

Enquiries: Mr. E Basson

18 July 2014

TO: Principal Officers – All registered Pension Funds
CC: All Investment Managers Managing Pension Fund Assets
CC: Chairperson – RFIN
CC: Chairperson – AUTN
CC: Chairperson - IMAN

EXPLANATORY NOTE: PI/PF/01/2014

EFFECTIVE DATE: 1 JULY 2014

SUBJECT: ROLES AND RESPONSIBILITIES WITH REGARDS TO REGULATION 29

1. Introduction

1.1 This explanatory note is issued by virtue of NAMFISA's functions and powers, and those of its CEO in his capacity as the Registrar of Pension Funds, in terms of the Namibia Financial Institutions Supervisory Authority Act No. 3 of 2001 and is applicable to all registered pension funds under the Pension Funds Act, 1956 (Act no. 24 of 1956) ("the Act").

1.2 The purpose of this explanatory note is to provide clarity to the industry in relation to the responsibilities and duties of Pension Funds with regards to unlisted investments.

2. The amended Regulation 28 and newly promulgated Regulation 29 made under the Act

2.1 Effective 1 January 2014, the amended Regulation 28 and new Regulation 29 was gazetted to set out and specify the different investment limits per specific asset class

and to provide guidance on the newly incorporated unlisted investment requirements for Pension Funds.

Pension Funds are required to invest a minimum of 1.75%, up to a maximum of 3.5%, of the market value of its investments in unlisted investments through a Special Purpose Vehicle ("SPV"). As such, the investment agreement is between the Pension Fund and the SPV.

- 2.2 It is important to note that this agreement is indeed entirely different to the investment agreement between the Fund and their respective investment managers responsible for managing the remaining 96.5% – 98.25% of the Fund's assets in line with items 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Annexure 1 to Regulation 28 made under the Act.
- 2.3 As such, the industry is advised to observe these different agreements and handle them as separate arrangements. Furthermore, it is the Funds' responsibility to comply with these Regulations as compliance is assessed on Fund level and not per Investment Manager.
- 2.4 Failure to comply with these Regulations will result in administrative penalties charged to a Fund as set out in Regulation 26 under the Act.

3. The law

- 3.1 Regulation 28, subsection (4) states that *"...a fund must invest in unlisted investments in Namibia a minimum of 1.75 per cent of the market value of its investments, within a period of 12 months from the date of publication of this notice in accordance with regulation 29, but unlisted investments may cumulatively not exceed 3.5 per cent of the market value of the investments of a fund."*

- 3.2 The definitions as per Regulation 29, which specifically sets out the investment relationship are set out below:

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

"subscription agreement" means an agreement between an investor and a special purpose vehicle referred to in sub-regulation (63);



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

“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.

3.3 Regulation 29, subsection (2) states that *“All unlisted investments pursuant to regulation 28(4) must be held by a special purpose vehicle.”*

3.4 Regulation 29, subsection (3) states that *“In the application of these regulations with regard to the total assets of a pension fund, the assets of a pension fund held by a special purpose vehicle are regarded as a proportionate investment in the portfolio investments of the special purpose vehicle.”*

3.5 Regulation 29, subsection (4) states that *“A pension fund is deemed to have complied with regulation 28(4), if the aggregate amount of all capital commitments to special purpose vehicles falls within the limits of regulation 28(4), subject to sub-regulation (14)(b).”*

4. Conclusion

The Registrar therefore, requires all Funds registered in accordance with the Act, to take cognizance of the relationship between a Pension Fund and an SPV with regards to unlisted investments as per item 10 of Annexure 1 to Regulation 28, and not to confuse it with the agreements in place with the current Investment Managers to manage the remainder of the investments as per items 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Annexure 1 to Regulation 28.

The Registrar further requires all Funds registered in accordance with the Act, to ensure compliance with Regulation 28 and Regulation 29 with regards to investments, as compliance checks will be performed at Fund level and not at asset manager level.

Should you still need more clarity, please do not hesitate to contact Mr. Eben Basson at 061 290 5225 or ebasson@namfisa.com.na



Phillip N. Shiimi

Registrar: Pension Funds