



STOCKS AND SECURITIES

Unit Trusts Control Act 54 of 1981, as amended in South Africa prior to Namibian independence  

Summary: This Act ([RSA GG 7760](#)) regulates trust schemes relating to securities and prohibits similar schemes relating to other assets.

This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Repeals: The Act repeals the *Unit Trusts Control Act 18 of 1947*.

Applicability to SWA: Section 45 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Inspection of Financial Institutions Act 38 of 1984* ([RSA GG 9155](#))
- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#)).

In South Africa, the *Financial Institutions Amendment Act 64 of 1990* ([RSA GG 12564](#)) amended section 38 (section 12 of Act 64 of 1990), with this amendment being deemed to have come into force on 6 July 1987 (section 18(2) of *Act 64 of 1990*). However, since *Act 64 of 1990* was gazetted on 29 June 1990, after the date of Namibian independence, this retroactive amendment was not applicable to South West Africa.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)) amends section 1, substitutes section 2 and repeals section 2A.

Act 10/2011 ([GG 4847](#)) amends the Act substantially (sections 1, 3, 5A, 6, 7, 8, 9, 11, 20, 29, 37, 42, 44).

Act 14/2016 ([GG 6184](#)) amends sections 1 and 5.

Savings: Section 46(2) of this Act contains a broad savings clause:

Anything done or deemed to have been done under any provision of a law repealed by subsection (1), and which could be done under a provision of this Act, shall be deemed to have been done under the last-mentioned provision.

Regulations: Regulations are authorised by section 51 of this Act. The only surviving pre-independence regulations located are the “Regulations under the Unit Trusts Control Act, 1947, as amended” which are contained in RSA GN R.1378/1963 ([RSA GG 595](#)).³¹⁷

After independence, regulations relating to unit trust schemes capital requirements were issued in GN 256/2014 ([GG 5637](#)).

³¹⁷ These regulations repeal the previous regulations issued under the *Unit Trusts Control Act 18 of 1947* in SA Government Notice No. 2697 dated 24 December 1947.

Notices: A determination of the securities and other assets that may be included in a unit portfolio of a unit trust scheme and minimum and maximum restrictions and conditions for such securities and other assets is contained in General Notice 443/2014 ([GG 5637](#)).

Other determinations relating to unit trust management companies are contained in General Notice 444/2014 ([GG 5637](#)).

Appointments: A Registrar and Deputy Registrar of Unit Trust Companies are appointed in General Notice 31/1991 ([GG 174](#)).

Stock Exchanges Control Act 1 of 1985, as amended in South Africa prior to Namibian independence

Summary: This Act ([RSA GG 9634](#)) regulates stock exchanges, stock-brokers and loans made against securities.

This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Repeals: The Act repeals the *Stock Exchanges Control Act 7 of 1947*.

Applicability to SWA: Section 1 defines “Republic” to include “the Territory”, which is defined as “the territory of South West Africa”. Section 52 states “The provisions of this Act and any amendment thereof, whenever made, shall apply also in the Territory, including the Eastern Caprivi Zipfel.”

Amendments: Act 26/1992 ([GG 488](#)) amends sections 1, 3, 7, 8, 10, 14, 19, 21, 34, and 43, and repeals section 52, to make the Act consistent with an independent Namibia and to facilitate the establishment of a Namibian Stock Exchange.

Act 29/2000 ([GG 2460](#)) amends sections 3, 7, 8, 9, 10, 11, 12, 15, 33 and 39, repeals section 13 and inserts section 45A.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)) amends section 1, substitutes section 2 and repeals section 2A.

Savings: Section 53(2) of this Act contains a broad savings clause:

Anything done or deemed to have been done by, under or in terms of any provision of a law repealed by subsection (1), shall be deemed to have been done by, under or in terms of the corresponding provision of this Act.

Regulations: Regulations are authorised by section 51 of this Act. The only pre-independence regulations that remain in force are the **Stock Exchanges Regulations** made in terms of this Act and contained in RSA GN R.1493/1986 ([RSA GG 10350](#)).³¹⁸ No post-independence regulations have been promulgated.

³¹⁸ These regulations repeal the ones promulgated under the previous Act in RSA Government Notice R.1817 of 8 October 1976.

Rules: The Namibian Stock Exchange Rules are contained in GN 151/1995 ([GG 1147](#)), as amended by GN 145/1997 ([GG 1603](#)), GN 81/1999 ([GG 2098](#)), GN 12/2002 ([GG 2688](#)), General Notice 203/2002 ([GG 2796](#)) and General Notice 251/2005 ([GG 3518](#)) and General Notice 113/2012 ([GG 4940](#)).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on members of stock exchanges licensed under the Act and on the Namibia Stock Exchange.

Notices: Notices of applications for approval of amendment of the rules are contained in GN 12/2002 ([GG 2688](#)), General Notice 203/2002 ([GG 2796](#)), General Notice 251/2005 ([GG 3518](#)) and General Notice 113/2012 ([GG 4940](#)).

The conditions that apply to a person who, as a regular feature of that person's business, administers or holds in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form a part, are contained in GN 31/2016 ([GG 5955](#)). These conditions are determined under section 4(1)(f) of the Act.

The conditions that apply to a person who, as a regular feature of that person's business, intends to operate a central securities depository that administers or holds in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form a part, are contained in GN 213/2022 ([GG 7864](#)). These conditions are determined under section 4(1)(f) of the Act. (These conditions do not reference or repeal the ones in GN 31/2016 ([GG 5955](#)).)

Appointments: A Registrar and Deputy Registrar of Stock Exchanges are appointed in General Notice 30/1991 ([GG 174](#)).

Notes: The **Corporate Governance Code for Namibia (NamCode)** can be found [here](#). This Code applies to "entities incorporated by statute or in terms of the Companies Act (2004) or registered in terms thereof and any other legislation applicable in Namibia". It became applicable beginning with financial years that started after 1 January 2014. The NamCode is based on international best practices and on the *King Code on Governance for South Africa, 2009 ("King III")*. Compliance with the NamCode is voluntary, but companies which are listed on the Namibian Stock Exchange are expected to apply the NamCode, or to explain the reasons for the areas where they are non-compliant (the "apply or explain" principle). The Board of Directors of the Namibian Stock Exchange has recommended (in the introduction to the publication containing the NamCode) that the NamCode should be applied to all Namibian entities regardless of their form of incorporation or establishment, including entities in the public, private and non-profit sectors, to achieve good governance.

Cases: *Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others* 2014 (2) NR 425 (HC); overturned on appeal 2016 (3) NR 747 (SC).