

UNIT TRUST ACT 1989

Act No. 26 of 1989

I assent,

1st July, 1989

V. RINGADOO
Governor-General

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An Act

To make provision for the setting up, operation and management of unit trust schemes.

ENACTED by the Parliament of Mauritius, as follows -

1 Short title

This Act may be cited as the Unit Trust Act 1989.

2 Interpretation

"authorised mutual fund" means a company declared to be an authorised mutual fund under the Companies Act 1984;

"Commission" means the Financial Services Commission established under the Financial Services Development Act 2001;

"Court" means the Supreme Court;

"Investment Committee" means a committee set up by the manager for the purpose of section 6(a)(iv);

"manager" means the manager of a unit trust scheme;

"Minister" means the Minister to whom responsibility for the subject of finance is assigned;

"qualified auditor" has the same meaning as in the Companies Act 1984;

"statutory body" means a corporate body set up by statute;

"trustee" means the person holding the property of a unit trust scheme on trust for the participants in the scheme;

"trust deed" means a notarial deed establishing a unit trust scheme;

"unit", in relation to a unit trust scheme, means any right of interest, however described, which may be acquired for consideration under the scheme;

"unitholder" means the holder of a unit in a unit trust scheme;

"Unit Trust Fund" means the fund comprising the income and other property of a unit trust scheme;

"unit trust scheme" means a scheme established under a trust deed in compliance with the provisions of this Act and intended to provide facilities for the

participation by a unitholder in the income, profits and gains arising out of the acquisition, holding, management or disposal of securities or other property.

3 Authorised unit trust scheme

(1) Subject to subsection (2), no person shall set up or manage any unit trust scheme in Mauritius unless -

(a) the scheme is authorised by the **Commission**; and

(b) the manager and trustee of the scheme are -

(i) authorised by the **Commission** upon application made in writing, to act as manager or trustee, regard being had to their financial standing, their knowledge and experience of investment business and their honesty and integrity;

(ii) corporate bodies designated as such in the scheme; and

(iii) independent of each other.

(2) The manager may be an authorised mutual fund approved by the **Commission**.

[Amended 30/20/02]

4 Prohibited advertisement

Unless the unit trust scheme has been authorised under this Act, no person shall promote such a scheme in Mauritius -

(1) by issuing or causing to be issued an advertisement, by whatever means -

(a) inviting persons to become participants in the scheme; or

(b) containing information calculated to lead directly or indirectly to persons to becoming or offering to become participants in the scheme; or

(2) by advising or procuring any person in Mauritius to become a participant in the scheme.

5 Application to operate a unit trust scheme

(1) Every person who proposes to set up or operate a unit trust scheme in Mauritius shall make an application to the Commission.

(2) No application shall be made by any person unless he is the manager or trustee, or the proposed manager or trustee, of the scheme.

(3) Every application shall be made in such form and contain such information as the Commission may determine.

(4) The Commission may -

(a) call for such additional information as it may require for any purpose under this Act; and

(b) direct that any information supplied shall be verified in such manner as it may require.

(5) [deleted FSDA 13/2001]

6 Requirement of unit trust scheme

The Commission may approve a unit trust scheme if -

[13/2001]

(a) it appears to the Commission that the scheme complies with the requirements of this Act as to -

(i) the constitution and management of any such scheme;

(ii) the powers and duties of the manager and the trustee;

(iii) the rights and obligations of the unitholders in any such scheme; and

(iv) the setting up of an Investment Committee for the proper conduct of investment business;

(b) the Commission has been furnished with a copy of the trust deed and a certificate signed by a notary and attached to the trust deed to the effect that the contents of the deed comply with the requirements of this Act and any regulations made under it.

7 Vesting of fund or other property

- (1) The property comprised in the Unit Trust Fund shall, in compliance with this Act and in conformity with the terms of the trust deed, be vested in the trustee and managed by the manager under the supervision of the trustee.
- (2) The trustee shall be governed, in addition to the provisions of this Act, by such provisions of the Trusts Act 1989 as are not inconsistent with this Act.
- (3) The accounts of a Unit Trust Fund shall be audited by a qualified auditor.

8 The Trust deed

- (1) Every trust deed setting up a unit trust scheme shall contain such particulars as may be prescribed and shall include all information relating to -
 - (a) the general directions and limits as to how investments may be made out of the Fund;
 - (b) the mode of creation, issue and redemption of units;
 - (c) the liquidation of units;
 - (d) the fees and commissions payable or chargeable under the scheme;
 - (e) the meetings of unitholders;
 - (f) the duration of the trust;
 - (g) the appointment and removal of the auditor;
 - (h) the audit of the accounts of the Unit Trust Fund;
 - (i) the audit of the accounts of the manager;
 - (j) the circulation of all audited statements of accounts to unitholders;
 - (k) the powers and limits of borrowing and lending by the manager.
- (2) The trust deed shall also provide that-
 - (a) a unitholder shall be entitled to have his units redeemed under such conditions and at such price as may be determined in accordance with the scheme; and

- (b) the trustee shall cause to be distributed to the unitholders all income received from investments made out of the Unit Trust Fund, after deduction of such fees and expenses as are payable under the trust deed.

9 Qualifications of trustee

- (1) Subject to subsection (2), the trustee shall-
 - (a) be a statutory body or a company incorporated in Mauritius;
 - (b) have and maintain at all times an issued and paid up capital of not less than 5,000,000 rupees;
 - (c) satisfy the Commission upon request and from time to time that it has assets which are sufficient to meet its expenses and liabilities , including liabilities in respect of the repayment of capital.
- (2) Where the capital of a trustee is held by another corporation, it shall be sufficient for the purpose of this section that the holding corporation has and maintains at all times capital and assets which comply with subsection (1) (b) and (c).

10 Duties of the manager

The manager shall-

- (1) keep an up to date register of unitholders;
- (2) publish, in such manner as may be prescribed, the buying and selling prices of all units;
- (3) make such investments out of the Unit Trust Fund as are permitted under the trust deed and in accordance with such guidelines issued by the Investment Committee and ensuring in all the circumstances that the interests of present and potential unitholders as well as of the Unit Trust Fund are protected; and
- (4) exercise due care and diligence in the discharge of his duties in respect of the scheme.

11 Liability of trustee and manager

Any provision of the trust deed of a unit trust scheme shall be void in so far as it seeks to exempt the manager or the trustee of the scheme from liability for any failure to exercise due care and diligence as specified in section 10(4).

12 Publication of scheme particulars

- (1) The manager shall publish such information about the scheme, to be known as scheme particulars, under such conditions and in such manner as may be prescribed.
- (2) Any person designated as responsible for any scheme particulars shall pay compensation, under such conditions and in such manner as may be prescribed, to any person who has become or agreed to become a participant in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any prescribed matter.
- (3) Subsection (2) shall not affect any liability which any person may incur otherwise than that prescribed under this section.

13 Proposed alteration of unit trust scheme and replacement of manager and trustee

- (1) The manager shall give written notice to the Commission of any proposed alteration to the scheme or any proposal to replace the trustee.
- (2) The trustee shall give written notice to the Commission of any proposal to replace the manager.
- (3) No alteration to a scheme or change of manager or trustee shall be effected without the approval in writing of **the Commission**.
- (4) **[deleted 30/02/2001]**
- (5) **The Commission** shall not give his approval unless-
 - (a) a certificate signed by a barrister certifies that the proposed alteration to the trust deed will not affect the compliance of the deed with the requirements of this Act and any regulations made under it; and
 - (b) the new trustee or manager, as the case may

be, satisfies the requirements of this Act and any regulations made under it.

14 Revocation of authority

(1) The Commission may revoke the approval of a unit trust scheme or parts thereof.

[Amended. 13/2001]

(2) The Commission may revoke the approval of a unit trust Scheme or parts thereof under subsection (1) if –

- (a) any of the requirements for granting the approval are no longer satisfied;
- (b) it is undesirable in the interests of the unitholders or potential unitholders that the scheme or part thereof should continue to be authorised;
- (c) without prejudice to paragraph (b), the manager or the trustee has contravened any provision of this Act or any regulations made under it or, in purported compliance with any such provision, has furnished false, inaccurate or misleading information, or contravened any prohibition; or
- (d) a request for revocation has been made by the manager or the trustee.

(3) For the purposes of subsection (2)(b) the Commission may take into account any matter relating to the scheme, the manager or trustee, a director or controller of the manager or trustee or any person employed by or associated with the manager or trustee in connection with the scheme.

(4) Before revoking an approval or refusing to do so, the Commission shall give the manager or the trustee, as the case may be, an opportunity to make such representations as he may wish to make.

[Amended 13/2001]

15 Investigation

(1) The Commission may appoint one or more inspectors to investigate and report on the administration of any unit trust scheme if it appears to him that –

- (a) it would be in the interests of unitholders or potential unitholders in the scheme to do so; and
 - (b) the matter is one of public concern.
- (2) An inspector appointed under subsection (1) shall have all the powers of an inspector appointed under Part X of the Companies Act 1984.
- (3) The expenses of any investigation under this section shall be borne by the unit trust scheme which is investigated.

[Amended. 13/2001]

16 Directions of the Commission

- (1) The Commission may, for any of the reasons specified in section 15(1), issue a direction in writing requiring-
- (a) the manager to cease the issue or redemption, or both the issue and redemption, of units under the scheme on a date specified in the direction until such further date as is specified in that or another direction;
 - (b) the manager and trustee to wind it up by such date as is specified in the direction or, if no date is specified, as soon as practicable.
- (2) The revocation of the approval of a scheme shall not affect the operation of any direction under subsection (1) which is then in force.

17. Injunction

- (1) The Court may, on the application of the Commission-
- (a) grant an injunction restraining the contravention of any provision of this Act or any regulation made under it where there is reasonable likelihood that any person will contravene or repeat the contravention of any such provision; or
 - (b) make an order, where appropriate, requiring that person or any other person who appears to

the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct to remedy it.

- (2) The Court may, on the application of the Commission, make an order under subsection 1(b) if satisfied-
 - (a) that profits have accrued to any person as a result of his contravention of any provision mentioned in subsection (1)(a); or
 - (b) that one or more investors have suffered loss or been otherwise adversely affected as a result of that contravention.
- (3) On an application under subsection (2), the Court may require-
 - (a) the person concerned to furnish it with accounts or other information as it may require for establishing any profits that have accrued and for determining how any amounts are to be paid or distributed; and
 - (b) any such accounts or information as are mentioned in paragraph (a) to be verified in such manner as it may direct.

18 Restitution order

- (1) The Court may, on an application made under section 17, also order the person concerned to pay into court, or appoint a receiver to recover from him, such sum as appears to the Court to be just, having regard to the facts of the case.
- (2) Any amount paid into Court by or recovered from a person in pursuance of an order under subsection (1) shall be paid out to such person or distributed among such persons as the Court may direct, being a person or persons appearing to the Court to have entered into transactions with that person as a result of which profits have accrued or, as the case may be, loss or adverse effect has been suffered as mentioned in section 17(2)(b).
- (3) Nothing in this section or section 17 shall affect the right of any person other than the Commission to bring proceedings in respect of the matters to which this section or section 17 applies.

19 Applications to Court

- (1) In any case in which the Commission has power to give a direction under section 16 in relation to a unit trust scheme, including a scheme which has ceased to be an authorised scheme, the Commission may apply to the Court-
 - (a) for an order removing the manager or trustee of the scheme or both of them and replacing either or both of them by a person or persons nominated by the Commission and appearing to the Commission to satisfy the requirements of this Act;
 - (b) if it appears to the Commission that no person, or no suitable person, satisfying those requirements is available, for an order removing the manager or trustee, or both of them, and appointing a receiver to wind up the scheme.
- (2) On an application under this section, the Court may make such order as it thinks fit and, on the application of the Commission, rescind an order made under subsection (1)(b) and substitute such an order as is mentioned in subsection (1)(a).
- (3) Subsection (2) shall not apply to a receiver appointed by an order made under subsection (1)(b).

20 Report of a unit trust scheme

- (1) The Manager shall submit an Annual Report of a unit trust scheme to the Commission within 3 months of the closing of accounts in every year.
- (2) The Annual Report shall contain the following -
 - (a) the manager's investment report;
 - (b) a statement of assets and liabilities;
 - (c) a statement of income and distribution;
 - and
 - (d) a copy of the auditor's report under subsection 7(3) ; and
 - (e) such other particulars as the Commission may prescribe.

**** [In sections 16,17,18,19 & 20 the word “Minister” has been replaced by the word “Commission” wherever it appears. Amended by the FSD Act 2001]**

21 Offences

Any person who contravenes any provision of this Act or any regulation made under it shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 3 years.

22 Regulations

The Minister may make such regulations as he thinks fit for the purposes of this Act.

23 Exemption

- (a) Every trust deed shall be registered on payment of a fixed duty.
- (b) All other documents drawn up under this Act shall be exempt from registration and stamp duty.

24 Consequential amendments

- (1) The Companies Act 1984 is amended -
 - (a) in section 2, by repealing the definition of "unit trust scheme" and replacing it by the following definition -

"unit trust scheme" has the same meaning as in the Unit Trust Act 1989;
 - (b) in section 35, by repealing subsection (4) and replacing it by the following subsection -
 - (4) A company which is declared to be an authorised mutual fund under subsection(1) may also be authorised by the Minister to manage a unit trust scheme approved under the Unit Trust Act 1989.

(2) The Income Tax Act is amended -

(a) in section 2(1) -

(i) by inserting the following definitions in their appropriate alphabetical order-

"manager", in relation to a unit trust scheme, has the same meaning as in the Unit Trust Act 1989;

"Official List" has the same meaning as in the Stock Exchange Act 1988;

"unitholder" has the same meaning as in the Unit Trust Act 1989;

"unit trust scheme" has the same meaning as in the Unit Trust Act 1989;

"Unit Trust Fund" has the same meaning as in the Unit Trust Act 1989;

(ii) by deleting the definition of "units" and replacing it by the following -

"unit", in relation to a unit trust scheme, has the same meaning as in the Unit Trust Act 1989;

(iii) by inserting the following words immediately after the definitions of -

(A) trust deed - "or, in relation to a unit trust scheme, the deed setting up such a scheme under the Unit Trust Act 1989";

(B) trustee -" or, in relation to a unit trust scheme, the meaning assigned to it in the Unit Trust Act 1989";

(b) in section 2(2), by inserting the following paragraph immediately after (g) - "(h) any amount distributed or paid to a unitholder out of the net income derived by the trustee under a unit trust scheme."

(c) in section 7(1) by deleting paragraph (zc) and

replacing it by the following -

"(zc) (i) 35% of the total amount of dividends received, other than dividends falling under section 2(2)(b) to (f), by an individual, either personally or as an associate of a société (other than a société treated as a company under section 9(3)), on -

(A) securities quoted on the Official List and which have not, on the date on which the dividends became payable, been suspended or withdrawn;

(B) units; and

(C) share in an authorised mutual fund;

(ii) for the purposes of -

(A) subparagraph (i)(A), the payer of the dividend shall at the time of payment issue to the holder of a security a dividend warrant which shall include -

(AA) the date on which the dividend became payable; and

(BB) a confirmation that on that date the dividend was paid on a security;

(B) subparagraph (i)(B), the trustee or manager shall at the time of payment of a dividend to a unitholder issue to him a certificate which shall include -

(AA) the date on which the dividend became payable;

(BB) the amount of dividend paid to the unitholder; and

(CC) the exempt amount referred to in section 59b(4);"

(d) by inserting the following section immediately

after section 54D -

"54E-Allowance for investment in units

(1) Subject to subsection (2), where, for any year of assessment, an individual taxpayer (other than a taxpayer referred to in section 8(2)) has acquired units in a preceding income year either personally, or as an associate in a société (other than a société referred to in section 9(3)), he shall be allowed a relief by way of deduction from the income tax otherwise payable by him for that year of assessment of an amount equal to 10 per cent of the amount paid as consideration for the units.

(2) No deduction under subsection (1)

(a) shall exceed 5,000 rupees in any year of assessment;

(b) shall be allowed, unless the taxpayer furnishes to the Commissioner a certificate from the manager stating -

(i) the date of acquisition;

(ii) the number of units acquired;

and

(iii) the consideration paid for the units."

(e) by inserting the following section immediately after section 59A -

"59B Chargeable income of unit trusts

(1) The chargeable income of the trustee of a unit trust scheme shall be determined for all purposes of the Act as if -

(a) the trustee were a company to which section 55 applies;

(b) the units were shares in a company;

(c) the unitholders were shareholders of a company; and

(d) any distribution to a unitholder out of

net income derived by the trustee were a dividend paid on such shares on the date or latest date specified in the trust deed or, if no date is specified, on the last date of the annual balance of the accounts of the unit trust scheme.

(2) The trustee or manager of a unit trust scheme shall in its books of accounts make a clear distinction between income derived -

(a) by way of dividend which is exempt from income tax under section 34C (3) or under any other section of the Act; and

(b) from other dividends or from other sources.

(3) The trustee or manager shall distribute to the unitholders proportionately out of income arising under the subsections 2(a) and (b).

(4) An amount which bears the same proportion to the dividend received by a unitholder as the total dividend under subsection(2)(a) for an accounting year bear to the total income for that year shall be exempt from income tax.

(5) Any profits derived by the trustee of a unit trust scheme on realisation of any investments shall be deemed not to be income derived by the trustee and shall -

(a) not be distributed as income to the unitholders but credited to the Unit Trust Fund of the Scheme;

(b) be appropriated to meet realised losses; and

(c) be applied towards a capital purpose only.

(f) in section 115, by inserting the following immediately after subsection (4) -

"(5) Every trustee or manager of a unit trust scheme shall be deemed to be the agent of a unit

trust scheme."

(g) in the First Schedule, by deleting in paragraph 1, the words "section 34B or 34C" and replacing them by the words "section 34B, 34C, or 59B".

25 Commencement

This Act shall come into force on a day to be fixed by Proclamation.

Passed by the Legislative Assembly on the eleventh day of July, one thousand nine hundred and eighty-nine.

L. RIVALTZ QUENETTE
Clerk of the Legislative Assembly