

**DRAFT LEGISLATIVE AMENDMENTS TO THE
SECURITIES AND FUTURES ACT (CAP. 289)
– AMENDMENTS TO DEFINITION OF “DEBENTURES” AND
“COLLECTIVE INVESTMENT SCHEMES”**

DISCLAIMER: This version of the amendments is in draft form and subject to change. It is also subject to review by the Attorney- General’s Chambers.

**SECURITIES AND FUTURES ACT
(CHAPTER 289)**

**PART I
PRELIMINARY**

Short title

1. This Act may be cited as the Securities and Futures Act

Interpretation

2. – (1) In this Act, unless the context otherwise requires –

...

“debenture”, ~~except for the purposes of Part XIII,~~ includes

(a) any debenture stock, bond, note and any other debt securities issued by a corporation or any other entity, whether constituting a charge or not, on the assets of the issuer; ~~or~~

(b) such other product or class of products as the Authority may prescribe;

but does not include –

~~(a)~~ (i) a cheque, letter of credit, order for the payment of money or bill of exchange; or

~~(b)~~ (ii) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

...

“collective investment scheme” means —

(a) an arrangement in respect of any property —

(i) under which —

~~(A)~~ — the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and

~~(B)~~ — the property is managed as a whole by or on behalf of a manager;

~~(ii) — under which the contributions of the participants and the profits or income from which payments are to be made to them are pooled; and~~

(ii) under which any of the following characteristics are present –

(A) the property is managed as a whole by or on behalf of a manager; or

(B) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(iii) the purpose or effect, or purported purpose or effect, of which is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —

(A) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or

(B) to receive sums paid out of such profits, income, or other payments or returns; or

(b) an arrangement which is an arrangement, or is a of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice published in the *Gazette*,

but does not include —

(i) an arrangement operated by a person otherwise than by way of business;

(ii) an arrangement under which each of the participants carries on a business other than investment business and enters into the arrangement solely incidental to that other business;

(iii) an arrangement under which each of the participants is a related corporation of the manager;

(iv) an arrangement made by or on behalf of an entity solely for the benefit of persons, each of whom is —

(A) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of that entity or, where that entity is a corporation, a related corporation of that entity; or

- (B) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;
- (iva) an arrangement made by or on behalf of 2 or more entities solely for the benefit of persons, each of whom is —
 - (A) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of any of those entities or, where any of those entities is a corporation, a related corporation of the entity which is a corporation; or
 - (B) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;
- (v) a franchise;
- (vi) an arrangement under which money received by an advocate and solicitor from his client, whether as a stakeholder or otherwise, acting in his professional capacity in the ordinary course of his practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;
- (vii) an arrangement made by any co-operative society registered under the Co-operative Societies Act (Cap. 62) in accordance with the objects thereof solely for the benefit of its members;
- (viii) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act (Cap. 39);
- (ix) an arrangement arising out of a life policy within the meaning of the Insurance Act (Cap. 142);
- (ixa) arrangements in which the whole amount of each participant's contribution is a deposit as defined in the Banking Act (Cap. 19);
- (x) a closed-end fund constituted either as an entity or a trust;
- (xia) arrangements under which -
 - (A) the predominant purpose is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to others; and
 - (B) the property to which the arrangements relate:
 - (i) does not consist of the currency of any country or territory, and

(ii) does not consist of or include any:

(A) capital markets product;

(B) policy as defined in the Insurance Act (Cap. 142);

(C) deposit as defined in the Banking Act (Cap. 19);

(D) credit facilities as defined in the Banking Act (Cap. 19);

(xii) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a collective investment scheme by notice published in the *Gazette*;

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