



# STOCKS AND SECURITIES

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***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. It repeals the *Unit Trusts Control Act 18 of 1947*. This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force.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during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

**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.

**Regulations:** Regulations made under the repealed Act appear to survive in terms of section 46(2) of this Act:

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 that may have survived under this provision have not been researched.

Regulations are authorised by section 51 of this Act. Pre-independence regulations have not been researched. Since independence, regulations relating to unit trusts scheme capital requirements are contained in GN 256/2014 ([GG 5637](#)).

**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. It repeals the *Stock Exchanges Control Act 7 of 1947*. 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.

**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.

**Regulations:** Regulations made under the repealed Act appear to survive in terms of section 53(2) of this Act:

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 that may have survived under this provision have not been researched.

Regulations are authorised by section 51 of this Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

**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 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 which 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.

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

**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).