UNIT TRUSTS AND MUTUAL FUNDS REGULATIONS, 2001 (L.I. 1695)

1. Application & annual fees

- **Regulation 3** of this law deals with application & annual fees and states that an applicant shall pay an application fee to the Commission for a license to operate a mutual fund e.g. EPACK, MFUND and BFUND. The Mutual Funds are also required to pay an annual renewal fee to the Commission not later than the 31st of January each year.

2. Capital requirements

- By **Regulation 5**, a manager of a mutual fund shall have a minimum issued and paid up capital of GH¢100,000.

3. Minimum subscription requirement for issue of licence

- **Regulation 7** provides that the promoters of a mutual fund (ie DAMSEL) are required to set a minimum amount as minimum initial subscription which the Commission must approve. A minimum of 5% of this amount shall be contributed by the manager.

4. Scheme particulars

- **Reg. 14** provides that the scheme particulars of a mutual fund (MFUND, EPACK etc) should contain an investment plan. For example what the minimum amount as the initial deposit should be and options for regular contributions e.g. weekly, monthly, etc.

- The fees, costs and charges relating to a Fund should also be stated in the scheme particulars. E.g. a prospective investor will be charged an exit fee of 1% if a withdrawal is made before the expiration of the 3 year period (for EPACK).

- Any increase in the fees, costs or charges relating to a mutual fund should be communicated to investors at least 30 days before the date the changes take effect.

- **Reg. 15** makes it mandatory for the manager of a mutual fund to cause to be published, the prices of mutual funds on each business day.

b) <u>Pricing and dealing</u>

- **Reg 25** permits the manager to suspend dealings under certain circumstances including:
    i. when the stock exchange itself is closed, or dealings there are restricted or suspended
    ii. when the situation is such that the sale of the fund's investments (eg Epack's investments) would be impracticable or might severely affect the interests of the investors and the scheme itself
- the manager or the Boar dof directors have to inform the Commission of any such suspension as well as the reasons for it.
- The law requires that the manager shall place a notice about the suspension in dealings in the daily newspaper in which its prices are published and repeat this monthly during the period of the suspension.

- **Reg. 26** deals with sale of shares by a investor known as Redemptions. It states that a request by a investor to sell off his interests in any scheme should be satisfied on a first come first serve basis. This means that there should be a register of investors who fill sale order forms and these transactions should be dealt with on a first come first serve basis.

- Payment for the redemption of funds from an investment scheme eg Bfund shall not exceed 5 working days.

- **Regulation 34** deals with transmission of interests. The law states that where interests to a scheme are held jointly and the death of any of the investors occurs, the surviving investor shall be recognized as the person entitled to the interest; provided:

(a) that there is no evidence to the contrary

(b) that the surviving investor delivers the relevant certificate.

- In all cases, the executors or administrators of the deceased shall be the only persons recognized by the manager as having title to the interests held by the deceased investor.

c) ***Reports to investors***

- It is mandatory for the manager of a mutual fund scheme e.g. DAMSEL[1] (managers of EPACK) to provide investors (EPACK, MFUND, BFUND etc) with a half-year and annual report at the end of each half year and full year respectively. This is clearly stated in **Regulation 49**.

- **Regulation 50** also provides that the half-year and annual reports prepared for investors shall be submitted to the Commission and circulated to investors before:

  (a) the expiry of 2 months after the end of the accounting period (for half-year reports); and

  (b) the expiry of 4 months after the end of the accounting period (for annual reports).

- As an alternative to circulating half-year reports to investors, they could be published in the newspapers before the expiry of the 2 months period.

- **Reg. 53** also makes it compulsory for the manager of a scheme to keep and maintain a register of investors and the register shall include the particulars of investors such as name, address, phone number, number of shares

[1] Databank Asset Management Services Limited

purchased and any other relevant information on the investor.
It is also required that an index to the register is kept and this will enable information about each investor to be accessed easily.

- **Reg. 54** states that the register and the index to it are to be kept at the registered office of the manager.
  It is required that a duplicate of the register is kept at a place which is different from the location at which the original register is kept.

- **Reg. 55** states that the manager of a scheme shall permit any trustee or director of the fund or its duly authorised representative or even an investor in the fund to inspect the register of investors during normal office hours free of charge.

- **Regulation 57** deals with closure of the register and states that any closure of the register for a period exceeding 30 business days shall be notified to the Commission and also to the general public by an advert in a newspaper or the newspaper(s) in which the prices of the interests are usually published.

d) *Provisions relating to the Manager of a scheme*

- The law requires in **Reg. 59** that the manager shall be paid out of the fund and the Commission shall be given not less than 3 months prior written notice of any increase in the manager's remuneration.

- **Regulation 60** states that the manager of a fund shall establish and enforce procedures that will ensure that:
  (a) only persons of good repute are responsible for the day to day management of the fund;

  (b) employees exercise due diligence and care in the performance of their duties and act honestly in matters concerning the fund;

(c) the manager supervises the activities of the employees to ensure compliance with the law;

(d) the manager does not take advantage of information acquired in the course of employment for personal gain.

The manager of a fund shall file with the Commission, within 3 months after the grant of a license to operate a fund, documents containing the procedures referred to above, and such documents shall be in the form of an internal compliance manual.

Regulation 63 states that the manager of a fund shall not engage in any of the under listed without the prior approval of the Commission:

(a) buy or sell securities in its own name;
(b) buy or sell securities in the name of a nominee in which it has an interest; or
(c) have an interest in any person engaged in the business of dealing in securities under its management.

Regulation 66

The manager of a fund may delegate its functions, powers, discretion, privileges and duties to any person only if this is done with the prior written approval of the board of directors of the fund.
With regards to this provision, it is important to note that the manager shall always remain liable for any act or omission of any such person.

Regulation 68 states that the following transactions cannot be executed without the written consent of the board of directors of a mutual fund:

(a) a transaction between the fund and the manager or any person associated with the manager; or eg V&A and BFUND
(b) a transaction by or on behalf of the fund in a security in which the manager has an interest.

e) <u>Matters relating to investors/shareholders</u>

- **Reg. 78** of the law gives investors the right to make enquiries into the operation of the mutual fund and these enquiries shall be properly considered and dealt with.

- With regards to a complaints procedure, **Reg.79** states that the manager of a scheme (e.g. DAMSEL), shall maintain a complaints register in which every complaint received, the date and other details of it are recorded.
  The manager shall investigate the complaints received and if within 3 months after the receipt of a complaint the complainant is not satisfied with its settlement, the manager shall give notice to the Commission of the details of the complaint.
  The Commission shall thereafter investigate the complaint and take immediate action to solve the complainant's problem.

- **Reg. 80** of the law deals with Annual General Meetings
  The law requires that investors or shareholders of a particular scheme meet at least once a year (Annual General Meeting).
  The place and time of such meetings are to be determined by the board of directors of the scheme. Registered investors, holding not less than one-twentieth of the total number of shares may request that the manager convenes a meeting of shareholders within 30 days of the date of request.

- As stated in **Reg. 81**, the rights of shareholders include their consent to any modification or addition to the provisions of a mutual fund, a departure from the policy statement in the scheme particulars, the removal and replacement of the manager with a nominated person and even the termination of the scheme, by a *special resolution*.[2]
- **Regulation 82** states that a notice of the meeting of investors (Annual General Meeting) shall specify the place, day, time and terms of the resolutions proposed and a

[2] A special resolution is achieved by votes at a meeting of shareholders duly convened and carried by a majority, consisting of 75% of the total number of votes cast, whether by show of hands or on a poll.

copy of this notice shall be sent by post or delivered to the office of the Commission.

- The AGM shall be convened by giving at least 21 days written notice to investors/shareholders (exclusive of the day on which the notice is served), or by publishing it at least 14 days before the meeting (exclusive of the day on which the notice is published).

- **Regulation 83** deals with the quorum for an AGM.
  The quorum for an AGM is:

  (a) 20 investors present in person or by proxy; or
  (b) 10 investors present in person or by proxy who hold at least 50% of all the interests in the fund.

  - The investors shall ***not*** transact any business at an AGM unless the requisite quorum is present at the commencement of the meeting.
  - If within an hour from the time the meeting is supposed to start, a quorum is not present, the meeting shall ***not*** be held.

- **Regulation 86** states that the board of directors of a mutual fund shall take or cause to be taken, minutes of each AGM, a copy of which shall be kept in the custody of the secretary of the mutual fund.
  - Any minutes signed by the chairperson of the meeting shall be conclusive evidence of the matters stated in the minutes.

  - Regulation 98 stipulates that the manager, custodian and every director, officer or employee of a manager, custodian or mutual fund company and all persons employed or in connection with any of the above-named companies shall before they start their duties sign a declaration. This declaration is a pledge to observe secrecy in respect of all matters that concern the funds and its transactions as well as the transactions of the investors. By this declaration they shall pledge not to reveal any matter which may come o their knowledge in the discharge of their duties.

The exceptions to the above are when the information is required by

- Board of directors of the manager, custodian or mutual fund company
- Court of law
- Person to whom the matter relates eg an investor
- In order to comply with the provisions of any law

f) Offences and penalties

- With regards to offences and penalties, Reg. 100 states that any person who contravenes any of the provisions stated above commits an offence and shall upon conviction, be liable to a fine or to imprisonment of a term not exceeding 12 months or to both.
  If the offence is a continuing offence, the accused shall be liable to pay a fine of 5 penalty units for each day the offence continues after conviction.

- However, where the offence is committed by a body corporate, every director shall upon conviction be liable to a fine or to an imprisonment term not exceeding 12 months or to both unless the person proves to the satisfaction of the court that he/she exercised due diligence to secure compliance with the provision and that the offence was committed without his/her knowledge, consent or connivance.

GLOSSARY

Commission means the Securities and Exchange Commission.