

REGULATIONS MADE IN TERMS OF

Pension Funds Act 24 of 1956

section 36

Pension Funds Regulations

Government Notice 211 of 2018

(GG 6697)

came into force on date of publication: 31 August 2018

The Government Notice which issues these regulations repeals the regulations   
contained in RSA GN R.98/1962 (RSA GG 162), but makes no mention   
of the amendments to those regulations.

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PART 1

INTRODUCTORY PROVISIONS

**Definitions**

**1.** In these regulations a word or an expression defined in the Act has that meaning unless the context indicates otherwise -

“Companies Act” means the Companies Act, 2004 (Act No. 28 of 2004);

“foreign fund” means a fund referred to in section 2(2) of the Act;

“friendly society” means a friendly society as defined in the Friendly Societies Act, 1956 (Act No. 25 of 1956);

“Long-term Insurance Act” means the Long-term Insurance Act, 1998 (Act No. 5 of 1998);

“person managing the business of the fund” includes, the committee, committee of management, board of trustees or similar body, administering the fund;

[The comma after “includes” is superfluous.]

“principal officer” means the principal executive officer referred to in section 8 of the Act who may be a member of the body administering the fund;

“privately administered fund” means a fund other than the funds referred to in sections 2(1), 2(2), 2(3)(a)(i) and 2(3)(a)(ii) of the Act;

“Public Accountants’ and Auditors’ Act” means the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951);

“state-controlled fund” means a fund referred to in section 2(3)(a)(i) of the Act;

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

“the Act” means the Pension Funds Act, 1956 (Act No. 24 of 1956); and

“underwritten fund” means a fund referred to in section 2(3)(a)(ii) of the Act.

PART 2

DOCUMENTS AND PARTICULARS TO BE FURNISHED WHEN APPLYING FOR REGISTRATION OF PENSIONS FUNDS UNDER SECTION 4

**Privately administered funds**

**2.** (1) An application for registration of a privately administered fund must consist of a letter signed by the person managing the business of the fund for the time being or on behalf of the employer participating in the fund, stating -

(a) the full title of the fund;

(b) the full physical address of the registered office of the fund and the postal address; and

(c) the name of the person for the time being, or who will upon registration of the fund, be administering the fund or for the time being at the head of the body administering the fund.

(3) An application for registration referred to in subregulation (1) must -

(a) be accompanied by -

(i) an original and one copy of such rules, duly certified as contemplated in regulation 8, by the applicant as being the rules which will become effective on the date of registration of the fund or the date of commencement of the fund, whichever is the later; and

(ii) a certificate by a valuator as to the soundness of the rules from a financial point of view and a copy of such certificate; and

(b) state -

(i) the name,

(ii) address; and

(iii) professional qualifications and experience of the valuator which must be indicated in the certificate;

(c) two copies of a document (for example an extract from the articles of association of the participating company and a copy of the directors’ resolution, etc.) to indicate the authority in terms of which the fund was established and if such authority does not exists this fact must be clearly stated; and

[The verb “exists” should be “exist” to be grammatically correct.]

(d) the prescribed registration fee of N$500.00 which must be paid in cash.

(4) If the valuator referred to in subregulation (3)(a)(ii) has not been employed by the fund or if financial methods will be adopted by the fund which will render periodic investigations by a valuator unnecessary, the applicant must provide information regarding the financial soundness of the rules as the applicant may possess together with an explanation as to why a certificate by a valuator is not available, must be furnished.

[The phrase “must be furnished” is superfluous,   
given the phrase “the applicant must provide… together with”.]

(5) If the application referred to in subregulation (1) is in relation to the business of a friendly society as contemplated in the definition of “pension fund organization” in section 1(1) of the Act, the rules covering such friendly society business are also to be submitted if they do not form part of the pension fund rules.

**Foreign funds**

**3.** (1) An application for registration of a foreign fund referred to in section 2(2) of the Act must be made on Form 1 in Annexure C and be accompanied by all the documents and particulars mentioned in regulation 2.

(2) An application referred to in subregulation (1) must be accompanied by a memorandum setting out -

(a) the reasons why exemption is claimed under section 2(2) of the Act;

(b) the names and registered addresses of the head offices of all the employers participating in the fund;

(c) the number of members of the fund -

(i) outside Namibia;

(ii) in Namibia who are Namibian citizens; and

(iii) in Namibia who are not Namibian citizens.

**State-controlled funds**

**4.** (1) An application for registration of a state-controlled fund which claims exemption under section 2(3)(a)(i) of the Act must be made on Form 1 in Annexure C and be accompanied by all the documents and particulars mentioned in regulation 2.

(2) An application referred to in subregulation (1) must be accompanied by a memorandum in which reasons are set out as to why exemption is claimed under section 2(3)(a)(i) of the Act.

**Underwritten funds**

**5.** (1) An application for registration of an underwritten fund which claims exemption under section 2(3)(a)(ii) of the Act must be made on Form 1 in Annexure C and be accompanied by all the documents and particulars mentioned in regulation 2.

(2) An application referred to in subregulation (1) must be accompanied by a certificate by the insurance company concerned to the effect that -

(a) an insurance policy has been or will be issued by it in terms of the rules of the fund; and

(b) the rules submitted by the applicant are those in force at the date of application.

PART 3

FINANCIAL STATEMENTS AND STATISTICS TO BE FURNISHED BY REGISTERED FUNDS

**Financial statements and statistics**

**6.** (1) Subject to section 15 of the Act, a registered fund must, not later than 6 months after the end of every financial year following the year in which the fund was registered -

(a) prepare its annual financial statements in the manner set out in Form 2 of Annexure C; and

(b) submit such annual financial statements to the registrar under cover of a letter signed by the principal officer.

(2) The annual financial statements referred to in subregulation (1) must be accompanied by -

(a) a copy of any special report by the auditor relating to any of the activities of the fund during the financial year to which such documents relate;

(b) a copy of any annual report that the fund may have issued to its members or shareholders in respect of the said financial year;

(c) a copy of any other statement that the fund may have presented to its members or shareholders in respect of any of its activities during such financial year; and

(d) an original and one copy of a list containing the names of all the employers participating in the fund except where such names are incorporated in the rules of the fund this fact need only be mentioned in the covering letter and, once a complete list has been furnished subsequent returns need only mention changes,

[The comma at the end of paragraph (d) should be a full stop;   
there is no additional text in the subregulation.]

(3) If it is not possible to comply with paragraph (a) to (d) of subregulation (2) due to the fact that such reports were not made or such statements were not presented or if there was no change in the list of participating employers referred to in paragraph (d), this fact must be mentioned specifically in the cover letter.

(4) The name of the fund and the financial year to which the documents relate must be given on each sheet of paper submitted under regulation 6.

PART 4

REPORTS BY VALUATOR AND STATEMENTS OF ASSETS AND LIABILITIES

**Reports and statements by valuator**

**7.** (1) A registered fund which carries on only pension fund business referred to in paragraph (a) or (b) of the definition of “pension fund organization” in section 1(1) of the Act must, whenever the fund sends a summary of a report of a valuator in terms of section 16(1) of the Act to every employer participating in the fund, cause any such summary to be prepared by the valuator concerned in a form substantially corresponding to Form 3 in Annexure C.

(2) A registered fund which in addition to its pension fund business carries on the business of a friendly society must, with regard to its pension fund business, comply with the requirements of section 16 of the Act.

(3) If -

(a) the friendly society business of the fund is subject to actuarial scrutiny in terms of the rules, such friendly society business must be investigated and reported upon by a valuator at the same time as the pension fund business is investigated and reported upon in terms of section 16 of the Act and the reports on the pension fund and the friendly society business must be submitted together; or

(b) the friendly society business is not subject to actuarial scrutiny in terms of the rules, a statement to that effect must accompany the valuation report in respect of the pension fund business submitted in terms of section 16 of the Act.

(4) A registered fund which requires authority to prepare a statement of liabilities and assets in lieu of causing its financial condition to be investigated and reported on by a valuator in terms of section 16 of the Act, must apply to the registrar for the necessary authority in terms of section 17 of the Act.

(5) The application for authority referred to in subregulation (1) -

(a) may be submitted at the same time as the application for registration under regulation 2; and

(b) must be accompanied by a memorandum setting out in detail the reasons as to why an investigation by a valuator is considered unnecessary.

PART 5

SIGNING OF DOCUMENTS

**Rules**

**8.** (1) The two copies of the rules of a fund which accompany an application for registration under Part 2 of these regulations, must be certified as follows on the first page or on the cover if the rules are in the form of a booklet:

“Certified that these are the rules of the XYZ Pension Fund which will become effective on the date of registration / commencement\* of the fund.”

\*Delete whichever not applicable.

(2) If the application is made by the person managing the business of the fund the certificate is to be signed by such person for the time being as the head of the administering body and by one other member.

(3) If the application is made on behalf of the participating employer the certificate must clearly indicate the capacity in which the applicant signed the document, for example as secretary of the company.

**Annual accounts and statements**

**9.** (1) For the purposes of section 20 of the Act, the annual financial statements prepared in accordance with Form 2 of Annexure C will be regarded as one document and must be accompanied by the following certificate:

“Certified that to the best of our knowledge the attached accounts and statements in respect of the XYZ Pension Fund for the year ended ... ……, 20.., are true and correct.”

(2) The certificate which must be signed as explained in regulation 10, may either be on a separate sheet of paper or be endorsed on the revenue account or where all the documents are bound in one volume the certificate must be on the cover.

**Other documents**

**10.** (1) Any document, excluding a letter, other than those referred to in regulations 7(5) and 8 must be signed on the first page as set out in section 20 of the Act, namely -

(a) where the fund is administered by one individual, by -

(i) such individual; and

(ii) the principal officer;

(b) where the fund is administered by a committee or trustees, by -

(i) the person for the time being at the head of such committee or trustees;

(ii) one other member of the committee or a trustee; and

(iii) the principal officer.

(2) In the case of subregulation (1)(a), there must be two signatures by different individuals.

(3) In the case of subregulation (1)(b), there must be three signatures but as the principal officer may be a member of the committee or a trustee it is possible that his or her signature may be two of the three signatures, but at least two different individuals must sign the document.

PART 6

AUDIT REQUIREMENTS

**Auditors**

**11.** (1) Subject to section 9 of the Act, the person managing the business of the fund must, within 30 days of the registration of a fund, apply in the form set out in Form 4 of Annexure C to the registrar for the approval of the appointment of the auditor.

(2) Subject to section 9 of the Act, whenever a registered fund has appointed a new auditor, the person managing the business of the fund must, within 30 days as from the date of such appointment, apply in the form set out in Form 4 of Annexure C to the registrar for the approval of the appointment of the auditor.

(3) The annual financial statements referred to in regulation 6 must be accompanied by a report signed by the auditor of the fund as set out in Form 2 of Annexure C.

(4) If the auditor is unable to sign the report referred to in subregulation (3) in the form so shown without qualification, the report must be in such form as he wishes provided that it must deal with the matters referred to in the report set out in Form 2 of Annexure C and must include his reasons for being unable to sign the report without qualification.

[All other provisions in these regulations use “he or she” and “his or her”.]

PART 7

ASSETS IN WHICH REGISTERED FUND MAY INVEST

**Definitions for purposes of this Part**

**12.** In this Part -

“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 a banking 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;

[The Banking Institutions Act 2 of 1998 has been  
replaced by the Banking Institutions Act 13 of 2023.]

“building society” means a building society registered in terms of the Building Societies Act, 1986 (Act No. 82 of 1986), and includes a building society authorised as such under the laws of a country other than Namibia;

[The correct citation for the statute referred to is Act 2 of 1986.]

“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 A -

(a) item 1 (credit balances) where such balances are held in Namibia;

(b) item 2 (Government Bonds) where such bonds are denominated in any currency, and wherever issued and purchased;

(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 to finance activities within Namibia;

(e) item 6 (property) where such property is located in Namibia;

(f) item 7 (shares) where such shares are in a company incorporated in Namibia and includes shares 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 incorporated 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 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 authorised by law to carry on the business of a stock exchange in the country where it is situated, 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 shares 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 in the company which is the registered owner of the property or of exercising control over the company which is the registered owner of the property or by way of a trust of which the company is a beneficiary; or

(b) of which 50 per cent or more of its gross income is derived from direct or indirect 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);

[Act 2 of 2006 was re-named the “Public Enterprises Governance Act”   
by the Public Enterprises Governance Amendment Act 8 of 2015.  
It has been replaced by the Public Enterprises Governance Act 1 of 2019.]

**Limits relating to assets in which registered fund may invest**

**13.** (1) Subject to subregulation (5), (6), (7), (9), (10), (11) and (13) and regulation 12, a fund may only invest in assets set out in Column 2 of Annexure A 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 of the market value of the total assets of the fund;

(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.

(2) Despite subregulation (1), and without prejudice to subregulations (9) and (11) and Annexure 1, a fund must keep invested in domestic assets, at all times after the following dates, not less than the following percentages of the market value of its total assets -

(a) 31 August 2018, not less than 40%;

(b) 30 November 2018, not less than 42.5%; and

(c) 31 March 2019, not less than 45%.

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

(a) 30 per cent of the market value of its total assets from 1 January 2014;

(b) 25 per cent of the market value of its total assets from 1 January 2015;

(c) 20 per cent of the market value of its total assets from 1 January 2016;

(d) 15 per cent of the market value of its total assets from 1 January 2017; or

(e) 10 per cent of the market value of its total assets from 1 January 2018.

(4) Assets consisting of shares in a company incorporated outside Namibia in excess of the limit set out in subregulation (3), acquired on a stock exchange licensed under the Stock Exchanges Control Act, are regarded as foreign assets.

(5) Despite subregulation (1), a fund must invest in unlisted investments a minimum of 1.75 per cent of the market value of its total assets in accordance with Part 8, but unlisted investments may cumulatively not exceed 3.5 per cent of the market value of the total assets of a fund.

(6) With regard to the assets in which a fund may invest in terms of subregulation (1), where the value of a kind or category of asset or an asset exceeds a percentage contemplated in subregulation (1) by 5% or less, as the result of a movement in the value of any asset and not due to a further investment in the same kind or category of asset or the asset which exceeds the percentage, a fund is not be in contravention of subregulation (1) if the fund -

(a) immediately on becoming aware of such excess notifies the registrar in writing that a percentage contemplated in subregulation (1) has been exceeded; and

(b) complies with this regulation within the period specified by the registrar in writing after having been notified in terms of paragraph (a).

(7) An investment may only be classified or counted as an investment in one kind or category of asset which may not be changed without the written approval of the registrar upon good cause shown.

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

(9) 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 considered not to be an asset of the fund.

(10) 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 excluding any unlisted investments included in the unit portfolio of such a unit trust scheme.

(11) 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.

(12) The investments of a fund referred to in section 2(3)(a)(ii) of the Act are not subject to this regulation provided that the investments by such fund in credit balances as contemplated in item 1 of Annexure A does not exceed 10% of the value of the insurance policies at any given time.

[The verb “does” should be “do” to be grammatically correct: “investments….do”.]

(13) 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.

(14) 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 (5) after having obtained the approval of the Minister.

PART 8

INVESTMENT OF PENSION FUND ASSETS IN UNLISTED INVESTMENTS

**Definitions for purposes of this Part**

**14.** (1) In this Part -

“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 regulation 20(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 regulation 18(3);

“subscription agreement” means an agreement between an investor and a special purpose vehicle referred to in regulation 39;

“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; and

“unlisted investment manager” means a person who is registered in terms of regulation 28(3) and engages in the buying, selling or otherwise dealing with unlisted investments on behalf of a special purpose vehicle.

**Requirements for unlisted investments**

**15.** (1) All unlisted investments made pursuant to regulation 13(5) must be used to finance the activities within Namibia of the companies which are the subjects of the unlisted investments -

(a) may not be transferred out of Namibia in any form or manner; and

(b) must be held by a special purpose vehicle.

[There is a problem with the sentence structure of this subregulation.   
There is possibly a missing word such as “and” at the end of the introductory phrase.]

(2) 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.

(3) A pension fund is considered to have complied with regulation 13(5), if the aggregate amount of all capital commitments to special purpose vehicles falls within the limits of regulation 13(5), subject to regulation 20(b).

(4) 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**

**16.** (1) A person who wants to register a special purpose vehicle -

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

(2) 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**

**17.** A person may be registered or remain so registered as a special purpose vehicle if it -

(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 organised and operated for purposes of holding unlisted investments on behalf of investors;

[The Trust Moneys Protection Act 34 of 1934 has been replaced   
by the Trust Administration Act 11 of 2023.]

(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.

**Registration of special purpose vehicle**

**18.** (1) A person who wants to register a special purpose vehicle under these regulations must -

(a) lodge with the registrar an application for registration in the form of Form 5 as set out in Annexure C; and

(b) fully and honestly disclose the required particulars.

(2) The registrar may call on the person to furnish further relevant information considered necessary by the registrar.

(3) If the registrar is satisfied that -

(a) the conditions set under regulation 17 and other information contemplated in subregulation (2) 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 6 as set out in Annexure C.

(4) A special purpose vehicle registered under subregulation (3) 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**

**19.** A person who -

(a) in terms of section 225 and section 226 of the Companies Act is disqualified from being appointed or acting as a director of a company;

(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; or

(c) does not meet the fit and proper requirements determined,

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**

**20.** 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 subject thereto that the special purpose vehicle may only effect a drawdown of the committed capital or a part thereof when such drawdown is necessary to make a specific unlisted investment already identified at the time of the drawdown,

but if a drawdown is not effected, or only partially effected, in respect of a pension fund, within a period of 24 months, the capital commitment lapses in respect of the capital which has not been drawn down, 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.

**Powers, restrictions and functions of special purpose vehicle**

**21.** (1) 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.

(2) 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, subject thereto that the registrar’s written approval is not required if the amendment does not affect the rights or obligations of any person and does not contravene the Act, this regulation or any other law;

(d) employ people or establish any business places other than its registered office; or

(e) merge with another entity or change its form without the written approval of the registrar.

[The last two paragraphs are mislabelled;   
there is no paragraph (c) in the *Government Gazette*.]

(3) 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.

(4) 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.

(5) In performing the functions under subregulations (3) and (4), 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 investments 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 of special purpose vehicle**

**22.** (1) 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.

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

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

**Appointment and duties of auditor**

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

(2) 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.

(3) 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.

(4) 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.

(5) 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 No. 51 of 1951), must -

(a) audit the financial statements of the special purpose vehicle in accordance with regulation 35(2);

(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.

(6) 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**

**24.** (1) 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.

(2) The registrar must give notice to and afford the special purpose vehicle the opportunity to be heard prior to deregistration in terms of subregulation (1)(a) or (d).

**Unregistered person may not administer unlisted investments**

**25.** A person may not administer unlisted investments on behalf of pension funds pursuant to regulation 13(5), unless such a person is registered in terms of regulation 28(3).

**Approval and change of name of unlisted investment manager**

**26.** (1) 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).

(2) 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**

**27.** (1) A person other than a company which -

(a) is incorporated as either a public or private company under the Companies Act 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 persons, or a person, to be its portfolio manager and chief executive officer, who are, unless the registrar in exceptional circumstances otherwise allows on such conditions as specified by the registrar, Namibian citizens resident in Namibia,

may not be registered as an unlisted investment manager.

(2) If an unlisted investment manager, at any time, ceases to comply with subregulation (1), it must within a period of 30 days thereafter report to the registrar in writing to that effect.

**Registration of unlisted investment manager**

**28.** (1) 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 7 as set out in Annexure C; and

(b) fully and honestly disclose the required particulars.

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

(3) If the registrar is satisfied that -

(a) the conditions set under regulation 27(1) 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 8 as set out in Annexure C.

(4) An unlisted investment manager registered under subregulation (3) 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**

**29.** 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 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;

(c) is a trustee or a principal officer of a pension fund; or

(e) does not meet the fit and proper requirements determined.

[The last paragraph is mislabelled;   
there is no paragraph (d) in the *Government Gazette*.]

**Duties of unlisted investment manager**

**30.** (1) 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 fulfil 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 regulation 21(4), 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.

(2) In performing the functions under regulation 30(1), 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.

(3) An unlisted investment manager must require its directors, officers and employees to abide by these regulations.

**Co-investment requirement of unlisted investment managers**

**31.** 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 by unlisted investment manager**

**32.** (1) 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.

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

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

**Appointment and duties of auditor**

**33.** (1) An unlisted investment manager must, with the written approval of the registrar, appoint and at all times have an auditor.

(2) 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.

(3) 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.

(4) 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.

(5) 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 No. 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.

(6) 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**

**34.** (1) 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.

(2) The registrar must give notice to and afford the unlisted investment manager the opportunity to be heard prior to deregistration in terms of subregulation (1)(b).

**Reporting requirements for special purpose vehicle**

**35.** (1) 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 regulation 21(4) 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.

(2) A special purpose vehicle must within 180 days after the end of the financial year as per regulation 22(1), 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 regulation 35(1).

**Reporting requirements for unlisted investment manager**

**36.** An unlisted investment manager must submit to the registrar within 180 days after the end of the financial year as per regulation 32(1), annual audited financial statements, prepared in accordance with International Financial Reporting Standards.

**Investment plan**

**37.** (1) 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, as well as the method by which any losses of the special purpose vehicle will be recouped from any performance bonuses or incentives paid or to be paid; and

(ak) any other particulars or relevant documents reasonably required by the registrar.

(2) Any provision in the investment plan inconsistent with these regulations or any other law is invalid.

**Management agreement**

**38.** (1) 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 particulars or relevant documents reasonably required by the registrar.

(2) 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**

**39.** (1) 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.

(2) 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**

**40.** (1) 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.

(2) 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.

(3) 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.

(4) When the registrar intends to act as contemplated in subregulations (2) and (3), 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.

[There should be a comma after the word “concerned”, as in paragraph (a).]

(5) 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).

PART 9

GENERAL PROVISIONS

**Amendment of rules of fund**

**41.** (1) A registered fund may not change its registered address unless the procedure prescribed in its rules for the amendment of the rule pertaining to the registered address has been followed and the amendment of the rule has been registered by the registrar.

(2) Within one month from the date of the passing of a resolution for the alteration or rescission of any rule or for the adoption of any additional rule the principal officer of the fund must submit to the registrar -

(a) a copy of the resolution adopted together with a certificate signed as contempated in regulation 9 to the effect that the resolution has been adopted in accordance with the provisions of the rules of the fund;

[The word “contemplated” is misspelt in the *Government Gazette*, as reproduced above.]

(b) if the alteration or rescission of or addition to the rules affects the financial condition of the fund, a certificate by a valuator as to the financial soundness of the alteration, rescission or addition or, if no valuator has been employed, such information regarding the financial soundness of the altered, rescinded or added rule as the fund may possess; and

(c) a statement explaining the necessity for the alteration or rescission of or addition to the rules.

(3) An alteration or rescission of or addition to the rules is not valid before registration by the registrar in terms of section 12(4) of the Act, and such alteration, rescission or addition takes effect either as from the date determined by the fund concerned, or if no such date has been so determined, as from the date of the registration thereof.

(4) On payment of the fees prescribed in Annexure B, any person may, between the hours of 9 a.m. and 12 noon and 2 p.m. and 3.30 p.m. on Mondays to Fridays, inspect at the office of the registrar or may make a copy of or take an extract from any document mentioned in the Annexure or may obtain from the registrar a copy of or an extract from any such document.

**Administrative penalties**

**42.** (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 these 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 22 is liable to the payment of a penalty of N$1 000 for every day during which the person remains in default.

**Prescribed interest rate**

**43.** 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 these regulations in the *Gazette*.

ANNEXURES

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