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OF THE

REPUBLIC OF NAMIBIA

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Government Notices

MINISTRY OF FINANCE

No.350

2013

AMENDMENT OF LONG-TERM INSURANCE REGULATIONS: LONG-TERM INSURANCE ACT, 1998

Under section 72 of the Long-term Insurance Act, 1998 (Act No. 5 of 1998), after consultation with the Advisory Committee on Long-term Insurance, I have -

- (a) amended the regulations set out in the Schedule, with effect from 1 January 2014;
- (b) withdrawn Government Notice No. 126 of 31 May 2013, with effect from that date of its publication in the *Gazette*.

S. KUUGONGELWA-AMADHILA
MINISTER OF FINANCE

Windhoek, 18 December 2013

SCHEDULE

Definitions

1. In these regulations “the Regulations” means the Long-term Insurance Regulations published under Government Notice No. 145 of 18 June 1998, as amended by Government Notices Nos. 47 of 15 February 2000, 143 of 16 July 2001, 31 of 4 February 2008 and 126 of 31 May of 2013.

Amendment of regulation 1

2. Regulation 1 of the Regulations is amended -

(a) by the substitution of the following definitions for the definitions of “banking institution” and “building society”:

“banking institution” means an institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998), and includes a banking institution authorised as such under the laws of a country other than Namibia;

“building society” means a building society registered under the Building Societies Act, 1986 (Act 82 of 1986), and includes a building society authorised as such under the laws of a country other than Namibia;

(b) by the insertion of the following definitions after the definition of “depositor”:

“domestic asset” means assets of the kind referred to in the following items of Columns 1 and 2 of Annexure C -

- (a) item 1 (credit balances) where such balances are held in Namibia;
- (b) item 2 (Government Bonds) where such bonds are denominated in Namibian currency, and issued and purchased in Namibia;
- (c) item 3 (State owned enterprises, local authorities and regional council bonds) where such bonds are denominated in Namibian currency, and issued and purchased in Namibia;
- (d) item 4 (corporate bonds) where such bonds are denominated in Namibian currency, and issued and purchased in Namibia;
- (e) item 6 (property) where such property is located in Namibia;
- (f) item 7 (shares) and includes assets in a company incorporated outside Namibia if such assets have been acquired on a stock exchange licensed under the Stock Exchanges Control Act;
- (g) item 8 (other claims) where such claims are against natural persons resident in Namibia and companies registered in Namibia;
- (h) item 9 (other assets) where such other assets are held in Namibia;
- (i) item 10 (unlisted investments); and
- (j) any other asset designated as a domestic asset by the Minister by notice in the *Gazette*;

“foreign asset” means an asset that is not a domestic asset;” and

(c) by the substitution for the definition of “Post Office Savings Bank” of the following definition:

“‘Post Office Savings Bank’ means the Post Office Savings Bank controlled and managed by the Namibia Post Limited established by section 2(1)(a) of the Posts

and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992), and includes a savings bank or similar institution authorised as such under the laws of a country other than Namibia;” and

- (d) by the addition of the following definition after the definition of “the Act”:
“‘unlisted investment’ means an investment that takes the form of equity or debt capital in a company incorporated in Namibia and not listed on any stock exchange;”.

Substitution of regulation 15

3. The following regulation is substituted for regulation 15 of the Regulations:

“Limits of investment

15. (1) The value of the assets which every registered insurer and reinsurer is, subject to the provisions of subregulation (5), required to hold in Namibia in respect of its long-term insurance business in terms of section 27 of the Act, may not, in respect of the kinds or categories of assets set out in Column 2 of Annexure C, exceed the percentage set out opposite each such kind or category of asset in Column 3 of that Annexure, which percentage expresses a percentage of the aggregate domestic liabilities of the long-term insurance business of the registered insurer or reinsurer, but -

- (a) assets of the kinds or categories referred to in items 6 to 9, inclusive, in Column 2 of that Annexure held in respect of long-term insurance business may not exceed 95 per cent of the aggregate liabilities of the long-term insurance business of the registered insurer or reinsurer; and
- (b) assets of the kinds or categories referred to in items 6 and 7 in Column 2 of the Annexure held in respect of long-term insurance business may not exceed 90 per cent of the aggregate liabilities of the long-term insurance business of the registered insurer or reinsurer.

(2) Despite subregulation (1), a registered insurer or reinsurer must, in respect of its long-term insurance business, invest in domestic assets not less than 35% of the value of the assets which every registered insurer and reinsurer is required to hold in respect of its long-term insurance business in terms of section 27 of the Act, but -

- (a) in the application of this subregulation with regard to domestic assets of an insurer or reinsurer, domestic assets consisting of shares acquired in a company incorporated outside Namibia may not exceed -
- (i) 30 per cent of the market value of its total assets from 1 January 2014;
- (ii) 25 per cent of the market value of its total assets from 1 January 2015;
- (iii) 20 per cent of the market value of its total assets from 1 January 2016;
- (iv) 15 per cent of the market value of its total assets from 1 January 2017; and
- (v) 10 per cent of the market value of its total assets from 1 January 2018;

- (b) assets consisting of shares in a company incorporated outside Namibia in excess of the limits set out in paragraph (a), acquired on a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), are in the application of this regulation, regarded as foreign assets.

(3) Despite subregulation (1), every registered insurer or reinsurer must invest 1.75 per cent of the market value of its investments in unlisted investments within a period of 12 months from the date of publication of this notice in the *Gazette*, but the unlisted investments may cumulatively not exceed 3.5 per cent of the market value of a registered insurer or reinsurer's investments.

(4) A registered insurer or reinsurer, within 90 days or a shorter period determined by the Registrar by written notice, after the end of each calendar quarter, must submit to the Registrar a statement of investment holdings in such form as the Registrar may determine.

(5) In the application of this regulation with regard to the assets which every registered insurer and reinsurer are required to hold in terms of subregulation (1), where a registered insurer or reinsurer invests in a unit trust scheme as defined in the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), such investment is regarded as a proportionate investment in the unit portfolio's underlying assets.

(6) The assets which every registered insurer and reinsurer are required to hold in terms of subregulation (1) must, without any limitation per kind of asset, include -

- (a) assets of the kinds referred to in items 1 and 8 of Schedule 1 to the Act; and
- (b) assets of the kinds referred to in items 2 to 6, inclusive, of Schedule 1 to the Act, but the limitations per institutions set out in items 2 and 3 of Annexure C apply thereto.

(7) For the purposes of -

(a) subregulation (1) -

- (i) assets of the kinds referred to in Schedule 1 to the Act (excluding amounts due by a registered insurer or reinsurer to an investment subsidiary) of an investment subsidiary is to the following extent deemed to be assets of such insurer or reinsurer in lieu of such insurer's or reinsurer's shares in and net loans to the investment subsidiary -

- (aa) that part of each asset of the investment subsidiary which is included as an asset of such insurer or reinsurer in lieu of such insurer's or reinsurer's net loans to the investment subsidiary, calculated as follows:

$$\frac{\text{market value of each asset of investment subsidiary}}{\text{market value of total assets of investment subsidiary}} \times \text{insurer's or reinsurer's net loans to investment subsidiary}$$

- (bb) that part of each asset of the investment subsidiary which is included as an asset of such insurer or reinsurer in lieu

of such insurer's or reinsurer's non equity interest in the investment subsidiary, calculated as follows:

$$\frac{\text{market value of each asset of investment}}{\text{market value of total assets of investment subsidiary}} \times \text{insurer's or reinsurer's non-equity interest in investment subsidiary}$$

- (cc) the remaining part of each asset of the investment subsidiary after the deduction of the parts referred to in items (aa) and (bb), is included as an asset of such insurer or reinsurer in lieu of such insurer's or reinsurer's equity shares in the investment subsidiary, calculated as follows:

$$\frac{\text{market value of remaining part of each asset of Investment subsidiary after the deduction of the parts in terms of items (aa) and (bb)}}{\text{total equity shares in investment subsidiary}} \times \text{insurers or reinsurer's equity shares in investment subsidiary}$$

- (ii) the liabilities of an investment subsidiary (excluding its liabilities towards such insurer or reinsurer), as well as the non-equity interest in an investment subsidiary (excluding such insurer's or reinsurer's share thereof), are deemed to be the liabilities of such insurer or reinsurer and are included as liabilities of such insurer, calculated as follows:

$$\frac{\text{liabilities of investment subsidiary (excluding towards insurer or reinsurer) plus non-equity interest in investment subsidiary (excluding insurer's and reinsurer's share thereof)}}{\text{total equity shares in investment subsidiary}} \times \text{insurers or reinsurer's equity shares in investment subsidiary}$$

- (b) in paragraph (a) -

“each asset”, in relation to an investment subsidiary, means an asset of the investment subsidiary of the kinds referred to in Schedule 1 to the Act, excluding an amount due by a registered insurer or reinsurer to an investment subsidiary;

“equity shares”, in relation to an investment subsidiary, means the issued shares of the investment subsidiary, but not shares which, concerning neither dividends nor capital, grant a right to participate in excess of a determined amount in a distribution;

“net loans”, in relation to an investment subsidiary, means all loans by a registered insurer or reinsurer to the investment subsidiary less all loans by the investment subsidiary to the registered insurer or reinsurer;

“non-equity interest”, in relation to an investment subsidiary, means the issued shares of the investment subsidiary (excluding equity shares) plus the value to be apportioned thereto by virtue of the excess or shortfall of assets over liabilities;

“total assets”, in relation to an investment subsidiary, means all assets of the investment subsidiary of the kinds referred to in Schedule 1 to the Act, excluding amounts due by a registered insurer or reinsurer to the investment subsidiary.

(8) Every registered insurer and reinsurer must annually, within six months after the end of its financial year, submit to the Registrar in such form as may be determined by the Registrar, a statement containing such particulars as the Registrar may require in determining whether the registered insurer or reinsurer is complying with subregulation (1).

(9) Any investment made outside the common monetary area must comply with such limitations as may be determined under the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), from time to time.

(10) The Registrar, on prior written application by a registered insurer or reinsurer, may grant such registered insurer or reinsurer written exemption from any of the provisions of this regulation subject to such conditions as he or she may impose, but the Registrar may only exempt a registered insurer or reinsurer from the provisions of subregulation (3) after having obtained the approval of the Minister to do so.”.

Substitution of Annexure C to Regulations

4. The following Annexure is substituted for Annexure C to the Regulations:

“ANNEXURE C

LIMITS OF INVESTMENTS (Regulation 15)

| Column 1 | Column 2 | Column 3 |
|---------------------|--|---|
| Kind of Asset | Definition of Asset | Maximum percentage of aggregate liabilities |
| 1. Credit Balances | Deposits with and balances in current and savings accounts with an office of a banking institution or a building society, including negotiable deposits and money market instruments in terms of which such a bank or building society is liable, including the paid-up shares of a building society, or deposits and savings accounts with the Post Office Savings Bank - | |
| | (a) per banking institution | 20% |
| | (b) per building society | 20% |
| | (c) per Post Office Savings Bank | 20% |
| | Total investments of a registered insurer or re-insurer in assets referred to in this item | 95% |
| 2. Government Bonds | Bills, bonds or securities issued or guaranteed by or loans to or guaranteed by the Government of the Republic of Namibia. | 95% |

| | | |
|---|--|--|
| <p>3. State-owned enterprise, local authority and regional council Bonds</p> | <p>Bills, bonds or securities issued or guaranteed by or loans to or guaranteed by any state-owned enterprise, local authority or regional council in the Republic of Namibia -</p> <p>(a) per local authority authorised by law to levy rates upon immovable property 20%</p> <p>(b) per regional council authorised by law to levy rates upon immovable property 20%</p> <p>(c) per state-owned enterprise 20%</p> <p>Total investments of a registered insurer or re-insurer in assets referred to in this item 30%</p> | |
| <p>4. Corporate Bonds</p> | <p>Bills, bonds or securities issued by or loans to an institution in Namibia, which bills, bonds, securities or loans the Registrar has approved in terms of item 5 of Schedule 1 to the Act subject to such conditions as he or she may determine, and also bills, bonds and securities issued by or loans to an institution, which institution the Registrar has likewise approved:</p> <p>Per institution 20%</p> <p>Total investments of a registered insurer or re-insurer in assets referred to in this item 50%</p> | |
| <p>5. Foreign Bonds</p> | <p>Bills, bonds or securities issued by the government of or any other institution in, a country other than Namibia, which country the Registrar has approved in terms of item 6 of Schedule 1 to the Act subject to such conditions as he or she may determine, and also bills, bonds and securities issued by an institution in such approved country, which institution the Registrar has likewise approved -</p> <p>(a) per Government 40%</p> <p>(b) per institution 10%</p> <p>Total investments of a registered insurer or re-insurer in assets referred to in this item 50%</p> | |
| <p>6. Property</p> | <p>Immovable property, and shares in, loans to and debentures, both convertible and non-convertible, of property companies -</p> <p>(a) per single property 5%</p> <p>(b) per property development project 5%</p> <p>Total investments of a registered insurer or re-insurer in assets referred to in this item 25%</p> | |

| | | |
|-----------------|--|---|
| 7. Shares | <p>Preference and ordinary shares in companies (excluding shares in property companies), convertible debentures, whether voluntarily or compulsorily convertible (but excluding such debentures of property companies): Provided that –</p> <p>(a) shares and convertible debentures in a single company or related party listed on any stock exchange within the common monetary area in a sector other than in the development capital sector -</p> <p>(i) with a market capitalisation of N\$5 000 million or less are limited to</p> <p>(ii) with a market capitalisation of more than N\$5 000 million are limited to</p> <p>(b) shares and convertible debentures in a single company or related party listed on a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)</p> <p>(i) with a market capitalisation of N\$500 million or less are limited to</p> <p>(ii) with a market capitalisation of more than N\$500 million are limited to</p> <p>Total investments of a registered insurer or re-insurer in assets referred to in this item</p> | <p>5%</p> <p>10%</p> <p>5%</p> <p>10%</p> <p>75%</p> |
| 8. Other Claims | <p>Debentures (listed and unlisted but excluding convertible debentures) and any other secured claims against natural persons (excluding loans or advances referred to in paragraph (c) of item 9 of this Annexure) and companies (excluding loans to and non-convertible debentures referred to in paragraph (b) of item 9 of this Annexure and loans to and debentures of property companies): Provided that –</p> <p>(a) claims against any one natural person are limited to</p> <p>(b) claims against any single company are limited to</p> <p>(c) outstanding premiums (including premiums debited to insurance agents, insurance brokers or reinsurance brokers) in respect of domestic policies under which a registered insurer or reinsurer is liable and which have been outstanding for more than four months since the date on which they became due and payable.</p> <p>Total investments of a registered insurer or re-insurer in assets referred to in this item</p> | <p>0.25%</p> <p>5%</p> <p>2.5%</p> <p>25%</p> |
| 9. Other Assets | <p>Any other asset not referred to in this Annexure per category or kind of asset, but excluding -</p> <p>(a) moneys in hand;</p> <p>(b) loans to and non-convertible debentures of associates and associated companies;</p> <p>(c) loans or advances on the sole security of domestic policies under which a registered insurer or reinsurer is liable;</p> <p>(d) motor vehicles, furniture and office equipment, including computer equipment, used by a registered insurer or reinsurer in the course of its business in Namibia;</p> <p>(e) any other asset designated by the Minister by notice in the Gazette.”.</p> | <p>5%</p> |

| | | |
|--------------------------|---|------|
| 10. Unlisted investments | Equity or debt capital in a company incorporated in Namibia and not listed on any stock exchange, but excluding the kinds of assets defined in column 2 of items 1, 2, 3, 4, 5, 6, 7, 8 or 9 of column 1 of this Annexure | 3.5% |
|--------------------------|---|------|

MINISTRY OF FINANCE

No. 351

2013

AMENDMENT OF REGULATIONS FOR PENSION FUNDS: PENSION FUNDS ACT, 1956

Under section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956), I have -

- (a) amended the regulations set out in the Schedule, with effect from 1 January 2014;
- (b) withdrawn Government Notice No. 127 of 31 May 2013, with effect from that date of its publication in the *Gazette*.

S. KUUGONGELWA-AMADHILA
MINISTER OF FINANCE

Windhoek, 18 December 2013

SCHEDULE

Definitions

1. In these regulations “the Regulations” means the Regulations made under the Pension Funds Act, 1956 (Act No. 24 of 1956), published under Government Notice No. R. 98 of 26 January 1962 (referred to as Regulations for Pension Funds), as amended by Government Notices Nos. R. 2144 of 28 September 1984, R. 1790 of 16 August 1985, R. 1037 of 28 May 1986, R. 232 of 06 February 1987, R. 1452 of 07 July 1989, 103 of 15 June 1994, 143 of 01 August 1994, 56 of 15 March 1995, 108 of 15 June 1995, 30 of 4 February 2008 and 127 of 31 May 2013.

Amendment of regulation 1 of Regulations

- 2.** Regulation 1 of the Regulations is amended by the insertion -
 - (a) after the definition of “foreign fund” of the following definition:

“Long-term Insurance Act” means the Long-term Insurance Act, 1998 (Act No. 5 of 1998);
 - (b) after the definition of “privately administered fund” of the following definition:

“Public Accountants’ and Auditors’ Act’ means the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951);”; and
 - (c) after the definition of “state-controlled fund” of the following definition:

“Stock Exchanges Control Act’ means the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);”.

Substitution of regulation 26 of Regulations

- 3.** The following regulation is substituted for regulation 26 of the Regulations:

“Administrative penalties

26. (1) Without derogating from section 37 of the Act, a person who fails to make a return or to transmit or deposit a scheme, report, account, statement, other document or information within the time prescribed by the appropriate provision of the Act or the Regulations or within any extended period allowed by the Registrar in terms of sections 24 and 33(1) of the Act is still after such failure permitted -

- (a) to furnish such return; or
- (b) to transmit or deposit such scheme, report account, statement, other document or information,

subject to the payment of a penalty of N\$500 for every day during which the person remains in default.

(2) A person who contravenes or fails to comply with any provision of regulation 28 is liable to the payment of a penalty of N\$1 000 for every day during which the person remains in default.”.

Substitution of regulation 27 of Regulations

4. The following regulation is substituted for regulation 27 of the Regulations:

“Prescribed interest rate

27. For the purpose of section 19(5)(b)(iii) of the Act the rate of interest is equal to the sum of the percentage of the repo rate charged by the Bank of Namibia plus an additional 4 per cent per annum with effect from the date of publication of this notice in the *Gazette*.”.

Substitution of regulation 28 of Regulations

5. The following regulation is substituted for regulation 28 of the Regulations:

“Limits relating to assets in which registered fund may invest

28. (1) In this regulation -

“any other stock exchange within the common monetary area” means any stock exchange authorised by or under the laws of a country of the common monetary area to function as, or carry on the business of, a stock exchange in that country;

“banking institution” means an institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998), and includes a banking institution authorised as such under the laws of a country other than Namibia;

“building society” means a building society registered in terms of the Building Societies Act, 1986 (Act 82 of 1986), and includes a building society authorised as such under the laws of a country other than Namibia;

“common monetary area” means the Republic of Namibia, the Kingdom of Lesotho, the Kingdom of Swaziland and the Republic of South Africa;

“domestic asset” means assets of the kind referred to in the following items of Column 1 and 2 of Annexure 1 -

- (a) item 1 (credit balances) where such balances are held in Namibia;
- (b) item 2 (Government Bonds) where such bonds are denominated in Namibian currency, and issued and purchased in Namibia;
- (c) item 3 (State-owned enterprises, local authorities and regional council bonds) where such bonds are denominated in Namibian currency, and issued and purchased in Namibia;
- (d) item 4 (corporate bonds) where such bonds are denominated in Namibian currency, and issued and purchased in Namibia;
- (e) item 6 (property) where such property is located in Namibia;
- (f) item 7 (shares) and includes assets in a company incorporated outside Namibia if such assets have been acquired on a stock exchange licensed under the Stock Exchanges Control Act;
- (g) item 8 (other claims) where such claims are against natural persons resident in Namibia and companies registered in Namibia;
- (h) item 9 (other assets) where such other assets are loans granted to members of the fund in Namibia or investments in the participating employer in Namibia;
- (i) item 10 (unlisted investments); and
- (j) any other asset designated as a domestic asset by the Minister by notice in the *Gazette*;

“foreign asset” means any asset that is not a domestic asset;

“fund policy” means a fund policy as defined in the Long-term Insurance Act;

“local authority council” means any municipal council, town council or village council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“market value”, in relation to -

- (a) the value of every quoted asset, means the price at which it was quoted on a stock exchange licensed under the Stock Exchanges Control Act or any other stock exchange within the common monetary area within a period of three months immediately preceding the date to which the statement relates, which value must be shown in the statement at an amount not exceeding the value determined according to the price last so quoted, but if such quotation relates to a date other than the date to which the statement of assets relates that amount must be properly adjusted in the case of -
 - (i) any interest-bearing asset, by the difference between the amount of the interest which had accrued from the last date on which interest was payable up to the date of the quotation in question and the corresponding amount of interest accrued up to the date to which the statement relates; and

(ii) any share on which dividends have been declared, by the difference between the amount of any dividend which had been declared but not paid on the date of the quotation in question and the amount of any dividend which had been declared but not paid on the date to which the statement relates;

(b) assets to which paragraph (a)(i) do not apply, means the value determined in accordance with section 19(5A) of the Act;

“Post Office Savings Bank” means the Savings Bank controlled and managed by the Namibia Post Limited established by section 2(1)(a) of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992), and includes a savings bank or similar institution authorised as such under the laws of a country other than Namibia;

“property company” means a company -

(a) of which 50 per cent or more of the market value of its assets consists of immovable property, irrespective of whether such property is held directly by the company as registered owner or indirectly by way of ownership of the shares of the company which is the registered owner of the property or which exercises control over the company which is the registered owner of the property; or

(b) of which 50 per cent or more of its income is derived from investments in immovable property, or from an investment in a company 50 per cent or more of the income of which is derived from investments in immovable property;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“State-owned enterprise” means an entity that is named in Schedule 1 to the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006);

(2) Subject to subregulations (1), (6), (7), (8) and (10), a fund may only invest in assets set out in Column 2 of Annexure 1 and only to the extent set out in Column 3 of that Annexure in respect of such asset, but -

(a) the aggregate of the market value of investments in assets referred to in items 6 and 7 in Column 2 of that Annexure, expressed as a percentage, may not exceed 90 per cent;

(b) the aggregate of the market value of investments in assets referred to in items 6, 7, 8 and 9 in Column 2 of that Annexure, expressed as a percentage, may not exceed 95 per cent,

of the market value of the total assets of the fund.

(3) Despite subregulation (2), and without prejudice to subregulations (6) and (8) and Annexure 1, a fund must keep invested in domestic assets not less than 35 per cent of the market value of its total assets, but -

(a) in the application of this subregulation with regard to domestic assets of a fund, domestic assets consisting of shares acquired in a company incorporated outside Namibia may not exceed -

- (i) 30 per cent of the market value of its total assets from 1 January 2014;
 - (ii) 25 per cent of the market value of its total assets from 1 January 2015;
 - (iii) 20 per cent of the market value of its total assets from 1 January 2016;
 - (iv) 15 per cent of the market value of its total assets from 1 January 2017; and
 - (v) 10 per cent of the market value of its total assets from 1 January 2018.
- (b) assets consisting of shares in a company incorporated outside Namibia in excess of the limit set out in paragraph (a), acquired on a stock exchange licensed under the Stock Exchanges Control Act, are, in the application of this regulation, regarded as foreign assets.

(4) Despite subregulation (2), a fund must invest in unlisted investments in Namibia a minimum of 1.75 per cent of the market value of its investments, within a period of 12 months from the date of publication of this notice in accordance with regulation 29, but unlisted investments may cumulatively not exceed 3.5 per cent of the market value of the investments of a fund.

(5) A fund must, within 90 days or a shorter period determined by the Registrar by written notice, after the end of each calendar quarter, submit to the Registrar a statement of investment holdings in such form as the Registrar may determine.

(6) In the application of this regulation with regard to the total assets of a fund, including any fund exempted under section 2(3)(a)(ii) of the Act, a fund policy issued to the fund concerned by an insurer carrying on long-term insurance business as contemplated in the Long-term Insurance Act is deemed not to be an asset of the fund.

(7) In the application of this regulation with regard to the total assets of a fund where a fund invests in a unit trust scheme as defined in the Unit Trusts Control Act, 1981(Act No. 54 of 1981), such investment is regarded as a proportionate investment in the unit portfolio's underlying securities.

(8) Where the membership of a fund, including any fund exempted in terms of section 2(3)(a)(ii) of the Act, is not compulsory and the fund operates by means of individual policies or certificates issued in respect of each member of the fund by an insurer carrying on long-term insurance business as contemplated in the Long-term Insurance Act, such policies or certificates are not subject to this regulation if the assets held by the insurer in respect of their net liabilities under those policies or certificates comply with the requirements of regulation 15 of the Regulations made under the Long-term Insurance Act.

(9) Any investment made outside the common monetary area must comply with such limitations as may be determined under the Currency and Exchanges Act, 1933 (Act No. 9 of 1933) from time to time.

(10) The Registrar, on a written application by a fund, may grant such fund written exemption from any of the provisions of this regulation upon such conditions as he or she may impose, but the Registrar may only exempt a fund from subregulation (4) after having obtained the approval of the Minister.”.

Addition of regulation 29 to Regulations

7. The following regulation is added after regulation 28 of the Regulations:

“Investment of pension fund assets in unlisted investments

29. (1) In this regulation -

“administration of unlisted investments” means the function performed by an unlisted investment manager in terms of the management agreement with a special purpose vehicle;

“auditor” means an auditor registered in terms of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951) and who is resident in Namibia;

“committed capital” means, at any point in time, the total amount of money committed to a special purpose vehicle by an investor in terms of subregulation (14)(b)(i) pursuant to a subscription agreement, and “capital commitment” has that meaning;

“contributed capital” means, at any point in time, the portion of the committed capital which has been transferred from an investor to a special purpose vehicle;

“co-investor” means any person other than a pension fund or an unlisted investment manager that invests in a special purpose vehicle;

“drawdown” means an amount of money transferred by an investor to a special purpose vehicle;

“drawdown period” means the period in which the special purpose vehicle has the right to drawdown committed capital;

“financial institution” means a financial institution as defined in section 1 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001);

“investment plan” means the document in terms of which the special purpose vehicle will invest in unlisted investments and all matters incidental thereto;

“investor” means a pension fund or a co-investor that invests money in a special purpose vehicle;

“portfolio company” means a company into which a special purpose vehicle has invested directly;

“portfolio investment” means any unlisted investment held by a special purpose vehicle;

“special purpose vehicle” means an entity registered in terms of subregulation (11);

“subscription agreement” means an agreement between an investor and a special purpose vehicle referred to in subregulation (63);

“subscription interest” means the capital commitment of an investor to a special purpose vehicle;

“trust property” means any asset held or administered, directly or indirectly, by or on behalf of a pension fund;

“portfolio investment” means any unlisted investments held by a special purpose vehicle; and

“unlisted investment manager” means a person who is registered in terms of subregulation (38) and engages in the buying, selling or otherwise dealing with unlisted investments on behalf of a special purpose vehicle.

Requirements for unlisted investments

(2) All unlisted investments pursuant to regulation 28(4) must be held by a special purpose vehicle.

(3) In the application of these regulations with regard to the total assets of a pension fund, the assets of a pension fund held by a special purpose vehicle are regarded as a proportionate investment in the portfolio investments of the special purpose vehicle.

(4) A pension fund is deemed to have complied with regulation 28(4), if the aggregate amount of all capital commitments to special purpose vehicles falls within the limits of regulation 28(4), subject to subregulation (14)(b).

(5) A pension fund may not directly or indirectly invest in any unlisted investment manager, except insofar as such indirect investment is through a company listed on a stock exchange.

Approval and change of name of Special purpose vehicle

(6) A person desirous to register a special purpose vehicle -

(a) must submit to the Registrar a written notification of the proposed name of the special purpose vehicle;

(b) may use the proposed name unless the Registrar objects in writing within 30 days from the date of the notification referred to in paragraph (a).

(7) A special purpose vehicle may change its name by submitting to the Registrar a written notification of the proposed change of name, and may use the proposed name unless the Registrar objects in writing within 30 days from the date of such notification.

Requirements for special purpose vehicle

(8) A person other than an entity which -

(a) is incorporated or registered as -

(i) either a public or private company under the Companies Act, 2004 (Act No. 28 of 2004) and is solely organized and operated for purposes of holding unlisted investments on behalf of investors; or

(ii) a trust under the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934) and is solely organized and operated for purposes of holding unlisted investments on behalf of investors;

(b) has submitted an investment plan to the Registrar for approval;

(c) has submitted its memorandum of association, trust deed or founding documents that are not inconsistent with the investment plan;

- (d) has submitted a management agreement to the Registrar for approval;
- (e) has submitted a generic subscription agreement;
- (f) has at least three directors or trustees;
- (g) has submitted the names of its directors or trustees, and confirmed that the majority of the directors or trustees are independent directors or trustees and are not affiliated, directly or indirectly, to the unlisted investment manager; and
- (h) has submitted any further information that the Registrar may reasonably require,

may not be registered as a special purpose vehicle or remain so registered.

Registration of special purpose vehicle

(9) A person who desires to register a special purpose vehicle under these regulations must -

- (a) lodge with the Registrar an application for registration in the form of Form 1 as set out in Annexure 2, and in the manner determined by the Registrar; and
- (b) fully and honestly disclose the required particulars.

(10) The Registrar may call upon the person to furnish further relevant information considered necessary by the Registrar.

(11) If the Registrar is satisfied that -

- (a) the conditions set under subregulation (8) and other information contemplated in subregulation (10) are met;
- (b) the proposed directors or trustees are qualified under these regulations to act as directors or trustees; and
- (c) the manner in which the business of the special purpose vehicle is to be carried on is -
 - (i) not inconsistent with the Act and these regulations;
 - (ii) based on sound financial principles; and
 - (iii) in the public interest,

the Registrar may register the special purpose vehicle and issue a certificate of registration in the form of Form 2 as set out in Annexure 2.

(12) A special purpose vehicle registered under subregulation (11) is regarded as a financial institution as defined -

- (a) in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984); and

- (b) in section 1 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001),

which invests, keeps in safe custody, controls or administers trust property.

Restrictions on directors or trustees of special purpose vehicle

- (13) A person, who -
 - (a) in terms of section 225 and section 226 of the Companies Act, 2004 (Act No. 28 of 2004) is disqualified from being appointed or acting as a director of a company; or
 - (b) is a director, trustee or principal officer of a financial institution and such financial institution is not in compliance with any law governing financial institutions,

does not qualify as a director or trustee of a special purpose vehicle, but the director or trustee appointed by the unlisted investment manager may not serve as chairperson of the board of the special purpose vehicle.

Capital of special purpose vehicle

- (14) A special purpose vehicle -
 - (a) must have subscription interest as specified in its investment plan;
 - (b) must enter into a subscription agreement, not inconsistent with the investment plan, with an investor that is desirous of investing in the special purpose vehicle, that specifies -
 - (i) the total committed capital of the investor to the special purpose vehicle; and
 - (ii) the period within which the special purpose vehicle has the right to drawdown the committed capital,

but, if the drawdown is not effected, in respect of a pension fund, within a period of 24 months, the capital commitment lapses, unless the special purpose vehicle and the pension fund agree upon an extension of the drawdown period, and such extension has been approved by the Registrar;

- (c) may, if so authorised by its memorandum of association and upon written approval by the Registrar, issue debentures, provided that -
 - (i) the special purpose vehicle has submitted to the Registrar all particulars of the debenture issuance, including the debenture trust deed; and
 - (ii) the issuance of debentures is not inconsistent with the investment plan and the Companies Act, 2004 (Act No. 28 of 2004).

Powers, restrictions and duties of special purpose vehicle

- (15) A special purpose vehicle has the power to -

- (a) accept the sale or transfer of assets in terms of the approved investment plan;
 - (b) undertake, on its own or by agreement with any person, such activities as contained in the approved investment plan;
 - (c) create any indebtedness or encumbrances to defray administrative or other necessary expenses as specified in the approved investment plan; and
 - (d) pay out or invest its funds in accordance with the approved investment plan.
- (16) A special purpose vehicle may not -
- (a) undertake any activity other than that for which it is registered or contained in the approved investment plan;
 - (b) amend the investment plan, management agreement or the subscription agreement without the written approval of the Registrar;
 - (c) employ people or establish any business places other than its registered office; or
 - (d) merge with another entity or change its form without the written approval of the Registrar.
- (17) A special purpose vehicle must -
- (a) act in accordance with the investment plan;
 - (b) represent the interests of the investors in the special purpose vehicle;
 - (c) enter into a management agreement with the unlisted investment manager for the management and administration of the special purpose vehicle and, upon termination of the agreement and notice thereof to the Registrar, enter into a management agreement with another unlisted investment manager;
 - (d) ensure that the unlisted investment manager acts in accordance with the management agreement and the investment plan;
 - (e) monitor the performance of the unlisted investment manager; and
 - (f) appoint an auditor.
- (18) The directors or trustees, by majority of the quorum of the independent directors or trustees, of a special purpose vehicle must review the proposed investment decisions by the unlisted investment manager, and in writing -
- (a) decline a proposed investment decision if the proposed investment decision is found to be inconsistent with the investment plan; or
 - (b) otherwise approve a proposed investment decision,
- and keep a record of the decisions.
- (19) In performing the functions under subregulations (17) and (18), the directors or trustees of a special purpose vehicle must -

- (a) observe utmost good faith and act with due skill, care and diligence;
- (b) conduct the business of the special purpose vehicle in a responsible way and not engage in practices which would prejudice the interests of investors, unlisted investment managers, portfolio companies and other stakeholders;
- (c) take a long-term view of the portfolio investments and not engage in speculative activity;
- (d) promote and maintain ethical standards of conduct and deal fairly and honestly with investors, unlisted investment managers, portfolio companies and other stakeholders;
- (e) not disclose to third parties any confidential, financial or technical information acquired in the course of negotiations with unlisted investment managers and potential portfolio companies, or in the course of business with unlisted investment managers and portfolio companies, unless it has received permission for such disclosure;
- (f) not use the special purpose vehicle to promote their welfare or private interests; and
- (g) be accountable to the investors by fully disclosing information in a manner that is clear, fair and not misleading.

Notification of financial year

(20) Every special purpose vehicle must, within a period of 30 days after its registration, notify the Registrar of the date on which its financial year ends.

(21) The financial year of a registered special purpose vehicle may not exceed a period of 12 months.

(22) A special purpose vehicle may not without the prior written approval of the Registrar change its financial year.

Appointment and duties of auditor

(23) A special purpose vehicle must obtain a written approval of the Registrar when appointing an auditor, and must at all times have an auditor.

(24) A director or trustee of a special purpose vehicle, and firm of which such director or trustee is a member, may not be appointed as an auditor of the special purpose vehicle.

(25) A director, officer or employee of an unlisted investment manager, and a firm of which such director, officer or employee is a member, may not be appointed as an auditor of the special purpose vehicle.

(26) Whenever the appointment of an auditor is terminated, or the auditor has resigned, the special purpose vehicle and the auditor must within seven days from the date of such termination or resignation notify the Registrar in writing of the reasons.

(27) The auditor of a special purpose vehicle, in addition to the duties imposed on him or her by the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), must -

- (a) audit the financial statements of the special purpose vehicle in accordance with subregulation (57);
- (b) conduct an independent review, as part of their audit, of the valuations conducted by the unlisted investment manager; and
- (c) submit a report to the Registrar and the unlisted investment manager on compliance, or otherwise, with these Regulations, the investment plan, the management agreement and any other applicable law.

(28) The auditor must report to the Registrar any irregularity and any other matter which the auditor has become aware of in his or her capacity as auditor of a special purpose vehicle and which in his or her opinion may be of concern to the Registrar having regard to the Registrar's supervisory functions.

Deregistration of special purpose vehicle

- (29) The Registrar must deregister a special purpose vehicle, if -
- (a) it fails to invest in unlisted investments within 24 months from the date of registration unless extended by the Registrar upon application not later than 3 months before the end of the 24 months period;
 - (b) holders of at least 75% of the contributed capital or subscription interest in the special purpose vehicle have resolved to liquidate or terminate the special purpose vehicle and the Registrar has approved such liquidation or termination;
 - (c) conditions for deregistration as specified in the investment plan occur; or
 - (d) the Registrar is satisfied that the special purpose vehicle no longer meets the conditions upon which it was registered, or fails to comply with these regulations or any other applicable law.

(30) The Registrar must give notice to and afford the special purpose vehicle the opportunity to be heard prior to deregistration in terms of subregulations (29)(a) or (29)(d).

Unregistered person may not administer unlisted investments

(31) A person may not administer unlisted investments on behalf of pension funds pursuant to regulation 28(4), unless such a person is registered in terms of subregulation (38).

Approval and change of name of unlisted investment manager

- (32) A person desirous to register an unlisted investment manager -
- (a) must submit to the Registrar a written notification of the proposed name of the unlisted investment manager; and
 - (b) may use the proposed name, unless the Registrar objects in writing within 30 days from the date of the notification referred to in paragraph (a).

(33) An unlisted investment manager may change its name by submitting to the Registrar a written notification of the proposed change of name, and may use the proposed name unless the Registrar objects in writing within 30 days from the date of such notification.

Requirements for Unlisted Investment Manager

- (34) A person other than a company which -
- (a) is incorporated as either a public or private company under the Companies Act, 2004 (Act No. 28 of 2004) and its object is to administer unlisted investments;
 - (b) has a registered office and operates in Namibia;
 - (c) has and maintains paid-up share capital and non-distributable reserves which, at any time, may not be less than an amount equal to 1% of the sum of the committed capital of each special purpose vehicle with which such person has entered into a management agreement;
 - (d) has at least three directors;
 - (e) has submitted the names of its directors; and
 - (f) has appointed a person to be its portfolio manager or chief executive officer, who is, unless the Registrar in exceptional circumstances otherwise determines, a Namibian citizen resident in Namibia,

may not be registered as an unlisted investment manager.

(35) If an unlisted investment manager, at any time, ceases to comply with subregulation (34), it must within a period of 30 days thereafter report to the Registrar in writing to that effect.

Registration of Unlisted Investment Manager

(36) A company which desires to be registered as an unlisted investment manager must -

- (a) lodge with the Registrar an application for registration in the form of Form 3 as set out in Annexure 2, and in the manner as determined by the Registrar; and
- (b) fully and honestly disclose the required particulars.

(37) The Registrar may call upon any company which has applied for registration to furnish further relevant information considered necessary by the Registrar.

(38) If the Registrar is satisfied that -

- (a) the conditions set under subregulation (34) are complied with;
- (b) the proposed directors are qualified under these regulations to act as directors; and
- (c) the manner in which the business of the unlisted investment manager is to be carried on is -
 - (i) not inconsistent with the Act and these regulations;

- (ii) based on sound financial principles; and
- (iii) in the public interest,

the Registrar may register the applicant as an unlisted investment manager and issue a certificate of registration in the form of Form 4 as set out in Annexure 2.

(39) An unlisted investment manager registered under subregulation (38) is regarded as a financial institution, as defined -

- (a) in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984); and
- (b) in section 1 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001),

which invests, keeps in safe custody, controls or administers trust property.

Restrictions on directors of Unlisted Investment Manager

(40) A person does not qualify as a director, portfolio manager or chief executive officer of an unlisted investment manager, if the person -

- (a) is disqualified in terms of section 225 and section 226 of the Companies Act, 2004 (Act No. 28 of 2004) from being appointed or acting as a director of a company;
- (b) is a director or principal officer of a financial institution and such financial institution is not in compliance with any law governing financial institutions; or
- (c) is a trustee or a principal officer of a pension fund.

Duties of Unlisted Investment Manager

(41) An unlisted investment manager must -

- (a) have exclusive authority to manage and administer the portfolio investments of a special purpose vehicle in accordance with the investment plan and in terms of the management agreement;
- (b) have the right, power and authority to do on behalf of the special purpose vehicle all things necessary or desirable to carry out its duties and responsibilities to fulfill the requirements of the investment plan and the management agreement, including to initiate, screen, select and conduct due diligence and perform valuations on potential portfolio investments;
- (c) have the right to make investment decisions, not inconsistent with the investment plan and subject to subregulation (18), on behalf of the special purpose vehicle;
- (d) have the right to exercise the voting power conferred by the securities issued by a portfolio company and held in the special purpose vehicle;
- (e) monitor and report on the performance of portfolio investments of the special purpose vehicle;

- (f) structure and manage portfolio investments; and
 - (g) manage and administer the operations of the special purpose vehicle.
- (42) In performing the functions under subregulation (41), an unlisted investment manager -
- (a) may not receive any other type of compensation or commission, direct or indirect, except that specified in the management agreement;
 - (b) must observe utmost good faith and act with due skill, care and diligence;
 - (c) must conduct its business in a responsible way and not engage in practices which would prejudice the interests of investors, special purpose vehicles, portfolio companies and other stakeholders;
 - (d) may not engage in speculative activity;
 - (e) must exercise the voting power in such a manner that best serves the interests of the special purpose vehicle;
 - (f) must promote and maintain ethical standards of conduct and deal fairly and honestly with investors, special purpose vehicles, portfolio companies and other stakeholders;
 - (g) may not disclose to third parties any confidential, financial or technical information acquired in the course of negotiations with potential portfolio companies, or in the course of business with portfolio companies, unless they have received explicit permission for such disclosure;
 - (h) may not be used to promote the welfare of, or assist its directors, officers or employees, except insofar as they benefit from the performance of the special purpose vehicle in terms of the management agreement;
 - (i) must be accountable to the special purpose vehicle by fully disclosing information in a manner that is clear, fair and not misleading; and
 - (j) must maintain adequate human, financial and operational resources for its business.
- (43) An unlisted investment manager must require its directors, officers and employees to abide by these regulations.

Co-investment requirement of Unlisted Investment Managers

- (44) An unlisted investment manager is required to co-invest in any special purpose vehicle with which it has entered into a management agreement a minimum of 1% of the contributed capital on the same terms and conditions as applicable to investors.

Notification of Financial Year

- (45) Every unlisted investment manager must, within a period of 30 days after registration, notify the Registrar in writing of the date on which its financial year ends.

- (46) The financial year of an unlisted investment manager may not exceed a period of 12 months.

(47) An unlisted investment manager may not without the written approval of the Registrar change the financial year.

Appointment and duties of auditor

(48) An unlisted investment manager must, with the written approval of the Registrar, appoint, and at all times have, an auditor.

(49) A director or trustee of a special purpose vehicle, and a firm of which such director or trustee is a member, may not be appointed as an auditor of the unlisted investment manager.

(50) A director, officer or employee of an unlisted investment manager, and a firm of which such director, officer or employee is a member, may not be appointed as an auditor of the unlisted investment manager.

(51) Whenever the appointment of an auditor is terminated, or the auditor has resigned, the unlisted investment manager and auditor must within seven days from the date of such termination or resignation notify the Registrar in writing of the reasons.

(52) The auditor of an unlisted investment manager, in addition to the duties imposed on him or her by the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), must -

- (a) audit the financial statements of the unlisted investment manager; and
- (b) submit a report to the Registrar on compliance, or otherwise, with these regulations, the management agreement and any other applicable law.

(53) An auditor must report to the Registrar any irregularity and any other matter which the auditor has become aware of in his or her capacity as auditor of an unlisted investment manager and which in his or her opinion may be of concern to the Registrar having regard to the supervisory functions of the Registrar.

Deregistration of Unlisted Investment Manager

(54) The Registrar must deregister an unlisted investment manager if -

- (a) the unlisted investment manager requests the Registrar to be deregistered; or
- (b) the Registrar is satisfied that the unlisted investment manager no longer meets the conditions upon which it was registered, or fails to comply with these regulations or any other applicable law.

(55) The Registrar must give notice to and afford the unlisted investment manager the opportunity to be heard prior to deregistration in terms of subregulation (54)(b).

Reporting Requirements for Special Purpose Vehicle

(56) A special purpose vehicle must within 60 days after 31 December and 30 June in each year submit to the Registrar -

- (a) unaudited financial reports of the special purpose vehicle prepared for the six months in question, and such unaudited financial reports must include -

- (i) a statement of assets and liabilities;
 - (ii) a statement of profit and loss;
 - (iii) a statement of holdings of securities; and
 - (iv) a description of the nature of each portfolio investment, including the cost thereof.
- (b) details of portfolio investments and disposals made by the special purpose vehicle, including minutes and resolutions as per subregulation (18) detailing such investment decisions;
 - (c) particulars of expenditure incurred by the special purpose vehicle;
 - (d) summary of valuations for new portfolio investments indicating the valuation amounts;
 - (e) details of drawdowns, total contributed capital and committed capital;
 - (f) details of the number of permanent and temporary employees of the portfolio companies; and
 - (g) any other information that the Registrar may require.

(57) A special purpose vehicle must within 180 days after the end of the financial year as per subregulation (20), submit to the Registrar annual audited financial statements, prepared in accordance with International Financial Reporting Standards, containing, to the extent possible, all information listed under subregulation (56).

Reporting requirements for Unlisted Investment Manager

(58) An unlisted investment manager must submit to the Registrar within 180 days after the end of the financial year as per subregulation (45), annual audited financial statements, prepared in accordance with International Financial Reporting Standards.

Investment Plan

- (59) The investment plan of a special purpose vehicle must, at a minimum, address -
- (a) the object of the special purpose vehicle;
 - (b) the investment objectives of the special purpose vehicle;
 - (c) classes and limits of investments;
 - (d) risk management;
 - (e) details of the possession and ownership of assets;
 - (f) the term of the special purpose vehicle;
 - (g) the share capital or subscription interest;

- (h) the appointment of directors or trustees of the special purpose vehicle, including but not limited to, the term, number and vacating of office;
- (i) the proceedings of the directors or trustees meetings;
- (j) the powers of the directors or trustees;
- (k) the remuneration of the directors or trustees;
- (l) the management and control of the special purpose vehicle;
- (m) the annual and general meeting;
- (n) the capital commitments;
- (o) the procedure for drawdown of capital commitments;
- (p) the procedure for defaults in effecting payments for a drawdown;
- (q) the accounting, auditing, financial year and annual financial statements;
- (r) the bank accounts;
- (s) the capital accounts for investors;
- (t) the allocation of income, gains and losses;
- (u) reporting to the regulator and investors;
- (v) the distribution policy;
- (w) the valuation of portfolio investments;
- (x) performance measurement;
- (y) non-performing portfolio investments;
- (z) the borrowing policy;
- (aa) the issue of debentures, if any;
- (ab) investor participants;
- (ac) the transfer of business;
- (ad) termination, de-registration or winding-up of the special purpose vehicle;
- (ae) confidentiality;
- (af) delegation of duties;
- (ag) amendments to the investment plan;
- (ah) conflict of interest;

- (ai) arbitration;
 - (aj) fees and remuneration of unlisted investment managers, auditors and, where applicable, portfolio companies; and
 - (ak) any other information determined by the Registrar.
- (60) Any provision in the investment plan inconsistent with these regulations or any other law is invalid.

Management Agreement

- (61) The management agreement must, at a minimum, address -
- (a) the terms of appointment of the unlisted investment manager;
 - (b) the circumstances under which the appointment of an unlisted investment manager may be terminated prematurely, including the notice period;
 - (c) the duties of the unlisted investment manager;
 - (d) staffing of the unlisted investment manager;
 - (e) the manner in which the performance of the unlisted investment manager is assessed;
 - (f) the valuation of portfolio investments;
 - (g) the reporting requirements;
 - (h) exclusivity, if any;
 - (i) management fees, performance fees and other remuneration;
 - (j) expenses borne by the special purpose vehicle;
 - (k) warranties;
 - (l) confidentiality;
 - (m) restriction on subcontracting;
 - (n) arbitration;
 - (o) indemnity and breaches;
 - (p) termination; and
 - (q) any other information determined by the Registrar.
- (62) Any provision of a management agreement that is inconsistent with any provision of the investment plan, these regulations or any other law is invalid.

Subscription Agreement

- (63) The subscription agreement must, at a minimum, address -

- (a) the names of the investors and the special purpose vehicle (issuer);
- (b) names of the directors or trustees of the special purpose vehicle;
- (c) description of securities issued, including the form;
- (d) offering price and pricing disclosure;
- (e) subscription interest or committed capital;
- (f) purpose of offer;
- (g) terms and conditions of the securities;
- (h) basis of allotment;
- (i) uses of proceeds;
- (j) offer and subscription in respect of securities;
- (k) drawdown of subscribed amounts;
- (l) encumbrances, contingencies and commitments;
- (m) any conditions precedent; and
- (n) any other particulars or relevant documents reasonably required by the registrar.

(64) A provision of a subscription agreement that is inconsistent with any provision of the investment plan, these regulations or with any other law is invalid.

Powers of Registrar

(65) The Registrar has in relation to special purpose vehicles and unlisted investment managers the powers conferred upon the Registrar by -

- (a) the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001);
- (b) the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984);
- (c) the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984); and
- (d) any other law,

to regulate and supervise special purpose vehicles and unlisted investment managers, and any matters incidental thereto.

(66) The Registrar has in relation to a special purpose vehicle, after due notice, the power to remove -

- (a) a director or trustee; or
- (b) an unlisted investment manager,

if not in compliance with these regulations or any other applicable law.

(67) The Registrar has in relation to an unlisted investment manager, after due notice, the power to remove a director, portfolio manager or chief executive officer if not qualified under these regulations or any other applicable law.

(68) When the Registrar intends to act as contemplated in subregulations (66) and (67), the Registrar must -

- (a) give notice to the special purpose vehicle or unlisted investment manager, or the director, trustee, portfolio manager or chief executive officer concerned, of the intention of the Registrar and the reasons therefore; and
- (b) afford the special purpose vehicle or unlisted investment manager, or the director, trustee, portfolio manager or chief executive officer concerned an opportunity to be heard.

(69) The Registrar may at any time inspect the affairs or any part of the affairs of a special purpose vehicle or an unlisted investment manager, or instruct an inspector to carry out such inspection in accordance with the powers of the Registrar conferred by the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984).

Substitution of Annexure to Regulations

7. The following Annexure is substituted for the Annexure to the Regulations:

“ANNEXURE 1

LIMITS OF INVESTMENT

(Regulation 28

| Column 1 | Column 2 | Column 3 |
|---------------------|--|--|
| Kind of Asset | Definition of Asset | Maximum percentage of aggregate market value of total assets |
| 1. Credit Balances | Deposits with and balances in current and savings accounts with a banking institution or a building society, including negotiable deposits and money market instruments in terms of which such a bank or building society is liable, including the paid-up shares of a building society, or deposits and savings accounts with the Post Office Savings Bank: | |
| | (a) Per banking institution | 20% |
| | (b) Per building society | 20% |
| | (c) Per Post Office Savings Bank | 20% |
| | Total investments of a fund in assets referred to in this item | 95% |
| 2. Government Bonds | Bills, bonds or securities issued or guaranteed by or loans to or guaranteed by the Government of the Republic of Namibia. | 95% |

| | | |
|---|--|---|
| <p>3. State-owned enterprise, local authority and regional council Bonds</p> | <p>Bills, bonds or securities issued or guaranteed by or loans to or guaranteed by any state-owned enterprise, local authority or regional council in the Republic of Namibia:</p> <p>(a) Per local authority authorised by law to levy rates upon immovable property</p> <p>(b) Per regional council authorised by law to levy rates upon immovable property</p> <p>(c) Per state-owned enterprise</p> <p>Total investments of a fund in assets referred to in this item</p> | <p>20%</p> <p>20%</p> <p>20%</p> <p>30%</p> |
| <p>4. Corporate Bonds</p> | <p>Bills, bonds or securities issued by or loans to an institution in Namibia, which bills, bonds, securities or loans the Registrar has approved subject to such conditions as he or she may determine, and also bills, bonds and securities issued by or loans to an institution, which institution the Registrar has likewise approved:</p> <p>Per institution</p> <p>Total investments of a fund in assets referred to in this item</p> | <p>20%</p> <p>50%</p> |
| <p>5. Foreign Bonds</p> | <p>Bills, bonds or securities issued by the government of or any other institution in a country other than Namibia, which country the Registrar has approved subject to such conditions as he or she may determine, and also bills, bonds and securities issued by an institution in such an approved country, which institution the Registrar has likewise approved:</p> <p>(a) Per Government</p> <p>(b) Per institution</p> <p>Total investments of a fund in assets referred to in this item</p> | <p>40%</p> <p>10%</p> <p>50%</p> |
| <p>6. Property</p> | <p>Immovable property, and shares in, loans to and debentures, both convertible and non-convertible, of property companies:</p> <p>(a) Per single property</p> <p>(b) Per property development project</p> <p>Total investments of a fund in assets referred to in this item</p> | <p>5%</p> <p>5%</p> <p>25%</p> |
| <p>7. Shares</p> | <p>Preference and ordinary shares in companies (excluding shares in property companies), convertible debentures, whether voluntarily or compulsorily convertible (but excluding such debentures of property companies):</p> <p>Provided that -</p> <p>(a) shares and convertible debentures in a single company or related party listed on any stock exchange within the common monetary area -</p> <p>(i) with a market capitalisation of N\$5 000 million or less are limited to</p> <p>(ii) with a market capitalisation of more than N\$5 000 million are limited to</p> <p>(b) shares and convertible debentures in a single company or related party listed on a stock exchange licensed under the Stock Exchanges Control Act -</p> <p>(i) with a market capitalisation of N\$500 million or less are limited to</p> <p>(ii) with a market capitalisation of more than N\$500 million are limited to</p> <p>Total investments of a fund in assets referred to in this item</p> | <p>5%</p> <p>10%</p> <p>5%</p> <p>10%</p> <p>75%</p> |

| | | |
|---------------------------------|--|--|
| 8. Other Claims | <p>Debentures (listed and unlisted but excluding convertible debentures) and any other secured claims against natural persons (excluding loans referred to in paragraph (b) of item 9 of this Schedule) and companies (excluding loans to and debentures of property companies):</p> <p>Provided that -</p> <p>(a) claims against any one natural person are limited to</p> <p>(b) claims against any single company are limited to</p> <p>Total investments of a fund in assets referred to in item 8 of this Schedule</p> | <p>0.25%</p> <p>5%</p> <p>25%</p> |
| 9. Other Assets | <p>Any other asset not referred to in this Annexure, per category or kind of asset, excluding –</p> <p>(a) moneys in hand;</p> <p>(b) loans granted to members of the fund concerned in accordance with –</p> <p>(i) the section 19(5) of the Act; and</p> <p>(ii) such exemptions as may have been granted to the fund in terms of section 19(6) of the Act;</p> <p>(c) investments in the business of a participating employer to the extent that it has been allowed by an exemption in terms of –</p> <p>(i) section 19(4) of the Act; or</p> <p>(ii) section 19(6) of the Act;</p> <p>(d) any other asset designated by the Minister by notice in the <i>Gazette</i>.</p> | 2.5% |
| 10. Unlisted Investments | Equity or debt capital in a company incorporated in Namibia and not listed on any stock exchange, but excluding the kinds of assets defined in column 2 of items 1, 2, 3, 4, 5, 6, 7, 8 or 9 of column 1 of this Annexure. | 3.5% |

ANNEXURE 2

FORMS

(Regulation 29)

| Form | Description | Subregulation |
|--------|---|---------------|
| Form 1 | Application for Registration as Special Purpose Vehicle | (9) |
| Form 2 | Certification of Registration as Special Purpose Vehicle | (11) |
| Form 3 | Application for Registration as Unlisted Investment Manager | (36) |
| Form 4 | Certificate of Registration as Unlisted Investment Manager | (38) |



**PENSION FUNDS ACT, 1956 (ACT NO. 24 OF 1956)
REGULATIONS FOR PENSION FUNDS, 1962**

(Section 36, Regulation 29(9))

APPLICATION FOR REGISTRATION AS A SPECIAL PURPOSE VEHICLE

We, the undersigned, do hereby apply for the registration as a Special Purpose Vehicle, in terms of subregulation (9) of Regulation 29, pursuant to section 36 of the Pension Funds Act, 1956(Act No. 24 of 1956).

| |
|--|
| Section A. Information of Applicant |
|--|

1. General

- Full name of applicant
- Business Address
- Postal Address
- Telephone Number
- Facsimile
- Website, if any
- E -mail address
- Financial year end of the Entity
- Entity's registration No
- Namibian Tax reference No

2. Details of Directors or Trustees

(Please fill directors' details if the entity is registered as a company or trustees' details if the entity is registered as a trust). <Attach more details of directors or trustees if required>

(a)

- Full name
- Identification No
- Nationality
- Postal address

- Telephone No
- Email address

(b)

- Full name
- Identification No
- Nationality
- Postal address
- Telephone No
- Email address

(c)

- Full name
- Identification No
- Nationality
- Postal address
- Telephone No
- Email address

3. Auditor

(Auditor should adhere to Annexure A of the application form)

- Full name of Auditor
- Contact Person
- Postal Address
- Physical Address
- Telephone No
- Facsimile

4. Bank Details

- Name of Bank
- Branch Name
- Account No

- Trust account No

Section B: Requirements, Information and Documentation

1. Is the Special Purpose Vehicle as per subregulation (8):

- | | Yes | No |
|---|--------------------------|--------------------------|
| (a) Incorporated as either a public company or a private company under the Companies Act, 2004 (Act No. 28 of 2004)? Or | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Registered as a trust under the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934)? | <input type="checkbox"/> | <input type="checkbox"/> |

2. Information and Documentation:

We have submitted the following documentation: **Yes** **No**

- | | | |
|--|--------------------------|--------------------------|
| (a) Investment Plan; | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Memorandum of Association or trust deed (not inconsistent with the Investment Plan); | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Management Agreement; | <input type="checkbox"/> | <input type="checkbox"/> |
| (d) Generic Subscription Agreement; and | <input type="checkbox"/> | <input type="checkbox"/> |
| (e) Names of all directors or trustees. | <input type="checkbox"/> | <input type="checkbox"/> |

3. Disclosure:

3.1 Is the manner in which the business of the Special Purpose Vehicle to be carried on in terms of subregulation (11)(c):

- | | Yes | No |
|--|--------------------------|--------------------------|
| (a) Consistent with the Act and these regulations? | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Based on sound financial principles? and | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) In the public interest? | <input type="checkbox"/> | <input type="checkbox"/> |

Please give explanations where necessary

.....

.....

.....

.....

3.2 Restrictions on Directors and Trustees in terms of subregulation (13):

| | Yes | No |
|--|--------------------------|--------------------------|
| (a) Has any of the directors been disqualified as directors in terms of sections 225 and 226 of the Companies Act, 2004 (Act No. 28 of 2004)? | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Has any of the directors been a director or a principal officer of a financial institution and such financial institution was not in compliance with any law governing financial institutions? | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Has any of the directors or trustees serve as chairperson of the board of the Special Purpose Vehicle? and | <input type="checkbox"/> | <input type="checkbox"/> |
| (d) Confirm if the majority of the directors or trustees are independent directors or trustees and not affiliated, directly or indirectly with the Unlisted Investment Manager. | <input type="checkbox"/> | <input type="checkbox"/> |

Please give explanations where necessary

.....

.....

.....

4. Reporting requirements and continuous compliance obligation:

4.1 We, in terms of subregulation (56), endeavor to submit to the Registrar within 60 days after the end of 31 December and 30 June of each year -

- (a) unaudited financial reports that includes -
- (i) A statement of assets and liabilities;
 - (ii) A statement of profit and loss;
 - (iii) A statement of holdings of securities;
 - (iv) A description of the nature of each portfolio investment, including cost thereof;
- (b) details of portfolio investments and disposals made by the SPV including minutes and resolutions, detailing such investment decisions;
- (c) particulars of expenditure incurred by the SPV;
- (d) summary of valuations for new portfolio investments;
- (e) details of drawdowns, total contributed capital and committed capital; and
- (f) details of the number of permanent and temporary employees of the portfolio companies.

4.2 In addition, we will submit to the Registrar within 180 days after the end of the financial year annual audited financial statements, prepared in accordance with International Financial Reporting Standards as is required in terms of subregulation (57).

4.3 We will also ensure compliance with the provisions of the Financial Intelligence Act 2012, (Act No. 13 of 2012).

5. Attachments

- (a) Proof of bank account of the Special Purpose Vehicle;
- (b) Company or trust registration documents;
- (c) Certified copies of ID of all directors or trustees;
- (d) Signed declaration of all directors or trustees;
- (e) Certified copies of qualification of all directors or trustees;
- (f) Proof of registration payment of N\$5 000 (Five Thousand Namibia dollar).

6. Declaration

<Name of entity applying for the registration as a Special Purpose Vehicle>

- **Declare** that all the information provided in this application (including all attachments) are complete, true and correct.
- **Read and understood** the provisions in regulation 29 and hereby declare that we will comply with these provisions and with any other provisions as may be determined by the Registrar.
- **Understand** that if any information in this application changes before this application is approved, we must notify the Authority in writing immediately of the changes.

(To be signed by all directors or trustees of the entity applying for the registration as a Special Purpose Vehicle.)

| | | |
|------------------|------------------|-------------|
| | | |
| Full Name | Signature | Date |

| | | |
|------------------|------------------|-------------|
| | | |
| Full Name | Signature | Date |

| | | |
|------------------|------------------|-------------|
| | | |
| Full Name | Signature | Date |

7. COMMISSIONER OF OATHS

| | |
|-------------|-----------------------------------|
| | |
| Name | Rank and other Particulars |

| | |
|------------------|-----------------------|
| | |
| Signature | Date and Stamp |

ANNEXURE A

8. Appointment and duties of Auditor in terms of subregulations (23) - (28) of regulation 29

8.1 A Special Purpose Vehicle must, subject to the written approval of the Registrar, appoint, and at all times have, an auditor.

8.2 As Auditors appointed by *<name of the Special Purpose Vehicle>*, hereby confirm that:

(a) We are not directors or trustees of *<name of the Special Purpose Vehicle>* and none of our members are directors or trustees of *<name of the Special Purpose Vehicle>*;

(b) We are not directors or trustees of *<name of the Unlisted Investment Manager>*, and none of our members are directors or trustees of *<name of the Unlisted Investment Manager>*; and

(c) Whenever we, *<name of Auditor>* terminate or resign as auditors, we will within seven days from the date of such termination or resignation, as the case may be, notify the Registrar in writing of the reasons.

8.3 As per the duties imposed on the Auditor by the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), in terms of subregulation (27) of regulation 29, we will:

(a) Audit the financial statements of *<name of the Special Purpose Vehicle>*;

(b) Conduct an independent review, of the valuations conducted by *<name of the Unlisted Investment Manager>*; and

(c) Submit a report to the Registrar and *<name of Unlisted Investment Manager>* on compliance, or otherwise, with these Regulations, the Investment Plan, the Management Agreement and any other applicable law.

8.4 Report to the Registrar any irregularity or any other matter which we have become aware of in our capacity as auditor of *<name of the Special Purpose Vehicle >* and which in our opinion may be of concern to the Registrar having regard to the Registrar's supervisory functions.

9. Declaration by Auditors

.....
(Name of Auditor)

- **Read and Understood** our duties as Auditors in terms of subregulations (23) – (28) of regulation 29.
- **Declare** that all the information provided as per Annexure A of this application (including any attachments) is complete, true and correct.

.....
Full Name

.....
Signature

.....
Date

ANNEXURE B

10. Affidavit by Director or Trustee or Portfolio Manager or Chief Executive Officer

I, (Full name of director/trustee/portfolio manager/chief executive officer),

Identity / Passport Number hereby declare and confirm under oath / or affirm that I -

- 1. am not a minor or a person under legal disability;
- 2. am not an unrehabilitated insolvent;
- 3. have not been removed from an office of trust on account of misconduct;
- 4. have not been convicted of insider trading or any other fraud-on-the-market offence; and
- 5. have not been convicted, whether in Namibia or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under any law for the prevention of corruption, or any offence involving dishonesty or in connection with the promotion, formation or management of a company, and sentenced to imprisonment without the option of a fine or to a fine to the equivalent of or exceeding N\$1 000 (One Thousand Namibia dollar).

I undertake to inform the Registrar forthwith should any of the statements made in this affidavit no longer be true and correct.

| | |
|------------------------------|-------------|
| | |
| Signature of deponent | Date |

COMMISSIONER OF OATHS

| | |
|-------------|-----------------------------------|
| | |
| Name | Rank and other Particulars |

| | |
|------------------|-----------------------|
| | |
| Signature | Date and Stamp |



PENSION FUNDS ACT, 1956 (Act No. 24 of 1956)
REGULATIONS FOR PENSION FUNDS, 1962

(Section 36, Regulation 29(11))

CERTIFICATE OF REGISTRATION AS SPECIAL PURPOSE VEHICLE

This is to certify that

.....

is registered as Special Purpose Vehicle in terms of regulation 29(11) of the Regulations made under the Pension Funds Act, 1956, (Act No. 24 of 1956) published under Government Notice No. R. 98 of January 1962 pursuant to section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956).

Registrar of Pension Funds

Date

**Form 3**

**PENSION FUNDS ACT, 1956 (ACT NO. 24 OF 1956)
REGULATIONS FOR PENSION FUNDS, 1962**

(Section 36, Regulation 29(36))

APPLICATION FOR REGISTRATION AS UNLISTED INVESTMENT MANAGER

We, the undersigned, do hereby apply for the registration as Unlisted Investment Manager, in terms of subregulation (36) of regulation 29, pursuant to section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956).

| | | | |
|----------------|--------------------------|-----------------|--------------------------|
| Public Company | <input type="checkbox"/> | Private Company | <input type="checkbox"/> |
|----------------|--------------------------|-----------------|--------------------------|

Please tick whichever is relevant

Section A. Company information

1. General

- Full name of applicant
- Business Address
- Postal Address
- Telephone Number
- Facsimile
- Website, if any
- E-mail address
- Financial year end of the company
- Company's registration No
- Namibian Tax reference no

2. Share Capital

We hereby confirm that the company will have and maintain a paid-up share capital and non-distributable reserves at any time, not less than 1% of the committed capital in each special purpose vehicle as per subregulation (34)(c) of regulation 29 reflected as follows:

| Committed Capital Special Purpose Vehicle (SPV)(Provide name) | Paid-up share capital | Non-distributable reserves | % of committed capital in SPV |
|---|-----------------------|----------------------------|-------------------------------|
| SPV1 | | | |
| SPV2 | | | |
| SPV3 | | | |

3. Auditor

- Full name of Auditor
- Contact Person
- Postal Address
- Physical Address
- Telephone No
- Facsimile

4. Directors

<Attach if more directors' details required>

(a)

- Full name of director
- Identification No
- Nationality
- Postal address
- Telephone No
- Email address

(b)

- Full name of director
- Identification No
- Nationality
- Postal address
- Telephone No
- Email address

(c)

- Full name of director
- Identification No
- Nationality
- Postal address
- Telephone No
- Email address

5. Chief Executive Officer

- Full name
- Identification No
- Nationality
(If not Namibian, provide letter stating the exceptional circumstance)
- Postal address
- Telephone No
- Email address

6. Portfolio Manager

- Full name
- Identification No
- Nationality
(If not Namibian, provide letter stating the exceptional circumstance)
- Postal address
- Telephone No
- Email address

7. Bank Details

- Name of Bank
- Branch Name
- Account No
- Trust account no
<Proof of bank account to be attached>

Section B: Registration Requirements, Disclosure and Duties**1. Disclosure****1.1 Is the manner in which the business to be carried on in terms of subregulation (38)(c) of regulation 29:**

- | | Yes | No |
|--|--------------------------|--------------------------|
| (a) Consistent with the Act and these regulations; | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Based on sound financial principles; and | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) In the public interest. | <input type="checkbox"/> | <input type="checkbox"/> |

Please give explanations where necessary

.....

.....

1.2 Restrictions on Directors, Chief Executive Officer and Portfolio Manager in terms of subregulation (40) of regulation 29

| | Yes | No |
|--|--------------------------|--------------------------|
| (a) Has any of the directors or the Chief Executive Officer (CEO) or the Portfolio Manager (PM) been disqualified to act as directors in terms of sections 225 and 226 of the Companies Act, 2004 (Act No. 28 of 2004) of a company? | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Was any of the directors or the CEO or the PM, a director or a principal officer of a financial institution and such financial institution was not in compliance with any law governing financial institutions? | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Are any of the directors, the CEO or the PM, a trustee or a principal officer of a pension fund? | <input type="checkbox"/> | <input type="checkbox"/> |

Please give explanations where necessary?

.....

.....

2. Operational ability

| | Yes | No |
|--|--------------------------|--------------------------|
| (a) Do you have a fixed business address? | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Do you have adequate access to communication facilities including at least, a full-time telephone or cell phone service, typing and document duplication facilities? | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Do you have adequate storage and filing systems for the safekeeping of records, business communications and correspondence? | <input type="checkbox"/> | <input type="checkbox"/> |
| (d) Have you established compliance and reporting arrangements for your entity activities? | <input type="checkbox"/> | <input type="checkbox"/> |
| (e) Do your compliance arrangements specify how often compliance with procedures are monitored and reported on? | <input type="checkbox"/> | <input type="checkbox"/> |
| (f) Will any substantial activities of the entity be outsourced? | <input type="checkbox"/> | <input type="checkbox"/> |
| (g) Do you have written service level agreements in place for outsourced activities? | <input type="checkbox"/> | <input type="checkbox"/> |

- (h) Do you have a process in place to ensure that providers selected for any outsourced functions are suitable?
- (i) To whom will you be outsourcing these activities? Independent party
 Related party
 Both

(j) What is the name of the entity to whom you intend outsourcing?

.....

(k) What function(s) will be outsourced?

.....

.....

.....

(l) **Do you have internal controls structure, procedures and controls in place which include the following?**

| | Yes | No |
|--|--------------------------|--------------------------|
| (i) segregation of duties, roles and responsibilities where such segregation is appropriate from an operational risk mitigation perspective; | <input type="checkbox"/> | <input type="checkbox"/> |
| (ii) application of logical access security; | <input type="checkbox"/> | <input type="checkbox"/> |
| (iii) access rights and data security on electronic data, where applicable; | <input type="checkbox"/> | <input type="checkbox"/> |
| (iv) physical security of the providers' assets and records, where applicable; | <input type="checkbox"/> | <input type="checkbox"/> |
| (v) documentation relating to business processes, policies and controls, and technical requirements; | <input type="checkbox"/> | <input type="checkbox"/> |
| (vi) system application testing, where applicable; | <input type="checkbox"/> | <input type="checkbox"/> |
| (vii) disaster recovery and back-up procedures on electronic data, where applicable; | <input type="checkbox"/> | <input type="checkbox"/> |
| (viii) training for all staff regarding the requirements of these regulations; | <input type="checkbox"/> | <input type="checkbox"/> |
| (ix) a business continuity plan; | <input type="checkbox"/> | <input type="checkbox"/> |

(m) **Compliance with the Financial Intelligence Act, 2012, and other anti-money laundering legislation.**

| | Yes | No |
|--|--------------------------|--------------------------|
| (i) Do you have written internal rules in place as required by the Financial Intelligence Act, 2012 (Act No.13 of 2012)? | <input type="checkbox"/> | <input type="checkbox"/> |

- | | | | |
|-------|---|--------------------------|--------------------------|
| (ii) | Do you have processes in place to ensure that employees receive training in respect of and are aware of their obligation to report suspicious transactions? | <input type="checkbox"/> | <input type="checkbox"/> |
| (iii) | Do you have anti-money laundering control policies, procedures and systems in place? | <input type="checkbox"/> | <input type="checkbox"/> |
| (iv) | Do you have processes to incorporate any additional requirements as may be required under the Financial Intelligence Act, 2012, and/or any other anti-money laundering legislation? | <input type="checkbox"/> | <input type="checkbox"/> |
| (v) | Do you have process in place to train staff in relation to anti-money laundering legislation? | <input type="checkbox"/> | <input type="checkbox"/> |

3. Duties

3.1 As part of our duties in terms of subregulation (41) of regulation 29, we hereby confirm that we:

- (a) Have exclusive authority to manage and administer the portfolio investments of a Special Purpose Vehicle (SPV) in accordance with the Investment Plan and in terms of the Management Agreement;
- (b) Have the right, power and authority to do all things necessary or desirable on behalf of the SPV, in order for the SPV to carry out its duties and responsibilities and to fulfill the requirements of the Investment Plan and the Management Agreement, including to initiate, screen, select and conduct due diligence and perform valuations on potential portfolio investments;
- (c) Have the right, power and authority to initiate, screen, select and conduct due diligence and perform valuations on potential portfolio investments;
- (d) Have the right to make investment decisions, not inconsistent with the Investment Plan and subject to subregulation (18) of regulation 29, on behalf of the SPV;
- (e) Have the right to exercise the voting power conferred by the securities issued by a portfolio company and held in the SPV;
- (f) Monitor and report on the performance of portfolio investments of the SPV;
- (g) Structure and manage portfolio investments; and
- (h) Manage and administer the operations of the SPV.

3.2 In addition, we will:

- (a) Comply with the provisions of the Financial Intelligence Act, 2012;
- (b) Pay levies; and
- (c) Submit returns as required by the registrar.

4. In performing our functions as per subregulations (41)–(45) and (58) of regulation 29, we declare that we will:

- (a) Not receive any other type of compensation or commission, direct or indirect, except that which is specified in the Management Agreement;

- (b) Observe utmost good faith and act with due skill, care and diligence;
- (c) Conduct our business in a responsible way and not engage in practices which would prejudice the interests of investors, Special Purpose Vehicles, portfolio companies and other stakeholders;
- (d) Not engage in speculative activity;
- (e) Exercise the voting power in a manner that best serves the interests of the Special Purpose Vehicle;
- (f) Promote and maintain ethical standards of conduct and deal fairly and honestly with investors, Special Purpose Vehicles, portfolio companies and other stakeholders;
- (g) Not disclose to third parties any confidential, financial or technical information acquired in the course of negotiations with potential portfolio companies, or in the course of business with portfolio companies, unless they have received explicit permission for such disclosure;
- (h) Not be used to promote the welfare of, or assist our directors, officers or employees, except in so far as they benefit from the performance of the Special Purpose Vehicle in terms of the Management Agreement;
- (i) Be accountable to the Special Purpose Vehicle, by fully disclosing information in a manner that is clear, fair and not misleading;
- (j) Maintain adequate human, financial and operational resources for our business;
- (k) Require our directors, officers and employees to abide by the regulations as stipulated in subregulation (43) of regulation 29;
- (l) Co-invest in any Special Purpose Vehicle with which we have entered into a Management Agreement, a minimum of 1% of the contributed capital on the same terms and conditions as applicable to investors in terms of subregulation (44) of regulation 29; and
- (m) Submit to the Registrar within 180 days after the end of the financial year, annual audited financial statements, prepared in accordance with the International Financial Reporting Standards in terms of subregulation (58) of regulation 29.

5. Attachments

- (a) Company registration documents;
- (b) Investment Plan;
- (c) Management Agreement;
- (d) Portfolio Manager's CV, certified copy of ID and if not Namibian, provide letter stating the exceptional circumstance;
- (e) CEO and Directors' CV and their certified copies of ID;
- (f) Certified copies of qualification of the portfolio manager, the CEO and all the directors;
- (g) Proof of banking details; and

(h) Proof of payment of the application fee **N\$5 000** (Five Thousand Namibia dollar).

Note: *The Registrar may call upon the applicant to furnish him/her with further information relevant to the application. The registrar is not obliged to consider incomplete applications.*

6. Applicant's declaration

We: _____
(Name of entity applying for the registration as an Unlisted Investment Manager)

- **Declare** that all the information provided in this application (including all attachments) is complete, true and correct.
- **Read and understood** the provisions in regulation 29 and hereby declare that we will comply with these provisions and any other provisions as may be determined by the registrar.
- **Understand** that if any information in this application changes before this application is approved, we must notify the Authority in writing immediately of the changes.

(To be signed by either two directors or the Chief Executive Officer and the Portfolio Manager of the entity applying as an Unlisted Investment Manager.)

| | | | |
|---------------------------|-----------------------------|---------------------------|----------------------|
| Full Name | Designation | Signature | Date |
|---------------------------|-----------------------------|---------------------------|----------------------|

| | | | |
|---------------------------|-----------------------------|---------------------------|----------------------|
| Full Name | Designation | Signature | Date |
|---------------------------|-----------------------------|---------------------------|----------------------|

7. COMMISSIONER OF OATHS

| | |
|----------------------|--|
| Name | Rank and other Particulars |
|----------------------|--|

| | |
|---------------------------|--------------------------------|
| Signature | Date and Stamp |
|---------------------------|--------------------------------|

ANNEXURE A

8. Appointment and duties of Auditor in terms of subregulations (48) –(53) of regulation 29

8.1. As Auditors appointed by *<name of the Unlisted Investment Manager>*, we hereby confirm that:

- (a) We are not directors or trustees of *<name of the Special Purpose Vehicle>*, and none of our members are directors or trustees of *<name of the Special Purpose Vehicle>*;
- (b) We are not directors, officers or employees of *<name of the Unlisted Investment Manager>*, and none of our members are directors, officers or employees of *<name of the Unlisted Investment Manager>*; and
- (c) Whenever we, *<name of Auditor>* terminate or resign as auditors, we will within seven days from the date of such termination or resignation, as the case may be, notify the Registrar in writing of the reasons.

8.2. As per the duties imposed on the Auditor by the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), we further confirm that we will:

- (a) Audit the financial statements of *<name of the Unlisted Investment Manager>*; and
- (b) Submit a report to the registrar on compliance, or otherwise, with these Regulations, the Management Agreement and any other applicable law.

8.3. In addition, we will report to the registrar any irregularity or any other matter which we have become aware of in our capacity as auditor of *<name of the Unlisted Investment Manager>* and which in our opinion may be of concern to the Registrar having regard to the Registrar's supervisory functions.

9. Declaration by Auditors

.....
(Name of Auditor)

- **Read and Understood** our duties as Auditors in terms of subregulations (48) – (53) of regulation 29, we hereby:
- **Declare** that all the information provided as per Annexure A of this application (including any attachments) is complete, true and correct.

.....
Full Name

.....
Signature

.....
Date

ANNEXURE B

10. Affidavit by Director or Trustee or Portfolio Manager or Chief Executive Officer

I
(Full name of director/trustee/portfolio manager/chief executive officer),

Identity / Passport number hereby declare and confirm under oath / or affirm that I -

- 1. am not a minor or a person under legal disability;
- 2. am not an unrehabilitated insolvent;
- 3. have not been removed from an office of trust on account of misconduct;
- 4. have not been convicted of insider trading or any other fraud-on-the-market offence; and
- 5. have not been convicted, whether in Namibia or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under any law for the prevention of corruption, or any offence involving dishonesty or in connection with the promotion, formation or management of a company, and sentenced to imprisonment without the option of a fine or to a fine to the equivalent of or exceeding N\$1 000 (One Thousand Namibia dollar).

I undertake to inform the Registrar forthwith should any of the statements made in this affidavit no longer be true and correct.

.....
Signature of deponent

.....
Date

COMMISSIONER OF OATHS

.....
Name

.....
Rank and other Particulars

.....
Signature

.....
Date and Stamp

**Form 4**

PENSION FUNDS ACT, 1956 (Act No. 24 of 1956)
REGULATIONS FOR PENSION FUNDS, 1962

(Section 36, Regulation 29(38))

CERTIFICATE OF REGISTRATION AS UNLISTED INVESTMENT MANAGER

This is to certify that

.....

is registered as Unlisted Investment Manager in terms of Regulation 29(38) of the Regulations made under Pension Funds Act, 1956 (Act No. 24 of 1956), published under Government Notice No. R. 98 of January 1962, pursuant to section 36 of that Act.

Registrar of Pension Funds

Date