit Trust Companies and subject to the conditions that the Registrar may determine.

2. DEREGULATION OF CHARGES

The Financial Services Board and the unit trust industry of South Africa have agreed on the deregulation in question. Section 22(1)(h) of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981) ("the principal Act"), is the only provision in the principal Act in its current form that regulates the quantum of a charge, namely the initial charge. That section is proposed to be deleted by clause 7 of the Bill. The definitions of "compulsory charge", "initial charge" and "service charge" in section 1 of the principal Act are proposed to be deleted by clause 1 of the Bill. The amendment of section 22(2)(i) of the principal Act by clause 7(b) of the Bill is to make it compulsory for management companies and trustees to prescribe in their trust deeds what charges may be levied and the method on which those charges are to be calculated. Clause 7(c) of the Bill proposes to insert a new paragraph (iA) in section 22(2) of the principal Act in terms of which the trust deed must provide for three months' notice to be given to unitholders of any increase in any charge or of any change of the basis of calculation of charges which could result in an increase. Comprehensive disclosure of charges to be levied on purchasers of units is in line with the current legal position and practice and will be ensured by the proposed amendment of section 12 of the principal Act by clause 4 of the Bill.

3. FUNDS CONSISTING SOLELY OR PARTIALLY OF UNITS IN OTHER UNIT PORTFOLIOS

According to the current definition of "securities" in section 1 of the principal Act only units in a unit trust scheme in property shares may be included in a unit portfolio. The proposed amendment of that definition by clause 1(c) of the Bill will enable management companies to include in their unit portfolios units in unit portfolios of any collective investment scheme, including units whether listed on a recognised foreign stock exchange or not. Clause 1(b) of the Bill proposes to insert a definition of "fund of funds" in the principal Act. According to that definition a fund of funds consists, apart from liquid assets and approved securities, solely of units in unit portfolios of unit trust schemes. The manner in and conditions subject to which units may be included in a unit portfolio must be prescribed by regulation by the Minister of Finance -- see clause 2 of the Bill. Allowing management companies to create funds of funds or to invest in the units of unit trust schemes increases their opportunity to participate in the international markets. The offering of this new product will also serve to diversify the investment risk of investors.

4. ANNUAL REPORTING TO UNITHOLDERS

The present disclosure by management companies to unitholders in terms of section 10 of the principal Act is considered to be too extensive and voluminous to provide meaningful information to the average investor. The cost associated with the disclosure currently required is significant. That cost is in the final analysis passed on to unitholders and it is therefore in their interests that costs be kept to a minimum. It is proposed in clause 3 of the Bill that section 10 of the principal Act be amended so as to authorise the Minister of Finance to prescribe by regulation what information relating to the state of affairs and results of the operation of a unit trust scheme must be furnished to the Registrar and unitholders.

5. APPOINTMENT OF REPRESENTATIVE BY TRUSTEE

The specific functions of a trustee in terms of the trust deed envisaged by the proposed amendment of section 21 of the principal Act by clause 6 of the Bill pertain to the registration and safe custody of scrip. The relaxation of exchange control and the establishment of central depositories necessitate this amendment whereby a trustee is empowered to appoint a representative to perform those functions when it is impracticable for the trustee to do so. However, the trustee is not divested of its responsibilities.

6. CONTROL OF FOREIGN COLLECTIVE INVESTMENT SCHEMES

Under the current dispensation foreign collective investment schemes may promote their business and solicit investments in the Republic without being subject to the South African regulatory requirements and supervision. Unscrupulous operators therefore have the opportunity to take advantage of uninformed investors. Regulation of the activities of these operators is necessary to protect the interests of investors and to ensure that the reputation of the local industry is not tarnished and its integrity not undermined. The object of the proposed insertion of section 37A in the principal Act by clause 8 of the Bill is to create an environment which is conducive to free and equitable market participation and which does not prejudice any participant. To this end foreign collective investment schemes will be required to apply to the Registrar of Unit Trust Companies to do business and to comply with the conditions determined by him or her by notice in the *Gazette*.

7. OTHER AMENDMENTS

The amendments proposed by clause 5 of the Bill are of a consequential nature.

8. BODIES CONSULTED

Hereunder is a list of bodies which were invited to submit comments on the proposed amendments. All bodies which responded were fully supportive of the principles contained in the proposed amendments.

- * Fund Managers Association of South Africa
- * SA Law Commission
- * Association of Law Societies
- Black Lawyers Association
- National African Federated Chamber of Commerce (NAFCOC)
- Black Management Forum
- ABASA
- Genbel Securities Limited
- National Black Consumer Union
- The Council of South African Banks
- * Association of Unit Trusts of South Africa
- * Association of Trust Companies in South Africa
- * Graduate School of Management, University of Pretoria
- * South African Chamber of Business
- The South African Futures Exchange
- Association of Participation Mortgage Scheme Managers in South Africa
- Registrar of Companies
- Office for Public Enterprises

Bond Exchange of South Africa
*The Johannesburg Stock Exchange
Association of Black Securities & Investment Professionals
FABCOS
The Association of Corporate Treasurers of South Africa
*The Department of Finance
Public Property Syndication Association
Shareholders Association of South Africa
Consumer Council
Free Market Foundation
*Life Offices Association
*SA Institute of Chartered Accountants
Public Accountants and Auditors Board
SA Reserve Bank
*Association of Property Unit Trust Management Companies

NOTE: The bodies indicated with * submitted comments on the proposed legislation.

9. PARLIAMENTARY PROCEDURE

The State Law Advisers are of the opinion that this Bill must be dealt with in accordance with section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.