



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 24 December 2014

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## Government Notice

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### MINISTRY OF FINANCE

No. 256 2014

### REGULATIONS RELATING TO UNIT TRUSTS SCHEME CAPITAL REQUIREMENTS: UNIT TRUSTS CONTROL ACT, 1981

Under section 42, read with section 3(2)(b), section 8, section 9(1) and section 20(2)(a) of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), I have made the regulations set out in the Schedule.

**S. KUUGONGELWA-AMADHILA  
MINISTER OF FINANCE**

Windhoek, 5 December 2014

### SCHEDULE

#### Definitions

1. In these regulations a word or an expression to which a meaning has been assigned in the Unit Trusts Control Act, 1981 (Act No. 54 of 1981) has that meaning.

**Capital requirement relating to unit trust schemes**

2. (1) A company registered as a management company under section 4 of the Act must have and must maintain a share capital, paid-up share capital and non-distributable reserves which together amount to an amount not less than N\$2 400 000 actually employed or immediately available for employment in its unit trust business.

(2) A company or an institution, referred to in section 20(1) of the Act, that intends to become or act as a trustee under a unit trust scheme must maintain a paid-up capital and unimpaired reserves which together amount to an amount not less than N\$1 250 000.

(3) The paid-up capital and reserves, referred to in subregulation (1) and (2), which must be included in the amounts prescribed under those subregulations are -

- (a) permanent shareholder's equity, including issued and fully paid-up ordinary shares and perpetual non-cumulative preference shares;
- (b) disclosed reserves, being share premium and retained earnings; and
- (c) adjustment for impairment of capital consists of -
  - (i) intangible assets;
  - (ii) contingent liabilities; and
  - (iii) guarantee provided by a management company.

**Management company to make investment in every unit portfolio**

3. For the purposes of section 9(1) of the Act, a management company must of its own resources, have at all times -

- (a) invested in every unit portfolio 10 percent of the market value of the unit portfolio; or
- (b) invested in every unit portfolio N\$1 000 000.

**Initial size of unit portfolio**

4. For the purposes of section 8 of the Act, a unit trust portfolio formed pursuant to a unit trust scheme which contemplates the creation of unlimited number of units in such portfolio must comprise, as at the date on which the management company commences the selling of units to the public, an underlying securities to the market value of at least N\$500 000.

**Reporting to registrar**

5. The calculation of the capital position of a management company or trustee as contemplated in regulation 2(1) or (2) must be submitted to the registrar within 30 days after the end of 31 March, 30 June, 30 September and 31 December each year, in the form and manner determined by the registrar.

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## General Notices

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### NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. 443

2014

#### DETERMINATION OF SECURITIES AND OTHER ASSETS THAT MAY BE INCLUDED IN UNIT PORTFOLIO OF UNIT TRUST SCHEME AND RESTRICTIONS AND CONDITIONS OF INCLUSION: UNIT TRUST CONTROL ACT, 1981

In terms of section 6(1) of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), I, in concurrence with the Minister of Finance, determine, in the Schedule, securities and other assets that may be included in a unit portfolio of a unit trust scheme and the minimum or maximum or both minimum and maximum restrictions and conditions subject to which the securities and other assets may be included.

**P. N. SHIIMI**  
**REGISTRAR OF UNIT TRUST COMPANIES**

Windhoek, 7 December 2014

#### SCHEDULE

##### Definitions

**1.** In this notice a word or an expression to which a meaning has been assigned in the Act has that meaning and unless the context indicates otherwise -

“date of inclusion” means date of settlement in a particular unit trust portfolio;

“foreign country” means any country or territory other than Namibia and a member of the Common Monetary Area;

“foreign government” means the government of a country which is not a member of the Common Monetary Area;

“the Act” means the Unit Trusts Control Act, 1981 (Act No. 54 of 1981);

“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.

##### Nature of securities or other assets which may be included in unit portfolios

- 2.** (1) A management company may not sell or offer for sale any unit if -
- (a) at the date on which the unit was created by the company, the unit portfolio to which that unit relates included -
- (i) securities issued by any one concern to an amount in excess of 5 per cent of the market value of all the securities comprised in the unit portfolio or in the case of a concern with a market capitalisation of N\$2 billion or more to an amount in excess of 10 percent of the market value of all the securities comprised in the unit portfolio, except in so far as the excess is due to appreciations of the value of the underlying securities comprised in that portfolio, but subject to the condition that as long as the market value of an investment in any particular concern exceeds the above-mentioned limits, the management company may not purchase any further investments in the concern affected; or

(ii) securities of any one class issued by any one concern to an amount in excess of 5 percent of the aggregate amount representing all the securities of that class issued by that concern or in the case of a concern with a market capitalisation of N\$2 billion or more to an amount in excess of 10 percent of the aggregate amount representing all the securities of that class issued by that concern or in the case of securities in any investment company to an amount in excess of 5 percent or 10 percent of the aggregate amount of the issued securities of any one class in such company, except in so far as the excess is due to an amalgamation, cession, transfer or take-over in terms of the Act, but subject to the condition that -

(aa) the management company does not make any further investments in securities of the class in question as long as the stated 5 percent or 10 percent is exceeded; and

(bb) the management company, within 12 months after the date on which the amalgamation, cession, transfer or takeover becomes effective or within such further period as the registrar may approve on application by the management company, reduce the securities of the class in question to at least the stated 5 percent or 10 percent; and

(b) securities in the unit portfolio to which the unit relates do not consist of at least 90 percent of the market value of stock exchange securities or of securities other than stock exchange securities acquired by the management company pursuant to the exercise of rights attaching to any stock exchange securities included in the unit portfolio.

(2) If a security other than a security referred to in subparagraph (1)(b) does not become a stock exchange security within a period of one year from the date of its inclusion in a unit portfolio or within such further period as the registrar may approve, if the registrar is satisfied that the security is likely to become a stock exchange security within a reasonable period, the management company concerned must substitute stock exchange securities for such securities at either the value at which they were included in the unit portfolio or the price which can be obtained for them, whichever is higher, but an unlisted security included in the portfolio must be valued at a fair value or if the management company is unable to determine a market price, a fair market price for such security must be determined, at the request of the management company, by a stockbroker who is a member of a licensed stock exchange.

(3) If the management company does not agree with the market price determined by the stockbroker as contemplated in subparagraph (2), it must refer the matter to the committee of the stock exchange concerned, which must determine the fair market price for the security.

(4) Despite subparagraphs (1), (2) and (3), a management company may include in a unit portfolio -

(a) securities issued or guaranteed by -

(i) the Government of Namibia, to at least 100 percent of the market value of all the securities comprised in the unit portfolio;

(ii) a government in the Common Monetary Area, subject to the condition that Namibia remains a member of the Common Monetary Area, to at least 90 percent of the market value of all the securities comprised in the unit portfolio, where the gross domestic product of the country concerned exceeds N\$100 billion per government; or

- (iii) a foreign government, to at least 10 percent of the market value of all the securities comprised in the unit portfolio per government;
- (b) loans, bonds or securities in the nature of a loan to a state-owned enterprise, a local authority council or a regional council in the case of Namibia or an equivalent institution in the Common Monetary Area or in a foreign government, not exceeding -
- (i) 20 percent of the market value of all the securities comprised in the unit portfolio per institution in Namibia;
  - (ii) 15 percent of the market value of all the securities comprised in the unit portfolio per institution in the Common Monetary Area, on the condition that the instrument of security of the institution in the Common Monetary Area is listed on a recognised stock exchange;
  - (iii) 5 percent of the market value of all the securities comprised in the unit portfolio per institution in a foreign government on the condition that the instrument of security of the institution in the foreign government is listed on a recognised stock exchange;
- (c) advances, deposits including negotiable certificates of deposit, loans, bonds or securities in the nature of a loan to a Namibian banking institution, the Post Office Savings Bank or a Namibian building society and paid up share capital in respect of a Namibian building society, not exceeding, per institution -
- (i) 30 percent of the market value of all the securities comprised in the unit portfolio if the total assets of the institution exceeds N\$5 billion; or
  - (ii) 20 per cent of the market value of all the securities comprised in the unit portfolio if the total assets of the institution do not exceed N\$5 billion;
- (d) advances, deposits including negotiable certificates of deposit, loans, bonds, or securities in the nature of a loan to a banking institution in the Common Monetary Area, not exceeding, per institution -
- (i) 25 percent of the market value of all the securities comprised in the unit portfolio where the total assets of the banking institution exceeds N\$50 billion; or
  - (ii) 10 per cent of the market value all the securities comprised in the unit portfolio where the total assets of the banking institution do not exceed N\$50 billion;
- (e) advances, deposits including negotiable certificates of deposit, loans, bonds, or securities in the nature of a loan to a banking institution in a foreign country, not exceeding, per institution -
- (i) 10 percent of the market value of all the securities comprised in the unit portfolio where the total assets of the banking institution exceeds N\$50 billion; or
  - (ii) 5 percent of the market value of all the securities comprised in the unit portfolio where the total assets of the banking institution do not exceed N\$50 billion;

- (f) corporate loans, bonds or securities in the nature of a loan issued by a Namibian institution incorporated in Namibia and authorised by law to issue loans, bonds and securities, not exceeding, per institution -
  - (i) 20 percent of the market value of all the securities comprised in the unit portfolio, where the total assets of the institution, as reflected in the latest audited annual financial statements which are not more than a year old, exceed N\$500 million; or
  - (ii) 15 percent of the market value of all the securities comprised in the unit portfolio where the total assets of the institution, as reflected in the latest audited annual financial statements, which are not more than a year old, do not exceed N\$500 million;
- (g) corporate loans, bonds or securities in the nature of a loan issued by an institution in the Common Monetary Area, not exceeding, per institution -
  - (i) 15 percent of the market value of all the securities comprised in the unit portfolio where the total assets of the institution, as reflected in the latest audited annual financial statements which are not more than a year old, exceeds N\$1 billion; or
  - (ii) 10 percent of the market value of all the securities comprised in the unit portfolio where the total assets of the institution, as reflected the latest audited financial statements which are not more than a year old, do not exceed N\$1 billion;
- (h) corporate loans, bonds or securities in the nature of a loan issued by a institution in a foreign country, not exceeding, per institution -
  - (i) 10 percent of the market value of all the securities comprised in the unit portfolio where the total assets of the institution, as reflected in the latest audited financial statements which are no more than a year old, exceeds N\$1 billion; or
  - (ii) 5 percent of the market value of all the securities comprised in the unit portfolio where the total assets of the institution, as reflected in the latest audited financial statements which are no more than a year old, do not exceed N\$1 billion;
- (i) shares, depository receipts in the nature of shares and linked units in Namibian institutions listed on a recognised stock exchange, not exceeding, per institution -
  - (i) 20 percent of the market value of all the securities comprised in the unit portfolio, where the market capitalisation of the institution exceeds N\$2 billion;
  - (ii) 15 percent of the market value of all the securities comprised in the unit portfolio where the market capitalisation of the institution does not exceed N\$2 billion, but despite the percentages stated in this sub-item and sub-item (i) above, the management company may increase an institution's constituent weight in a unit portfolio by a factor not exceeding 20 per cent of the constituent weight, the result of this calculation expressed as a percentage of the market value of all the securities comprised in the unit portfolio and an institution's constituent weight is determined as the market

- value of the constituent relative to the market value of the index or sub-index on the recognised stock exchange of which it is a constituent;
- (j) shares, depository receipts in the nature of shares and linked units in foreign institutions listed on a recognised stock exchange, not exceeding, per institution -
- (i) 10 percent of the market value of all the securities comprised in the unit portfolio, where the market capitalisation of the institution exceeds N\$5 billion; or
- (ii) 5 percent of the market value of all the securities comprised in the unit portfolio where the market capitalisation of the institution does not exceed N\$5 billion, but despite the percentages stated in this sub-item and sub-item (i) above, the management company may increase an institution's constituent weight in a unit portfolio by a factor not exceeding 15 percent of the constituent weight, the result of this calculation expressed as a percentage of the market value of all the securities comprised in the unit portfolio and an institution's constituent weight is determined as the market value of the constituent relative to the market value of the index or sub-index on the recognised stock exchange of which it is a constituent; or
- (k) corporate loans, bonds or securities in the nature of a loan, shares, depository receipts in the nature of shares and linked units in Namibian institutions not listed on a recognised stock exchange, on the condition that the unit portfolio's trust deed allows for such investments, not exceeding, per institution -
- (i) a maximum limit expressed as a percentage of all the securities comprised in the unit portfolio equal to the minimum required investment in unlisted institutions contemplated in regulation 15 of the Long Term Insurance Regulations made under the Long Term Insurance Act, 1998 (Act No. 5 of 1998) and published under Government Notice No. 145 of 18 June 1998, increased by a factor of 15 percent of the minimum limit; or
- (ii) a maximum limit expressed as a percentage of all the securities comprised in the unit portfolio equal to the minimum required investment in unlisted institutions contemplated in regulation 28 of the Regulations made under the Pension Funds Act, 1956 (Act No. 24 of 1956), and published in the South African Government Notice No. R 98 of 26 January 1962, increased by a factor of 15 percent of the minimum limit.
- (5) Despite any limits determined or provisions made in this determination -
- (a) in the instance where the unit portfolio is a fund aiming to closely track an index established by a recognised stock exchange, a maximum limit determined as the constituent weight in the index may be increased by not more than 10 percentage points weight of the constituent weight, the result of this calculation expressed as a percentage of the market value of all the securities comprised in the unit portfolio;
- (b) a management company may invest in another unit portfolio in a unit trust scheme in Namibia or in the Common Monetary Area or in a foreign country which adheres to the maximum limits stated in this determinations, per unit portfolio, up to 100 percent of the market value of all securities comprised in the unit portfolio, on condition that the investee unit portfolio does not hold units in the investor unit portfolio; and
- (c) in the instance where a unit portfolio exclusively invests in corporate loans, bonds or securities in the nature of a loan, shares, depository receipts in the nature of shares

and linked units in Namibian institutions not listed on a recognised stock exchange at least 40 percent of the market value of all the securities comprised in the unit portfolio at the date on which that investment is made is allowed per institution on condition that the trust deed of the unit portfolio determines that the units in the unit portfolio are listed on a recognised stock exchange or if the units are not listed on condition that the registrar approves the terms of the undertaking by the management company to re-purchase the units.

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## NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. 444

2014

### UNIT TRUST CONTROL ACT, 1981 (AS AMENDED): DETERMINATIONS

I, [the Registrar], herewith give notice of determinations as contemplated in and pursuant to section 5A(3) of the Unit Trust Control Act, 1981 (Act No. 54 of 1981), as amended, as set out in the Schedule.

**P.N. SHIIMI  
REGISTRAR OF UNIT TRUST COMPANIES**

Windhoek, 7 December 2014

### SCHEDULE

#### **Fit and proper requirements**

##### **Underlying principle**

1. Judgment and discretion shall be reasonably exercised by the Registrar in assessing fitness and propriety and will take into account all relevant factors including, but not limited to:
  - a) honesty and integrity;
  - b) competence and operational ability; and
  - c) financial soundness

to ensure that the appointment of directors or management staff members is not likely to have significant implications for the role of the management company.

#### **Requirements**

2. Subject to an evaluation of the particular circumstances of each management company and application for approval of appointment, the Registrar will determine whether a specified person complies with the fit and proper requirement with reference to the following criteria:

- a) *Honesty and integrity*

A person will be considered to be fit and proper if that person:

- i) is not disqualified from being a director of a company in terms of section 225 and section 226 of the Companies Act, 2004 (Act No. 28 of 2004);
  - ii) has not breached a fiduciary obligation;
  - iii) has not perpetrated or participated in grossly negligent, deceitful, fraudulent or otherwise discreditable business or professional practices;
  - iv) has not been disqualified, or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;

- v) has not been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behaviour in that management;
- vi) is not of bad repute in any business or financial community or any market;
- vii) was not the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgment, honesty or integrity; and/or
- viii) has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards;

b) *Competence and operational ability*

A person will be considered to be fit and proper if that person has an appropriate range of skills, education or experience as applicable to understand, operate and manage the regulated activities/financial affairs of the management company;

c) *Financial Soundness*

A person will be considered to be fit and proper in this context depending on:

- i) whether there are any indicators that the person will not be able to meet his/her debts as they fall due;
  - ii) whether relevant solvency requirements are met;
  - iii) whether the person has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
  - iv) whether the person has been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
  - v) whether the person has made arrangements with creditors, has been the subject of a sequestration or been adjudged bankrupt or had assets sequestered; and/or
  - vi) whether the person has been able to provide the Registrar with a satisfactory credit reference.
3. A specified person must demonstrate that he/she meets the criteria set out in paragraph 2 upon application for approval of appointment and on an on-going basis.
4. Failure by a specified person to meet any one or more of the criteria set out in paragraph 2 will not lead to an automatic refusal of an application, revocation of an approval by the Registrar. The significance and relevance of a specified person failing to satisfy the Registrar that he/she meets a specific criterion depends on, but are not limited to:
- a) the seriousness of and surrounding circumstances resulting in, the specified person not meeting the specific criteria;
  - b) the relevance of the failure by the specified person to meet the specific criteria to the duties that are, or are to be, performed and the responsibilities that are, or are to be, assumed by the specified person; and
  - c) the passage of time since the failure by the specified person to meet the specific criteria.
5. These determinations come into effect on 1 January 2015.
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