

## CHAPTER 16

### INVESTMENT ENTITIES

#### Introduction

16.1 This Chapter sets out the requirements for the listing of the securities of investment entities, which include investment companies, unit trusts, closed-end funds, Global schemes, professional collective investment schemes, specialised collective investment schemes, expert funds and other collective investment schemes as defined in the Act and the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008. Investment entities seeking a listing must comply with the provisions of this Chapter. Where application for listing is made in respect of securities of investment entities which are not specifically addressed in this Chapter, the SEM should be consulted at an early stage.

#### Definitions

16.2 The following definitions apply:

- (a) "investment entity" includes:
  - (i) an "investment company";
  - (ii) a "unit trust scheme" as long as it continues to operate subject to the provisions of Section 160 (1) and (2) of the Act;
  - (iii) an "authorised mutual fund";
  - (iv) a "closed-end fund";
  - (v) a "Global scheme";
  - (vi) a "professional collective investment scheme";
  - (vii) a "specialised collective investment scheme";
  - (viii) an "expert fund"; and
  - (ix) any other "collective investment scheme" as defined in the Act and the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008.
- (b) "investment company" means a body corporate, whether open-ended or closed-ended, which has as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body;
- (c) "unit trust scheme" means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in income, profits and/or gains arising from the acquisition, holding, management or disposal of property of any description;
- (d) "Approved Investment Institution" designated under Section 50A of the repealed Stock Exchange Act, as long as it continues to operate subject to the provisions of Sections 159 (6) and (7) of the Act.
- (e) An "open-ended" investment entity is one whose security interests may be redeemed or repurchased out of its assets at the option of the holder.

## **General**

- 16.3 In evaluating an application for listing pursuant to this Chapter, regard will be had to the following fundamental principles, except for closed-end funds, Global schemes, professional collective investment schemes, specialised collective investment schemes, and expert funds:
- (a) those responsible for managing the investments of the investment entity must have adequate experience;
  - (b) there must be an adequate spread of investment risk;
  - (c) except as provided under The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, the applicant must be a passive investor and must not control or seek to control, or be actively involved in the management of, the companies or other entities in which it invests. Applicants whose policy it is to seek to control or exercise a decisive influence over the management of investments must have a three year trading record and comply with the Listing Rules applying to companies generally; and
  - (d) the applicant must not, to a significant extent, be a dealer in investments. Applicants which acquire or will acquire investments with a view to disposal in the short term in the course of a regular trading activity must have a three year trading record and comply with the Listing Rules applicable to companies generally.
- 16.4 The underlying investments held by an investment entity need not be limited to securities, but may include partnership arrangements, participations, joint ventures and other forms of non-corporate investment provided that the conditions of listing are met.
- 16.5 Investment entities must comply with the provisions regarding sponsors set out in Chapter 4. The sponsor of an investment entity shall be independent of the management company or the investment advisor, if any, unless prior approval has been obtained from the Relevant Authority.

## **Investment companies**

### *Conditions for listing*

- 16.6 An investment company must comply with the conditions for listing, as set out in Chapter 6, with the following modifications and additional conditions except as provided under The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008:
- (a) if the investment company is not able to satisfy fully the conditions set out in Rule 6.7(a) (audited accounts for three years), Rule 6.10 (nature and duration of business activities) and Rule 6.11 (continuity of management), it must satisfy the SEM that its directors have, and (if one is appointed) its investment manager has, sufficient and satisfactory experience in the management of investments of the type in which the company proposes to invest;

- (b) the board of directors (or equivalent body) of the investment company must be able to demonstrate that it will act independently of any investment manager of the investment company;
- (c) distributable income must be principally derived from investment and the investment company and any of its subsidiaries must not conduct a trading activity which is significant in the context of the group as a whole;
- (d) except as provided in (k) below, the investment company must not take legal or management control of investments in its portfolio;
- (e) except as provided in (k) below and except with the prior approval of the SEM, not more than 20 per cent of the gross assets of the investment company (consolidated where applicable) may be lent to or invested in the securities of any one company or group (including loans to or shares in the issuer's own subsidiaries) at the time the investment or loan is made; for this purpose any existing holding in the company concerned must be aggregated with the proposed new investment (this restriction does not apply to cash deposits awaiting investment);
- (f) unless otherwise authorised by the SEM, the investment company must invest in ten or more securities, each of which has been issued by non related parties;
- (g) dividends must not be paid unless they are covered by income received from underlying investments;
- (h) except where and to the extent that the SEM agrees, the distribution as dividend of surpluses arising from the realisation of investments must be prohibited and a provision to this effect must be contained in the investment company's constitutional documents;
- (i) the SEM may waive the requirement regarding the minimum number of 200 shareholders set out in Rule 6.21 in appropriate circumstances but shall not waive the percentage in public hands requirements of Rules 6.21 and 6.22 except for investment entities which are open-ended;
- (j) the investment company must make arrangements acceptable to the SEM for the safe custody of its assets;
- (k) if the investment company's investment policy is principally to invest its funds in another company or fund which invests in a portfolio of investments, it must satisfy the SEM that at all times its directors will control the policy of that other company or fund so as to comply with the relevant requirements set out in this Chapter;
- (l) in addition to Rule 6.14, the manager, if an individual, or each director and proposed director of the investment company's management company (where applicable) must make a declaration and undertaking in the form set out in Appendix 5 and submit it to the SEM in accordance with the provisions of Rule 7.11(o); and
- (m) within one year of the first marketing of its securities to the public, the investment company must have a stated capital of MRU 20 million.

*Methods of listing*

16.7 Investment companies must comply with Chapter 5.

*Listing Particulars*

16.8 An investment company must comply with the requirements relating to Listing Particulars set out in Chapter 8 as modified by this Chapter and in the case of overseas companies by Chapter 15. Listing Particulars for an investment company may subject to Rule 2.3 omit the following items of information in circumstances where they would otherwise be required by these Listing Rules:

- (a) in relation to equity securities: Rules 9.29, 9.31 to 9.41 (inclusive), 9.46 and 9.48 (working capital); and
- (b) in relation to debt securities: Rules 9.91, 9.94 to 9.103, 9.107 and 9.109 (working capital).

In addition the SEM may be prepared to permit the omission of other information where it considers it appropriate.

16.9 Some of the items of information specified in Chapter 9 may be inappropriate to the issuer's sphere of activity or legal form, in which case the item should be appropriately adapted so that equivalent information is given.

16.10 In addition to the information required by Rule 16.8 and, where applicable, The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, Listing Particulars for investment companies must include:

- (a) a description of the investment policy to be followed;
- (b) if it is intended that fewer than 20 investments will be made, a statement of this fact;
- (c) a list of all investments made or to be made (if known) with a value of greater than five per cent of the gross assets of the investment company and, in any case, at least the 10 largest investments, stating, in relation to the company or group in which each such investment is held:
  - (i) a brief description of the business;
  - (ii) the proportion of capital owned or intended to be owned;
  - (iii) the cost of the investment and market value (if any) at the latest practicable date or a directors' valuation;
  - (iv) the dividend per share received in the most recent financial year;
  - (v) the earnings per share for the latest audited financial year; and

- (vi) the net assets attributable to the investment as at the date of the latest audited balance sheet; and such information shall be modified appropriately for investments other than shares;
  - (d) an analysis of realised and unrealised surpluses, stating separately profits and losses as between investments listed on any securities exchange and those not so listed;
  - (e) a summary of the borrowing powers of the investment company;
  - (f) the name of any investment manager together with an indication of the terms and duration of its appointment, the basis for its remuneration and any arrangements relating to the termination of its appointment;
  - (g) the names, addresses and a description of every director of any management company (this is in addition to the requirements of Rules 9.53 and 9.113);
  - (h) the name, address and description of any custodian or investment adviser;
  - (i) details of a basis upon which management expenses are to be charged to capital;
  - (j) a statement that the conditions set out in Rules 16.6(c) to (h) will be met;
  - (k) details of the distribution policy and the approximate dates on which distributions will be made;
  - (l) risk warnings as appropriate having regard to the nature of the investment policy;
  - (m) details of the investment policy of the investment company with regard to any foreign exchange controls or restrictions of relevance to the investment company or its investment policy; and
  - (n) in the case of an open-ended investment company, details of the circumstances in which valuations and redemptions or repurchases may be suspended, deferred or refused.
- 16.11 In addition to 16.8, 16.10 and The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, where applicable, a newly formed investment company must include in its Listing Particulars:
- (a) a statement by the directors of the date upon which the company was incorporated and registered and that the company has not traded and no accounts have been made up; and
  - (b) a statement that its principal investment policies there set out will, in the absence of unforeseen circumstances, be adhered to for at least three years following listing, and that any material change in the policies within that period may only be made with shareholder approval.
- 16.12 The statement of responsibility required under Rule 9.2 or 9.68 must be given by the manager, if an individual, or the directors of the management company (where applicable)

as well as the directors of the investment company and a statement in the Listing Particulars should be modified accordingly.

*Application procedures and requirements*

- 16.13 An investment company applying for listing is subject to the requirements for application set out in Chapter 7, save that Rules 7.11(j) and 7.11(l) do not apply to a newly formed company. Where applicable, one copy of the most recent Annual Report of the management company and custodian must be lodged with the SEM together with the other documents specified in Rule 7.11.

*"Multi-class fund" or "umbrella fund"*

- 16.14 An application for listing of the securities of a "multi-class fund" or an "umbrella fund" must provide details of the various classes or designations of securities intended to be issued by the company and these details must be given in the Listing Particulars. The SEM will admit to listing such number of securities as the issuer may request for the purpose of future issues. At the time of issue the securities will be designated to the relevant class.

*Publication and circulation*

- 16.15 An investment company is subject to the requirements set out in Chapter 10, except that the SEM may subject to Rule 2.3 grant exemptions to publication requirements where because of the nature of the company, compliance would be in breach of advertising restrictions imposed by law in Mauritius or elsewhere.

*Continuing obligations*

- 16.16 An investment company must continue to comply with Rules 16.6(c), (d) and (e) and must comply with the applicable continuing obligations set out in these Listing Rules, modified in the case of overseas companies by Chapter 15, save that:
- (a) an overseas investment company will not be required to have a registrar situated in Mauritius if it has a transfer agent in Mauritius with authority to remit transfers to the overseas registrar; any change in transfer agent must be notified to the SEM without delay;
  - (b) for an open-ended investment company, changes in stated capital need not be disclosed under Rules 11.8(a), (b), (d) and (g) as a result of issues and redemptions or repurchases in the normal course as described in the Listing Particulars, unless and until the number of securities of the relevant class currently in issue increases or decreases by more than 10 per cent since the publication of the Listing Particulars or the last notification to the SEM;
  - (c) for an open-ended investment company, Rules 11.9 and 11.10 (notification of major interests in shares) do not apply (but interests of any one person or entity which exceed 10 per cent of the value of any class in the capital of the company must, so far as they are known to the company, be notified to the SEM without delay following the company becoming aware of those interests);

- (d) where publication would be in breach of advertising restrictions imposed by law in Mauritius or elsewhere, any requirement to publish information or a document to the public may be modified by the SEM to require the sending of such information or document only to the SEM and to other permitted recipients under those advertising restrictions;
- (e) in addition to the requirements under The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 (where applicable) and of Chapter 12 (financial information), the issuer must include in its Annual Report:
  - (i) a management report on the investment performance;
  - (ii) a statement of assets and liabilities and incorporating a list of all investments with a value greater than five per cent of the company's investment portfolio, and at least the 10 largest investments, stating, with comparative figures where relevant, the information specified under Rules 16.10(c)(i), (ii) and (iii) with respect to each investment so listed;
  - (iii) a statement of income and distribution, distinguishing realised and unrealised surplus, stating separately profits and losses as between listed and unlisted investments;
  - (iv) in the case of an approved investment institution, a certified statement from the licensed auditors of the institution that the rules governing approved investment institutions have been complied with; and
  - (v) such other information as may be required by the SEM to enable investors to reach an informed judgement on the performance of any other investment;
- (f) Chapter 14 (restrictions on purchase and subscription) does not apply to open-ended investment companies; and
- (g) the directors of the investment company's management company (where applicable) must also comply with Rules 11.24 and 11.25.

16.17 An investment company must submit to the SEM a statement of its net asset value as at the end of each month within 15 days of that date, and publish it in at least two widely circulating daily newspapers.

16.18 Unless authorised by its shareholders, an investment company may not issue further shares of the same class as existing shares for cash at a price below the net asset value per share of those shares unless they are first offered pro rata to existing holders of shares of that class.

#### *Notifiable transactions*

16.19 The provisions of Chapter 13 insofar as they relate to related party transactions apply to all investment companies (both open-ended and close-ended) and, for the purposes of Chapter 13, any investment manager or custodian (or any related party thereof) shall be regarded as a related party of the issuer.

16.20 The remaining provisions of Chapter 13 (that is, those not referred to in Rule 16.19) apply to close-ended investment companies only, except for any transactions that fall within the stated investment policies.

### **Unit trust schemes**

16.21 The SEM may admit to listing the units of unit trust schemes which are either open-ended or close-ended.

#### *Conditions for listing*

16.22 A unit trust scheme is not required to comply with the conditions for listing set out in Chapter 6. The conditions for listing the units of a unit trust scheme are as follows:

- (a) its constitutive documents must make provision for the following matters:
  - (i) the characteristics of the units and their issue and redemption;
  - (ii) the expenses of the unit trust scheme (including the trustee's and manager's fees) and the means of meeting them;
  - (iii) the appointment, removal and duties of an auditor for the unit trust scheme;
  - (iv) restrictions on investment and borrowing powers of the unit trust scheme;
  - (v) maintenance of financial records and the preparation of periodic reports with respect to the unit trust scheme and their distribution to both the SEM and to the unit holders; and
  - (vi) all such further matters as required by the SEM in order to ensure that the unit trust scheme affords adequate protection to its unit holders.
- (b) the proposed managers must have sufficient and satisfactory experience in the management of investments and must complete a declaration and undertaking in the form set out in Appendix 5 and submit it to the SEM in accordance with the provisions of Rule 7.11;
- (c) unless otherwise agreed by the SEM, the trustee or one of the trustees must have sufficient and satisfactory experience of acting as trustee or custodian;
- (d) unless the SEM otherwise agrees and / or except as provided under The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, the investment policy of the unit trust scheme must be compatible with the requirements of Rules 16.6(c) to (h), (k) and (l) for investment companies; and
- (e) a close-ended unit trust scheme must comply with the conditions for listing for investment companies with appropriate modifications to reflect the legal form of the scheme.

#### *Methods of listing*

16.23 Chapter 5 usually does not apply to unit trust schemes which are open ended.

*Listing Particulars*

16.24 A unit trust scheme must prepare Listing Particulars which complies with Chapter 8 (except Rule 8.7(a)) and contains at least the information set out in Rule 16.25 and, where applicable, The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008. It need not comply with the requirements of Chapter 9.

*Contents of Listing Particulars*

16.25 In addition to the requirements of The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, where applicable, Listing Particulars in respect of units of a unit trust scheme must contain the following:

- (a) a declaration by the directors of the manager, modified appropriately if the managers are not a company, in the following form:

“The directors of the manager of the unit trust scheme, whose names appear on page [] are the persons responsible for the information contained in this document. To the best of the knowledge and belief of the directors (who have all taken reasonable care to ensure such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information. The directors accept responsibility accordingly.”

- (b) information with respect to the unit trust scheme, namely:

- (i) the name;
- (ii) a statement that application for listing has been made;
- (iii) a brief description of its history and formation;
- (iv) a brief description of its constitution;
- (v) the investment policy including any limitation application and an indication of any borrowing techniques and instruments or powers which may be used in the management of the scheme;
- (vi) a list of principal investments with a value greater than five per cent of the net assets of the unit trust scheme;
- (vii) the name of any regulatory body which supervises the unit trust scheme; and
- (viii) description of the risk factors involved.

- (c) information with respect to the managers, namely:

- (i) the names, addresses and description of the directors or equivalent officers, together with a description of their experience in the management of investments;
  - (ii) a brief history, including information on any other unit trust schemes or investment companies managed;
  - (iii) information on any investment advisers retained; and
  - (iv) remuneration arrangements (including the amount of preliminary and annual charges levied by the managers' custodians or third parties and the remuneration of any associate of the managers together with details of how and when they can be altered);
- (d) information with respect to the buying and selling of units in the unit trust scheme (or appropriate negative statements in the case of a close-ended unit trust scheme) namely:
- (i) the price of issue of units and how calculated;
  - (ii) the income distribution or allocation arrangements;
  - (iii) registration and issue of certificates, where applicable;
  - (iv) how the redemption price of units is calculated;
  - (v) the method by and intervals at which the units are valued;
  - (vi) the arrangements for the publication of valuations of units; and
  - (vii) the arrangements for conversion between classes of an umbrella fund;
- (e) information with regard to the trust deed, namely:
- (i) the names and addresses of the trustee and registrars;
  - (ii) the basis of remuneration of the trustee, together with details of any ancillary payments to be made to the trustee or any associate of the trustee together with details of how and when they can be altered;
  - (iii) details of all indemnities or restrictions of liability (if any) in respect of the trustee and managers;
  - (iv) arrangements for removing the managers or the trustee; and
  - (v) arrangements for termination of the unit trust scheme;

- (f) general information, namely:
  - (i) the basis of taxation of the unit trust scheme and of Mauritian unit holders;
  - (ii) details of any arrangements for preparation and distribution of reports and accounts for the year or other financial period;
  - (iii) details of material litigation pending or threatened which is significant in relation to the unit trust scheme;
  - (iv) in the case of a statement or report attributed to an expert, a statement that he has given and not withdrawn his written consent to the issue of the document with the statement or report included in the form and context in which it is included; and
  - (v) details of the availability of documents for inspection including copies of the trust deed (or equivalent constitutional document), the last three years' Annual Reports (if published), any written consents and any management contract and investment advisers' contracts;
- (g) financial information (which must be in the form of a report by the licensed auditors if a unit trust scheme already has units held by the public), namely:
  - (i) a statement of assets and liabilities made up to a date not more than six months prior to publication of the document;
  - (ii) a statement of changes in the capital account for the last financial period (if any);
  - (iii) income and, where applicable, distribution statements for the last three financial years (or any lesser number of completed financial years) expressed in amounts per unit; and
  - (iv) the accounting policies adopted;
- (h) where a portfolio of investments is already held or is intended to be acquired other than by purchases in the market, disclosure of the terms on which such investments were or are to be acquired and the identity of the vendors and of any person who managed the portfolio for the vendors or advised the vendors on its investment;
- (i) a statement of the circumstances in which valuations and redemptions or repurchases may be deferred, refused or suspended;
- (j) in the case of a newly formed unit trust scheme, a statement that the principal investment policy set out therein will, in the absence of unforeseen circumstances, be adhered to for at least three years following listing, and that any material change in investment policy within that period may only be made with unit holder approval; and
- (k) in the case of a newly formed unit trust scheme, the costs of establishing the unit trust to the extent borne by the unit trust scheme.

*Application procedures and requirements*

- 16.26 Unit trust schemes must comply with Chapter 7, which deals with application procedures and requirements (with appropriate modification). An umbrella fund or multi-class unit trust scheme must also comply with the provisions set out (in respect of investment companies) under Rule 16.14.
- 16.27 The SEM will admit to listing such number of units of a unit trust scheme as the managers may require for the purpose of future issues.

*Publication and circulation*

- 16.28 A unit trust scheme is subject to the requirements for publication set out in Chapter 10, as modified by Rule 16.29, except that the SEM may grant exemptions to publication requirements where, because of the nature of the unit trust scheme, compliance would be in breach of advertising restrictions imposed by law in Mauritius or elsewhere.
- 16.29 A unit trust scheme must publish a formal notice/box advertisement in at least two daily newspapers of wide circulation not less than two business days prior to consideration by the SEM of the application, stating:
- (a) the name of the unit trust scheme;
  - (b) that application for listing has been made;
  - (c) the amount and title of the units for which listing is sought;
  - (d) that the text of the Listing Particulars is available from the SEM;
  - (e) the addresses and times at which copies of the document are available to the public for 14 days from the date of the notice; and
  - (f) the date of publication.

*Continuing obligations*

- 16.30 Unit trust schemes which have any units listed must comply with the continuing obligations contained in these Listing Rules, as modified by Rule 16.16 for investment companies and by Chapter 15 in the case of international issuers and with appropriate modifications to reflect the legal form of the scheme. However, Rules 11.26 and 11.27 (notification of interests of directors and their associates) and 11.31 and 11.32 (board meetings and decisions) do not apply to any unit trust scheme and Rules 11.12 to 11.15 (pre-emption rights) do not apply to open-ended unit trust schemes. In addition to the requirements of The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, where applicable, the following obligations must be observed so long as the units remain listed:
- (a) the respective obligations of the managers and trustee under the constitutional documents of the unit trust scheme and the applicable legal and regulatory requirements;

- (b) the amount of the charges and expenses (to the extent borne by the unit trust scheme) of the managers, the trustee and any agent of the managers or trustee, or any sub-custodian, must be clearly set out in each Annual Report on the unit trust scheme;
- (c) the SEM must be advised on request of the number of units outstanding in bearer or registered form;
- (d) in the case of an open-ended unit trust scheme, the bid and offer prices must be notified to the SEM on the occasion of each valuation of units;
- (e) the unit trust scheme must notify the following information to the SEM and the FSC without delay:
  - (i) any changes in the identity or control of the managers or trustee;
  - (ii) any change in the general character or nature of the unit trust;
  - (iii) any proposal to renew, vary, amalgamate or terminate the unit trust scheme; and
  - (iv) any other information necessary to enable the unit holders to appraise the position of the unit trust scheme and avoid the establishment of a false market in the units;
- (f) the following documents must be lodged with the SEM:
  - (i) one copy of the audited statement of account within three months of the end of the financial period to which any such statement relates; and
  - (ii) one copy of all notices and circulars at the same time as sent to the unit holders;
- (g) a complete file must be maintained by the managers of all advertisements, brochures, leaflets and other documents issued by or on behalf of the managers with a view to effecting or stimulating sales or purchases of units; the file must be produced to the SEM at any time on demand (this is in addition to the review of documents requirement set out in Rule 11.21 as modified to reflect the legal form of the unit trust scheme); and
- (h) any requirement for a unit trust to publish information or a document may be modified by the SEM where publication would be in breach of advertising restrictions imposed by law in Mauritius or elsewhere.

**Other types of investment entities: Closed-end funds, Global schemes, professional collective investment schemes, specialised collective investment schemes and expert funds**

16.31 This part applies to the following investment entities:

- (i) a “closed-end fund” authorised under the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 which does not fall under the definition of investment company under this Chapter 16;
- (ii) a “Global scheme” authorised under the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008;
- (iii) a “professional collective investment scheme” authorised under the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008;
- (iv) a “specialised collective investment scheme” authorised under the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008; and
- (v) an “expert fund” authorised under the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008.

*Conditions for listing*

16.32 An investment entity must comply with the conditions for listing, as set out in Chapter 6, with the following modifications and additional conditions except as provided under The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008:

- (a) if the investment entity is not able to satisfy fully the conditions set out in Rule 6.7(a) (audited accounts for three years), Rule 6.10 (nature and duration of business activities), Rule 6.11(continuity of management) and Rule 6.18 (market capitalisation), it must satisfy the SEM that its directors have, and (if one is appointed) its investment manager has, sufficient and satisfactory experience in the management of investments of the type in which the company proposes to invest;
- (b) the board of directors (or equivalent body) of the investment entity must be able to demonstrate that it will act independently of any investment manager of the investment entity;
- (c) except where and to the extent that the SEM agrees, the distribution as dividend of surpluses arising from the realisation of investments must be prohibited and a provision to this effect must be contained in the investment company's constitutional documents;
- (d) the SEM may waive the requirement regarding the minimum number of 200 shareholders set out in Rule 6.21 and/or the percentage in public hands requirements of Rules 6.21 and 6.22 in appropriate circumstances;
- (e) the investment entity must make arrangements acceptable to the SEM for the safe custody of its assets;

- (f) in addition to Rule 6.14, the manager, if an individual, or each director and proposed director of the investment entity's management company (where applicable) must make a declaration and undertaking in the form set out in Appendix 5 and submit it to the SEM in accordance with the provisions of Rule 7.11(o); and
- (g) notwithstanding Rule 16.32 (a), an investment entity must, within one year of the first marketing of its securities to the public, have a stated capital of MRU 20 million.

### *Listing Particulars*

16.33 An investment entity must comply with the requirements relating to Listing Particulars set out in Chapter 8 as modified by this Chapter and in the case of investment entities registered, licensed or authorised in a foreign jurisdiction by Chapter 15. Listing Particulars for an investment entity may subject to Rule 2.3 omit the following items of information in circumstances where they would otherwise be required by these Listing Rules:

- (a) in relation to equity securities: Rules 9.29, 9.31 to 9.41 (inclusive), 9.46 and 9.48 (working capital); and
- (b) in relation to debt securities: Rules 9.91, 9.94 to 9.103, 9.107 and 9.109 (working capital).

In addition the SEM may be prepared to permit the omission of other information where it considers it appropriate.

16.34 Some of the items of information specified in Chapter 9 may be inappropriate to the issuer's sphere of activity or legal form, in which case the item should be appropriately adapted so that equivalent information is given, where applicable.

16.35 In addition to the information required by Rule 16.33 and, where applicable, The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, Listing Particulars for investment entities must include:

- (a) a description of the investment policy to be followed;
- (b) if it is intended that fewer than 20 investments will be made, a statement of this fact;
- (c) a list of all investments made or to be made (if known) with a value of greater than five per cent of the gross assets of the investment company and, in any case, at least the 10 largest investments, stating, in relation to the company or group in which each such investment is held:
  - (i) a brief description of the business;
  - (ii) the proportion of capital owned or intended to be owned;

- (iii) the cost of the investment and market value (if any) at the latest practicable date or a directors' valuation;
  - (iv) the dividend per share received in the most recent financial year;
  - (v) the earnings per share for the latest audited financial year; and
  - (vi) the net assets attributable to the investment as at the date of the latest audited balance sheet; and such information shall be modified appropriately for investments other than shares;
- (d) an analysis of realised and unrealised surpluses, stating separately profits and losses as between investments listed on any securities exchange and those not so listed;
- (e) a summary of the borrowing powers of the investment company;
- (f) the name of any investment manager together with an indication of the terms and duration of its appointment, the basis for its remuneration and any arrangements relating to the termination of its appointment;
- (g) the names, addresses and a description of every director of any management company (this is in addition to the requirements of Rules 9.53 and 9.113);
- (h) the name, address and description of any custodian or investment adviser;
- (i) details of a basis upon which management expenses are to be charged to capital;
- (j) a statement that the conditions set out in Rule 16.6(c) will be met;
- (k) details of the distribution policy and the approximate dates on which distributions will be made;
- (l) risk warnings as appropriate having regard to the nature of the investment policy;
- (m) details of the investment policy of the investment company with regard to any foreign exchange controls or restrictions of relevance to the investment entity or its investment policy; and
- (n) in the case of an open-ended investment entity, details of the circumstances in which valuations and redemptions or repurchases may be suspended, deferred or refused.
- 16.36 In addition to Rules 16.33, 16.35 and the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, where applicable, a newly formed investment entity must include in its Listing Particulars:
- (a) a statement by the directors of the date upon which the entity was incorporated and registered and that the entity has not traded and no accounts have been made up; and
  - (b) a statement that its principal investment policies there set out will, in the absence of unforeseen circumstances, be adhered to for at least three years following listing, and

that any material change in the policies within that period may only be made with shareholder approval.

16.37 The statement of responsibility required under Rule 9.2 or 9.68 must be given by the manager, if an individual, or the directors of the management company (where applicable) as well as the directors of the investment company and a statement in the Listing Particulars should be modified accordingly.

16.38 For investment entities falling under this Part, the SEM may waive any or part of the requirements under Rules 16.33 to 16.36 and accept the offer document (in the form of a Private Placement Memorandum or a Prospectus already registered with the FSC during the previous 12 months), as constituting Listing Particulars provided the Private Placement Memorandum or Prospectus complies in material respect with the requirements set out in these Listing Rules. Any significant change or new information which should be stated in the prospectus or offer document arising over the last 12 months must be reflected in the Listing Particulars.

#### *Application procedures and requirements*

16.39 An investment entity applying for listing is subject to the requirements for application set out in Chapter 7, save that Rules 7.11(j) and 7.11(l) do not apply to a newly formed entity.

#### *"Multi-class fund" or "umbrella fund"*

16.40 An application for listing of the securities of a "multi-class fund" or an "umbrella fund" must provide details of the various classes or designations of securities intended to be issued by the company and these details must be given in the Listing Particulars. The SEM will admit to listing such number of securities as the issuer may request for the purpose of future issues. At the time of issue the securities will be designated to the relevant class.

#### *Publication and circulation*

16.41 An investment entity is subject to the requirements set out in Chapter 10, except that the SEM may subject to Rule 2.3 grant exemptions to publication requirements where because of the nature of the entity, compliance would be in breach of advertising restrictions imposed by law in Mauritius or elsewhere.

#### *Continuing obligations*

16.42 An investment entity must comply with the applicable continuing obligations set out in these Listing Rules, modified in the case of overseas companies by Chapter 15, save that:

- (a) an overseas investment entity will not be required to have a registrar situated in Mauritius if it has a transfer agent in Mauritius with authority to remit transfers to the overseas registrar; any change in transfer agent must be notified to the SEM without delay;
- (b) for an open-ended investment entity, changes in stated capital need not be disclosed under Rules 11.8(a), (b), (d) and (g) as a result of issues and redemptions or repurchases in the normal course as described in the Listing Particulars, unless and

until the number of securities of the relevant class currently in issue increases or decreases by more than 10 per cent since the publication of the Listing Particulars or the last notification to the SEM;

- (c) for an open-ended investment entity, Rules 11.9 and 11.10 (notification of major interests in shares) do not apply (but interests of any one person or entity which exceed 10 per cent of the value of any class in the capital of the company must, so far as they are known to the company, be notified to the SEM without delay following the company becoming aware of those interests);
- (d) where publication would be in breach of advertising restrictions imposed by law in Mauritius or elsewhere, any requirement to publish information or a document to the public may be modified by the SEM to require the sending of such information or document only to the SEM and to other permitted recipients under those advertising restrictions;
- (e) in addition to the requirements under the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 (where applicable) and of Chapter 12 (financial information), the issuer must include, where available, in its Annual Report:
  - (i) a management report on the investment performance;
  - (ii) a statement of assets and liabilities and incorporating a list of all investments with a value greater than five per cent of the company's investment portfolio, and at least the 10 largest investments, stating, with comparative figures where relevant, the information specified under Rules 16.35 (c)(i), (ii) and (iii) with respect to each investment so listed;
  - (iii) a statement of income and distribution, distinguishing realised and unrealised surplus, stating separately profits and losses as between listed and unlisted investments; and
  - (iv) such other information as may be required by the SEM to enable investors to reach an informed judgement on the performance of any other investment;
- (f) Chapter 14 (restrictions on purchase and subscription) does not apply to open-ended investment entities; and
- (g) the directors of the investment entity's management company (where applicable) must also comply with Rules 11.24 and 11.25.

16.43 An investment entity must fully disclose and adhere to the investment policy, distribution policy, strategy, frequency of calculation of its net asset value and any restrictions (where applicable) in its prospectus or offer document.

16.44 Unless authorised by its shareholders, an investment entity may not issue further shares of the same class as existing shares for cash at a price below the net asset value per share of those shares unless they are first offered pro rata to existing holders of shares of that class.

*Notifiable transactions*

- 16.45 The provisions of Chapter 13 insofar as they relate to related party transactions apply to all investment entities (both open-ended and close-ended) and, for the purposes of Chapter 13, any investment manager or custodian (or any related party thereof) shall be regarded as a related party of the issuer.
- 16.46 The remaining provisions of Chapter 13 (that is, those not referred to in Rule 16.45) apply to close-ended investment entities only, except for any transactions that fall within the stated investment policies.

*General*

- 16.47 The requirements under this part are not exhaustive and the SEM may impose additional requirements in any particular case.
- 16.48 For specialised collective investment schemes authorised under Regulation 77 of the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008, the SEM shall determine the requirements under this part that shall apply and /or impose any additional requirements in each particular case.