
EXPLANATORY MEMORANDUM

TO : PUBLIC

DATE : 16 FEBRUARY 2024

SUBJECT : PROPOSED AMENDMENTS TO PENSION FUND REGULATIONS

1. INTRODUCTION

- 1.1 This Explanatory Memorandum pertains to the proposed amendments to the regulations under the Pension Funds Act, 1956 (Act No. 24 of 1956) (“the Act”) and is issued by virtue of the functions and powers of the Namibia Financial Institutions Supervisory Authority (“NAMFISA”) and those of its Chief Executive Officer, in his capacity as the Registrar of Pension Funds (“the Registrar”) in terms of the Act, read with the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).
- 1.2 The purpose of this Explanatory Memorandum is to serve as an explanatory note to the proposed draft amendments to the regulations under the Act as well as to solicit comments on the proposed amendments.
- 1.3 Should you have any queries pertaining to this Explanatory Memorandum, kindly contact Mr. Floris Fleermuys at ffleermuys@namfisa.com.na or via Tel: 061-290 5110 or Mr. Ryan Louw at rlouw@namfisa.com.na or via Tel: 061-290 5151.

2. EXPLANATION OF MAIN AMENDMENTS

2.1 REGULATION 2

Background

- 2.1.1 Part 2 of the regulations prescribes the documents and particulars to be furnished when applying for registration of pension funds under section 4 of the Pension Funds Act, 1956 (Act No. 24 of 1956) (“the Act”).

Proposed amendments

- 2.1.2 Sub-regulation (1) of regulation 2 is amended by prescribing the form in which an application for registration of a privately administered fund must be made;
- 2.1.2 Sub-regulation (2)(d) of regulation 2 is amended to allow for the prescribed registration fee to be paid by way of direct deposit or electronic funds transfer.

2.2 REGULATION 6

Background

- 2.2.1 Part 3 of the regulations prescribes the financial statements and statistics to be furnished by registered funds.

Proposed amendments

- 2.2.2 The reference in regulation 6(1)(a) to the form attached to the regulations in which the Annual Financial Statements must be prepared is deleted and replaced with the form as determined by the body responsible for regulating the public accounting and auditing profession in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 Of 1951). The rationale for this amendment is to allow for more flexibility to amend the form as and when it becomes necessary to ensure that the form is in the latest internationally recognized format.

2.3 REGULATION 7

Background

- 2.3.1 Part 4 of the regulations prescribes the reports by valuator and statements of assets and liabilities.

Proposed amendments

- 2.3.2 Sub-regulations (1) and (2) of regulation 7 are amended by prescribing the form in which an application for the approval of the appointment of a valuator must be made.

2.4 REGULATION 9

- 2.4.1 Part 5 of the regulations prescribes the requirements for the signing of documents.

Proposed amendments

- 2.4.2 Sub-regulation (2) of regulation 9 is amended by prescribing that the certificate accompanying the annual financial statements must be on the cover of the annual financial statements.

2.5 REGULATION 11

Background

- 2.5.1 Part 6 of the regulations prescribes the audit requirements.

Proposed amendments

- 2.5.2 Sub-regulation (3) of regulation 11 is amended by prescribing that the report to be signed by the auditor must be set out in the form determined by the body responsible for regulating the public accounting and auditing profession in Namibia in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).

2.6 BACKGROUND TO REGULATIONS 12, 13 AND ANNEXURE A

- 2.6.1 Part 7 of the regulations prescribes assets in which a fund may invest.
- 2.6.2 To safeguard investments of retirement funds, regulation 13 (previously known as regulation 28) made under section 36 of the Act was effected on 01 September 1989 via the Republic of South Africa (RSA) Government Notice number 1920 (GN No. 1920).
- 2.6.3 The main purpose of the regulation is to protect members' retirement savings from the effects of poorly diversified investment portfolios. The regulation limits the extent to which pension fund institutions may invest in particular assets or asset classes.
- 2.6.4 Since its introduction, the regulation and the annexure thereto, have been amended several times after Namibia gained independence from South Africa on 21 March 1990. The investment universe has drastically changed over the last 3 decades, while permissible asset classes and prudential limits for institutional investors, specifically retirement funds, have largely remained somewhat stagnant, not considering the evolution of risks and new, more

innovative, products in the financial markets. As a result, retirement funds, especially larger more sophisticated funds, find it more difficult to comply with regulation 13, because of its archaic nature.

2.6.5 The various amendments to the regulation and the annexure thereto over the last 30 years have failed to cater for new and innovative instruments in the investment landscape, both locally and internationally. In this regard, these proposed amendments aim to review the regulation and the different asset classes it prescribes, considering investor needs as well as government objectives.

The current regulation

2.6.6 Regulation 13 prescribes the maxima for various types of investment that may be made by a retirement fund. They are intended to guide funds which invest in their own name. These maxima relate to the market value of the assets of the fund under the direct control of the trustees, and are broadly:

- (i) No more than 95% may be invested in credit balances;
- (ii) No more than 50% may be invested in corporate bonds;
- (iii) No more than 75% may be invested in shares;
- (iv) No more than 25% may be invested in property;
- (v) No more than 90% may be invested in a combination of equities and property;
- (vi) No more than 10% may be invested in a large capitalization listed equity, and 5% in a small capitalization listed equity;
- (vii) No more than 20% may be invested with any single bank;
- (viii) No more than 2,5% may be invested in “other assets”; and
- (ix) No more than 3.5% may be invested in unlisted investments.

2.6.7 Furthermore, structured products like derivative instruments, hedge funds and private equity funds are not explicitly catered for in the regulation, leaving them

to be categorized under the category of “other assets”, and no guidance is provided as to how such products may be employed.

2.6.8 The evolution of capital markets across the world and the recent financial crises brought about key lessons in ensuring that investment portfolios of pension funds are well diversified. In this regard, many jurisdictions have reviewed their regulations in terms of portfolio limits for pension funds.

2.6.9 Pension funds' current exposures are well below the existing asset class prudential limits apart from the "other assets" category, for which some funds have exceeded the ceiling limit. This is mainly owed to investments in instruments that are not explicitly catered for in the regulation, and thus reported as "other assets", which resulted in the limit being exceeded.

2.6.10 It is, therefore, deemed appropriate to introduce additional asset classes, and in some cases to adjust the limits of existing asset classes, to ensure entities' ability to invest within a broader framework for diversification.

2.7 REGULATION 12 - DEFINITIONS FOR THE PURPOSES OF PART 7

Regulation 12 is amended by the insertion of and/or amendment of the following definitions (amendments illustrated by underlined italics and strike outs):

2.7.1 Insertion of the following definition of "derivative instrument":

"derivative instrument" means any financial instrument or contract that creates rights and obligations and –

(a) that derives its value from the price or value of; or

(b) the value of which may vary depending on a change in the price or value, of;

some other particular underlying product or thing;

2.7.2 Amendment and/or addition of the following paragraphs of the definition of "domestic asset":

(a) Item 1 (credit balances) where such balances are held in Namibia *and denominated in Namibian currency;*

(b) Item 2 (*Namibian Government and Bank of Namibia Bonds*) where such bonds are denominated in any currency, and wherever issued and purchased;

(c) *item 3 (Multilateral development bank Bonds) where such bonds are denominated in Namibian currency, and issued and purchased in Namibia;*

(d) item 4 (~~State-owned enterprises,~~ *statutory body, public enterprise,* local authority, and regional council bonds) where such bonds are denominated in Namibian currency, and issued and purchased in Namibia;

- (g) item 8 (shares) where such shares are in a company incorporated in Namibia and, subject to regulation 13(3) and (4), includes shares in a company incorporated outside Namibia if such shares assets have been acquired on a stock exchange licensed under the Stock Exchanges Control Act;
- (i) item 10 (commodities) where such commodities are listed on a stock exchange licensed under the Stock Exchanges Control Act;
- (j) item 12 (other structured products) where such investments are held in Namibia;
- (k) item 13 (housing loans) where such loans are made to natural persons resident in Namibia;
- (l) item 14 (other claims) where such claims are against natural persons resident in Namibia and companies incorporated in Namibia;
- (m) item 15 (other assets) where such other assets are held in Namibia;

2.7.3 Insertion of the following definition of “exchange traded fund”:

“exchange traded fund” or “ETF” means a listed investment product that tracks the performance of a group or ‘basket’ of underlying shares, currencies, bonds or commodities;

2.7.4 Insertion of the following definition for “exchange traded note”:

“exchange traded note” means an exchange-traded debt instrument that grants investors access to a wide spectrum of assets;

2.7.5 Insertion of the following definition of “foreign unit trust scheme”:

“foreign unit trust scheme” means any scheme or arrangement, in whatever form, including an open-ended investment company, carried on in a country

other than Namibia, in pursuance of which members of the public are invited to acquire an interest or undivided share (whether called a unit or by any other name) in one or more unit portfolios and to participate proportionately in the income or profits derived therefrom, whether the value of such interest, unit or undivided share which may be acquired remains constant or varies from time to time;

2.7.6 Insertion of the following definition of “fund of hedge funds”:

“fund of hedge funds” means a portfolio that invests only in hedge funds, but may also hold notes, coins and a balance or deposit in a savings, current or money market account with a banking institution, and subject to conditions as may be prescribed by the registrar;

2.7.7 Insertion of the following definition of “fund of private equity funds”:

“fund of private equity funds” means a portfolio that invests only in private equity funds, but may also hold notes, coins, and a balance or deposit in a savings, current or money market account with a banking institution, and subject to conditions as may be prescribed;

2.7.8 Insertion of the following definition of “hedge fund”:

“hedge fund” means an asset which-

- (a) uses any strategy or takes any position that could result in the portfolio incurring losses greater than its fair value at any point in time, and which strategies or positions include but are not limited to leverage and net short positions; and
- (b) is subject to conditions as may be prescribed by the registrar;

2.7.9 Insertion of the following definition of “investment manager”:

“investment manager” means an investment manager as defined in the Determination of conditions in terms of section 4(1)(f) of the Stock Exchanges Control Act;

2.7.10 Insertion of the following definition of “leverage”:

“leverage” means the use of securities, including derivative instruments, short positions or borrowed capital to increase the exposure beyond the capital employed to an investment;

2.7.11 Insertion of the following definition of “long position”:

“long position” means the situation in which a person holds or will hold more securities than such person has contracted to sell or, in respect of options, where such person has bought rights which exceed the rights sold;

2.7.12 Insertion of the following definition of “management company”:

“management company” means a management company as defined in the Unit Trusts Control Act, 1981 (Act No. 54 of 1981);

2.7.13 Insertion of the following definition of “multilateral development bank”:

“Multilateral development bank” means the World Bank Group, the International Monetary Fund and the African Development Bank;

2.7.14 Insertion of the following definition of “over-the-counter instruments”:

“over-the-counter instruments” means securities traded between two counterparties executed outside of a licensed exchange;

2.7.15 Insertion of the following definition of “private equity fund”:

“private equity fund” means a pool of capital that-

- (a) has, as its main business the making of equity, equity orientated or equity related investments in companies incorporated outside Namibia and not listed on an exchange to earn income and capital gains; and
- (b) is subject to conditions as may be prescribed by the registrar;

2.7.16 Insertion of the following definition of “short position”:

“short position” means a bear sale as defined in the Stock Exchanges Control Act;

2.7.17 Amendment of the following definition of “state-owned enterprise”:

“State-owned enterprise” means an entity that is named in Schedule 1 to the Public Enterprises Governance Act ~~State-owned Enterprises Governance Act~~, 2006 (Act No. 2 of 2006);

2.7.18 Insertion of the following definition of “uncovered position”:

“uncovered position” means a position in which an asset needed to settle a derivative contract is not held for the duration of the contract.

2.8 PROPOSED AMENDMENTS TO REGULATION 13 – LIMITS RELATING TO ASSETS IN WHICH A REGISTERED FUND MAY INVEST

2.8.1 Due to the insertion of additional provisions in regulation 13 and the introduction of additional asset classes to Annexure A to the regulations, the numbering and referencing of certain provisions have been amended accordingly.

2.8.2 Regulation 13(1) is amended as follows (amendments illustrated by underlined italics and strike outs):

13(1) Subject to subregulation (5), (6), ~~(7), (9), (10), (11), and (13), (14), (15), and (17)~~ 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 Columns 3 and 4 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~~7 and ~~7~~8 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~~ 13, 14 and 15 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; and
- (c) the aggregate of the market value of investments in assets referred to in items 10, 11 and 12 in Column 2 of that Annexure, expressed as a percentage, may not exceed 15 per cent of the market value of the total assets of the fund.

2.8.3 Regulation 13(2) is amended as follows (amendments illustrated by underlined italics and strike outs):

(2) Despite subregulation (1), and without prejudice to subregulations ~~(9)~~(11) and ~~(11)~~(13) and Annexure 4 A, a fund must keep invested in domestic assets, at all times, ~~after the following dates~~, not less than ~~the following percentages~~ 45 per cent 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%.~~

2.8.4 Regulation 13(3) is amended as follows (amendments illustrated by underlined italics and strike outs):

(3) Subject to subregulation (4), 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 15 per cent of the market value of its total assets.-

~~(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.~~

2.8.5 Regulation 13(5) is amended by increasing the upper limit for unlisted investments from 3.5 per cent to 5 per cent. The 5 per cent limit is also in line with those of regional peers (other SADC jurisdictions – Botswana, Kenya, South Africa, Tanzania and Uganda).

2.8.6 Regulation 13(6) is amended to address the procedures to be followed by a fund when it breaches any of the limits prescribed by regulation 13 due to market movements.

2.8.7 With the introduction of new asset classes to Annexure A, such as hedge funds, private equity funds and derivative instruments, regulations 13(7), 13(8), 13(9) and 13(10) were inserted to address, to a certain extent, any

additional risks which the new asset classes may pose to pension funds, as follows:

13(7) A fund must not invest or contractually commit to invest in an asset, including a hedge fund or private equity fund, where the fund may suffer a loss in excess of its investment or contractual commitment in the asset.

13(8) Hedge funds and private equity funds that may expose the fund to liability must be held in a limited liability structure.

13(9) A hedge fund must be managed or controlled by a management company and must be administered by an investment manager.

13(10) Despite subregulations (7) and (8), a fund may invest in derivative instruments, subject to the following conditions –

(a) the investment is made solely for purposes of reducing investment risk or various liability risks, or for efficient portfolio management, and may not be used for purely speculative purposes;

(b) no leverage may be used;

(c) at no time must there be uncovered positions, taking the fund's liability position into consideration;

(d) long positions must be fully covered by cash and short positions must be fully covered by the actual underlying asset;

(e) exposures may only be offset to the extent that they are exact and the reasonable correlation of assets is not enough to offset exposures;

(f) over-the-counter instruments should also be appropriately collateralized and a fund must require high quality assets that are easily converted into cash as collateral, which is measured and adjusted regularly;

(g) the use of derivatives that involves the possibility of unlimited commitments are prohibited; and

(h) the board of the fund must have the relevant reporting structures in place to monitor such investments, and must understand the use of derivatives to prudently manage risks associated with their use.

- 2.8.8 Regulation 13(11) is amended by requiring the registrar's prior written approval before changing the classification of an investment.
- 2.8.9 Regulation 13(14) is amended to include investments in foreign unit trust schemes. Currently, it appears as though this provision only applies to investments in local unit trust schemes and there appears to be no justification for differential treatment.
- 2.8.10 Regulation 13(18) is amended to provide that the registrar is not required to obtain the approval of the Minister to decline an application for exemption in terms of these regulations.

2.9 PROPOSED AMENDMENTS TO ANNEXURE A TO REGULATION 13 – LIMITS OF INVESTMENT

2.9.1 Amendment of Item 1 (Credit balances)

Current provision

The "single issuer" limit of 20% relates to both domestic and foreign issuers.

Proposed amendment

It is proposed that a 5% limit is applied to foreign issuers, to mitigate currency risk.

2.9.2 Amendment of Item 2 (Namibian Government and Bank of Namibia Bonds)

Proposed amendment

It is proposed that Bank of Namibia bonds be added to item 2 of the Annexure and treated in a similar manner as Government of Namibia bonds.

2.9.3 Insertion of Item 3 (Multilateral development bank Bonds)

Current provision

The current Annexure A to the regulations does not specifically provide for multilateral development bank bonds.

Proposed amendment

'Multilateral development bank Bonds' are added to the Annexure to the same degree and treatment as that afforded to Namibian Government security issuances, with a similar maximum limit of 95%.

Rationale for including 'Multilateral development bank bonds' as an asset class

An international financial institution (IFI) is a financial institution that has been established (or chartered) by more than one country, and hence is subject to international law. Its owners or shareholders are generally national governments, although other international institutions and other organizations occasionally figure as shareholders. The most prominent IFIs are creations of multiple nations, although some bilateral financial institutions (created by two countries) exist and are technically IFIs. The best known IFIs were established after World War II to assist in the reconstruction of Europe and provide mechanisms for international cooperation in managing the global financial system.

The IFIs include Multilateral Development Banks (MDBs) which are institutions created by a group of countries that provides financing and professional advice to enhance development, and the Bretton Woods Institutions, the World Bank Group and the International Monetary Fund (IMF). IFIs have played a role in supporting domestic capital markets by issuing local currency bonds and setting up guarantee facilities.

According to the IMF (2021), local currency marketable debt as a share of total government debt has increased in emerging market and developing economies over the past decade. Better macroeconomic conditions and increased perception about the importance of developing domestic debt markets have created the conditions for this increase. However, despite considerable growth of local currency bond markets (LCBMs) in recent years, LCBMs in emerging market and developing economies continue to remain relatively underdeveloped compared with advanced economies, in which the local currency share of total government debt is about 95 percent.

Alongside growth in LCBMs, issuance policies have improved. Emerging market and developing economies have adopted new issuance policies and procedures as their government debt portfolios have grown, advisory efforts among international financial institutions (IFIs) and global and regional actors have increased, and knowledge sharing on debt management and debt management best practices have improved within the international

community. In addition, progress has been observed in developing economies as primary market practices have become more transparent and more countries have started to issue benchmark securities.

Despite the observed progress, there is still significant scope for countries to further develop their LCBMs. Although many emerging market and developing economies have regularly promoted and adopted policies to develop their domestic markets for several years, different crises—for example, banking sector and macroeconomic dysfunctions in some countries have deterred LCBM improvements. In other cases, the lack of underlying enabling conditions or appropriate policies related to LCBM development has prevented further progress. Thus, it is important to understand the factors that are hindering the government LCBM development process so that appropriate measures and steps, targeted to the specific country, can be developed.

LCBM development can help to diversify government funding sources, safeguard sovereign portfolios from currency and maturity mismatches, and prevent financial crises in emerging markets (IMF 2002). In particular, the IMF says that Silva, and Velandia-Rubiano (2010) find that some emerging markets that shifted the composition of their public debt portfolios toward local currency debt issuance and improved their macroeconomic fundamentals avoided being buffeted by the global financial crisis.

The Group of Twenty (G20) has also recognized the importance of LCBMs in improving the resilience of the domestic economy and financial systems. In November 2011, the G20 endorsed an action plan to support LCBM development. As part of this commitment, several multilateral institutions developed a diagnostic framework to identify general enabling conditions, key components, and constraints for successful LCBM development in emerging market and developing economies (IMF, World Bank, EBRD, and Organisation for Economic Co-operation and Development 2013).

Considering LCBMs' integral role in sovereign debt portfolio management, the IMF affirms Jonasson and Papaioannou (2018) maintaining that LCBM development can be viewed in terms of three main stages with different priorities. In the initial stage, the focus should be on establishing a functioning primary market and creating the enabling conditions for secondary market development. In the deepening stage, where basic elements of the primary market and secondary market are established and functioning, the focus should be on improving liquidity on the secondary market. Finally, in the maturing stage, where elements of the market are, in general, well-functioning, the focus of policy makers should be on the development of

sophisticated instruments and segments such as derivatives and making the market internationally competitive.

The International Finance Corporation (IFC), a sister organization of the World Bank and member of the World Bank Group is the largest global development institution focused exclusively on the private sector in developing countries. The IFC issued a bond in Namibia, the IFC21 that matured on 5 April 2021. The bond was approved and listed on the Namibian Stock Exchange. The bond was afforded the same degree of treatment as a Namibian Government issuance.

Due to the importance and critical roles that IFIs play in global development, it is recommended that these institutions be granted the same preferential status as that of the Namibian Government in relation to their issuances of securities to support Namibia's developmental agenda. By granting these institutions the same status as the Namibian Government in relation to security issuances should encourage them to issue more securities in Namibia. This would as a consequence enhance the Namibian financial market development and skills transfer.

2.9.5 Amendment of Item 5 (Corporate Bonds)

Proposed amendment

Item 5 is amended by deletion of reference to "loans" in the second column of Item 5. The rationale for this deletion is that these loans are typically unsecured and secured loans are provided for in Item 14 (Other claims). Also, loans do not meet the definition of a "bond" and there is also no reference to "loans" in Item 6 (foreign bonds);

2.9.6 Amendment of Item 9 (Unlisted investments)

Current provision

The current limit of 3.5% seems adequate as drawn down capital for domestic unlisted investments has not breached this limit, indicating that investors are experiencing challenges in finding suitable unlisted investment opportunities.

Proposed amendment

It is however proposed to increase the ceiling to 5%, which would render the limit consistent with regional peers (other SADC jurisdictions – Botswana, Kenya, South Africa, Tanzania, Uganda).

Furthermore, adjustment is made to the exclusions contained in the second column due to the introduction of new asset classes and deletion of reference to “loans” in item 5 (corporate bonds).

2.9.7 Insertion of Item 10 (Commodities)

Current provision

The current Annexure A to the regulations does not specifically provide for commodity investments, and these types of investments are currently categorized under “other assets” for which a 2.5% ceiling is allowed.

Proposed amendment

It is proposed that commodities be added to the list of permissible asset classes, with a ceiling of 10% in line with similar limits in the SADC region (Botswana and South Africa).

Rationale for adding ‘Commodities’ as an asset class

Commodities are raw materials that are used to produce finished goods. Commodities include agricultural products, mineral ores and fossil fuels. They are basically any kind of natural resource that is consumed by companies and individuals. There are four main types of commodities:

- i. **Energy.** The energy market includes oil, natural gas, coal and ethanol—even uranium. Energy also includes forms of renewable energy, like wind power and solar power.
- ii. **Metals.** Commodity metals include precious metals, like gold, silver, palladium and platinum, as well as industrial metals, like iron ore, tin, copper, aluminum and zinc.
- iii. **Agriculture.** Agriculture covers edible goods, such as cocoa, grain, sugar and wheat, as well as nonedible products, such as cotton, palm oil and rubber.
- iv. **Livestock.** Livestock includes all live animals, such as cattle and hogs.

Commodities are physical goods that are bought, sold and traded in markets that are distinct from securities such as shares and bonds that exist only as financial instruments or contracts. There are several ways to invest in commodities.

- **Physical ownership.** This is the most basic way to invest in commodities. But unless these are small, transportable assets like precious metals, it can be impractical. Storing bales of cotton, steers or barrels of frozen orange juice concentrate or barrels of oil can be quite problematic for those not specifically dealing in those sectors, a pension

fund for instance. Owning these types of commodities is usually best left to those who will be turning that commodity into a finished product.

- **Futures contracts.** Futures originated as a way for farmers to set a price for future delivery of goods. These contracts are perhaps the most well-known method for investing in commodities. While it can be risky, trading in futures can help protect against swings in other parts of a portfolio investment. Futures contracts have price-mechanism transparency, and one can access a commodity futures contract for a small fraction of its value. Buying and selling futures contracts, however, requires skill and experience. If the forward price, or what one paid for the contract is higher than the spot price when the contract comes due, one could lose money on that investment.
- **Individual securities.** Shares of commodity-producing companies grant indirect access to the commodity markets. If the commodity rises in price, the companies producing that commodity may experience increased revenues and profits. This is achieved through a regulated exchange.
- **Collective investment schemes (CISs), exchange-traded funds (ETFs) and exchange-traded notes (ETNs).** These securities can provide a wide exposure with relatively low investment minimums.
- **Alternative investments.** Structured investments, hedge funds or investments specialising in commodities are an option. These are highly speculative and leveraged investment strategies, carrying a high degree of risk and volatility. Enhanced returns are a possibility, but there is no guarantee of success.

Although commodity exposure may take the form of various instruments, including physical commodities, commodity derivative contracts, exchange traded funds (ETFs), exchanged traded commodities (ETCs) and commodity-linked notes, due the complications that can be experienced in direct ownership of commodities by pension funds, it is recommended that ownership of these assets be through a regulated exchange. This serves the purpose not only of practicalities, but also ensures instant price discovery of the specific commodity.

2.9.8 Insertion of Items 11 and 12 (Private Equity Funds and other structured products)

Current provision

The current Annexure A to the regulations does not specifically provide for private equity funds or other structured products, and these types of investments are currently categorized under “other assets” for which a 2.5% ceiling is allowed.

Proposed amendment

In line with global trends, many pension funds, especially larger ones, have an increased appetite for alternative investments. Various alternative investment structures are available to institutional investors, although it is difficult to classify these into specific asset classes. These structures include, but are not limited to, exchange traded funds (ETFs), exchange traded commodities (ETCs), exchange traded notes (ETNs), derivative instruments, private equity funds and hedge funds.

It is proposed that “Private equity funds” be added as an additional asset class with a total exposure limit of 5%, including a 2.5% limit per private equity fund and 5% limit per fund of private equity fund.

Furthermore, it is proposed that “other structured products” be added as an additional asset class for the inclusion of hedge funds, ETFs, ETNs and derivative instruments, with a total exposure limit of 5% and further limits of 2.5% per hedge fund, ETF, ETN or derivative instrument, as well as 5% per fund of hedge fund.

Although this might initially attract foreign exposure (a result of already well-developed private equity markets outside Namibia), it may pave the way for developing the alternative investment market in Namibia.

2.9.9 Insertion of Item 13 (Housing Loans)

Current provision

Section 19(5) of the Act permits pension funds to grant housing loans to members by way of investment of its funds. However, neither the Act nor the investment regulation (in its current form) prescribe any limit to such

investments. The current climate of the cooling housing market requires that there are explicit limits, given potential rising risks in the housing market.

Proposed amendment

It is against this background that the limit of 20% exposure to this type of investment is proposed. The intention is for pension funds to be able to grant such loans up to a limit of 20% of the value of its assets, as opposed to limiting members to 20% of the value of their shares in the fund for such loans. Pension funds would then have the discretion to set its own limits for how much of a member's share may be borrowed by members based on the funds' risk assessments and appetite. Furthermore, Section 19(5)(b)(i) sets conditions that limit this amount, by requiring that the loan be guaranteed fully by either a bond or a pledge of benefits or both. The loan is limited to the total of the value of the property or the benefit that can be pledged (the amount after tax), or both. The Act (sect 19(5)(a)) clearly specifies that the loan is an investment of funds' assets, so members do not borrow from their share, but can in fact borrow to an amount in excess of their savings if security is by way of a bond over the property.

2.9.10 Amendment of Item 14 (Other claims)

Proposed amendment

Deletion of reference to "natural persons". Although these are secured claims, there remains a risk in granting loans to individuals and there is no rationale for granting such loans outside of the housing loans provided for in the Pension Funds Act, 1956.

2.9.11 Amendment of Item 15 (Other assets)

Current provision

The current ceiling of 2.5% is inadequate as various asset classes that are not provided for in the regulation are grouped together in this asset class, making this asset class limit prone to regular breaches.

Proposed amendment

It is proposed that the ceiling for "other assets" be increased from 2.5% to 5%, to allow for more scope to classify assets that are not adequately/expressly provided for in Annexure A to the regulations.

2.10 REGULATION 14 - DEFINITIONS FOR THE PURPOSES OF PART 8

Regulation 14 is amended by the insertion of and/or amendment of the following definitions (amendments illustrated by underlined italics and strike outs):

2.10.1 Amendment of the following definition of “administration of unlisted investments”:

“administration of unlisted investments” means the functions performed by an unlisted investment manager in terms of the management agreement with a special purpose vehicle

2.10.2 Amendment of the following definition of “committed capital”:

“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 a corresponding meaning;

2.10.3 Amendment of the following definition of “contributed capital”:

“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 to make an ~~for purposes of~~ investment in a portfolio company;

2.10.4 Amendment of the following definition of “drawdown”:

“drawdown” means an amount of money ~~transferred~~ authorised by an investor and transferred by an investor to a special purpose vehicle necessary for investment purposes;

2.10.5 Insertion of the following definition of “management agreement”:

“management agreement” means the agreement between the special purpose vehicle and the unlisted investment manager authorising the unlisted investment manager to manage unlisted investments on behalf of a special purpose vehicle;

2.10.6 Amendment of the following definition of “portfolio company”:

“portfolio company” means a company incorporated in Namibia and not listed on any stock exchange into which a special purpose vehicle has directly invested directly invested directly debt or equity capital in and which is managed by an unlisted investment manager;

2.10.7 Amendment of the following definition of “portfolio investment”:

“portfolio investment” means the collection of portfolio companies in which held by a any unlisted investment held by a special purpose vehicle has invested;

2.10.8 Amendment of the following definition of “unlisted investment manager”:

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

2.11 PROPOSED AMENDMENTS TO REGULATION 15 – REQUIREMENTS FOR UNLISTED INVESTMENTS

2.11.1 Amendment of regulations 15(1) and 15(4)

Regulations 15(1) and 15(4) is amended as follows (amendments illustrated by underlined italics and strike outs):

15. (1) All unlisted investments made pursuant to regulation 13(5) must solely be used to finance the activities of portfolio companies within Namibia ~~of the companies which are the subjects of the unlisted investments, provided that~~ and such unlisted investments -

(a) must solely be used for local economic development; may not be transferred directly or indirectly out of Namibia in any form or manner; and

(b) must be held by a special purpose vehicle; and

(c) may not be transferred directly or indirectly out of Namibia in any form or manner.

15 (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 licensed under the Stock Exchanges Control Act.

2.11.2 Amendment of regulation 16

Regulation 16 is amended as follows (amendments illustrated by underlined italics and strike outs):

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 to the registrar for approval; 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 for prior approval., ~~and may use the proposed name unless the registrar objects in writing within 30 days from the date of such notification.~~

2.11.3 Amendment of regulation 17

Regulation 17 is amended as follows (amendments illustrated by underlined italics and strike outs):

17. ~~A person may be registered or remain so registered as a special purpose vehicle of it~~ No person shall be registered as a special purpose vehicle, or remain so registered, unless such person –

- (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;
- (b) has submitted an investment plan and a management agreement to the registrar for approval;
- (c) has submitted to the registrar - ~~its memorandum of association, trust deed or founding documents that are not inconsistent with the investment plan;~~
- (i) its memorandum of association, trust deed or founding documents that are not inconsistent with the investment plan;
 - (ii) a generic subscription agreement;

- (iii) the names of its directors or trustees, who must at a minimum be three 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
- (iv) valid and existing professional indemnity insurance or fidelity insurance cover or both such insurances sufficient to cover the risk of losses due to fraud, dishonesty, negligence or any dishonest acts or breaches of professional duty of its directors or trustees; and
- (v) any further information that the registrar may reasonably require.

~~(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.~~

2.11.4 Amendment of regulation 18

Regulation 18(3)(c)(i) is amended as follows (amendments illustrated by underlined italics and strike outs):

18(3) If the registrar is satisfied that -

- (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 or any other law;

2.11.5 Amendment of regulation 19

Regulation 19(1) is amended as follows (amendments illustrated by underlined italics and strike outs):

19. (1) 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) is a trustee or a principal officer of a pension fund; or
- (d) does not meet the fit and proper requirements determined by the registrar,

~~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.~~

(2) The ~~A~~ director or trustee appointed by the unlisted investment manager's board as a chairperson may not serve as chairperson of the board of the special purpose vehicle.

2.11.6 Amendment of regulation 20

Regulation 20 is amended as follows (amendments illustrated by underlined italics and strike outs):

20. (1) A special purpose vehicle must -

- (a) ~~must~~ have subscription interest as specified in its investment plan; ~~with an investor that is desirous of investing in the special purpose vehicle, that specifies -~~
- (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) effect draw-downs within a period of 24 months from the capital commitment period prescribed in the subscription agreement. may, if so authorised by its memorandum of association and upon written approval by the registrar, issue debentures, provided that –~~

~~(2) If no drawdowns are effected or only partially effected, in respect of a pension fund, within the 24 months period, the undrawn capital commitment lapses, unless the special purpose vehicle and the investor agree to extend the drawdown period and such extension has been approved by the registrar.~~

~~(3) A special purpose vehicle may, if so authorised by its memorandum of association and upon prior written approval by the registrar, issue debentures, provided that -~~

~~(a) the special purpose vehicle has submitted to the registrar all particulars of the debenture issuance, including the debenture trust deed; and~~

~~(b) the issuance of debentures is not inconsistent with the investment plan and the Companies Act.~~

2.11.7 INSERTION OF NEW REGULATION 20A

Current provision

The current regulations merely require a Special Purpose Vehicle (SPV) to submit a debenture trust deed to the Registrar without providing guidance as to what must be contained therein.

Proposed amendment

Insertion of matters that must, at a minimum, be contained in the debenture trust deed of a SPV.

2.11.8 Amendment of regulations 21(2), 21(3), 21(4), 21(5)

Regulation 21 is amended as follows (amendments illustrated by underlined italics and strike outs):

21. (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 approved investment plan, management agreement or the subscription agreement without the prior written approval of the registrar, subject thereto that provided that the registrar's prior written approval is not required if the proposed amendment does not affect the rights or obligations of any person and does not contravene the Act, these ~~this~~ regulations or any other law;
- (c) employ people or establish any business places other than its registered office; or
- (d) amalgamate ~~merge~~ with another entity, transfer its business or portfolio investments to another special purpose vehicle which is managed by the same unlisted investment manager or change its ownership or shareholding structure ~~form~~, without the prior written approval of the registrar.

21. (3) A special purpose vehicle must at all times -

- (a) act in accordance with the investment plan, these regulations and any other law;
- (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 and these regulations;
- (e) monitor the performance of the unlisted investment manager and report thereon to the investors on a monthly basis;
- (f) keep records of all investment decisions, whether approved or declined, at its registered office;
- (g) submit a signed subscription agreement with an investor to the registrar; and
- (h) appoint an auditor.

21. (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 and these regulations; or
- (b) otherwise approve a proposed investment decision, which is consistent with the investment plan and these regulations.

21. (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 without causing ~~and not engage in practices which would~~ prejudice to 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 bound by the investment decisions made by the unlisted investment manager; and
- (h) be accountable to the investors by fully disclosing information in a manner that is clear, fair and not misleading.

2.11.9 Amendment of regulation 23

Regulation 23 is amended as follows (amendments illustrated by underlined italics and strike outs):

23. (1) A special purpose vehicle must at all times have an auditor who is in good standing with the Public Accountants' and Auditors' Board, established in terms of the Public Accountants' and Auditors Act and must obtain ~~the~~ a written approval of the registrar ~~when~~ within 30 days as from the date of appointing an its 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) For the purposes of subregulation (1), the registrar may object to the appointment of a particular auditor and may, if the reasons for the objection have been discussed with the special purpose vehicle, direct the special purpose vehicle to appoint another auditor.

(5) 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 for the termination.

2.11.10 Insertion of new regulation 23A

Current provision

The current regulations do not contain requirements pertaining to an amalgamation or transfer of business of a SPV.

Proposed amendment

Insertion of requirements that must be met in the event of an amalgamation or transfer of business of a SPV.

2.11.11 Amendment of insertion of regulation 24(3)

Regulation 24 is amended as follows (amendments illustrated by underlined italics and strike outs):

24. (1) The registrar ~~must~~ may deregister a special purpose vehicle, if -

24. (3) *The registrar must notify the relevant financial institutions and the general public of a deregistration in terms of subregulation (1).*

2.11.12 Insertion of new regulation 24A

Current provision

The current regulations do not contain provisions in regard to the measures that must be taken following the deregistration or removal of a SPV.

Proposed amendment

Insertion of provisions relating to the measures that must be taken in the event of deregistration or removal of a SPV.

2.11.13 Amendment of regulation 26

26. (1) A person desirous to register as an unlisted investment manager –
- (a) must submit ~~to the registrar~~ a written notification of the proposed name of the unlisted investment manager to the registrar for prior approval; 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, for prior approval. and ~~may use the proposed name unless the registrar objects in writing within 30 days from the date of such notification.~~
- (3) No person other than a registered unlisted investment manager may carry on business under any name, style or description which includes the words **unlisted investment manager** or suggests that such person is carrying on the business of an unlisted investment manager.

2.11.14 Amendment of regulations 27(1)(c), (d), (e), (f), (g), (h) and 27(2)

27. (1) No person other than a A-company ~~person other than a company~~ which -
- (c) has and maintains paid-up share capital and non-distributable reserves for employment in the business, ~~the greater~~ an amount of N\$250 000 or ~~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 of whom the chairperson must be an independent director;
 - (e) has directors that are qualified under these regulations to act as directors who are not affiliated, directly or indirectly, with the unlisted investment manager;

(f) has submitted the names of its directors; and

(g) has appointed persons, or a person, to be its portfolio manager, who must possess at a minimum, one or more of the qualifications and the corresponding experience set out in Annexure D, 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; and

(h) has and maintains indemnity insurance or fidelity insurance cover or both such insurances sufficient to cover the risk of losses due to fraud, dishonesty, negligence or any dishonest acts or breaches of professional duty of its employees, directors or trustees.

may not be registered as an unlisted investment manager.

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

2.11.15 Amendment of regulation 28(3)

28. (3) If the registrar is satisfied that -

- (a) the conditions set under regulation 27(1) are complied with; and
- ~~(b) the proposed directors are qualified under these regulations to act as directors who are not affiliated, directly or indirectly with the unlisted investment manager; 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 certificate of registration in the form of Form 8 as set out in Annexure C.

2.11.16 Amendment of regulation 29

The regulation is amended to provide for fit and proper requirements to be applied to a director, portfolio manager or chief executive officer of an unlisted investment manager, which are contained in the newly inserted Annexure E.

2.11.17 Amendment of regulations 30(1)(a), 30(1)(c), 30(1)(h), 30(1)(i), 30(2)(a), and 30(2)(k)

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~~ and in terms of these regulations;

(c) have the right to make investment decisions, not inconsistent with the investment plan and these regulations ~~subject to regulation 21(4)~~, on behalf of the special purpose vehicle, subject to regulation 21(4);

(h) appoint fit and proper persons as its directors, portfolio manager and chief executive officer; and

(i) satisfy the registrar that the persons appointed as its directors, portfolio manager and chief executive officer comply with the fit and proper requirements set out in Annexure E.

(k) must not merge with another entity, transfer its business to another person or change its ownership or its shareholding structure, without the prior written approval of the registrar.

30. (2) In performing the functions under regulation 30(1), an unlisted investment manager -

(a) may not directly or indirectly receive any other type of compensation, remuneration or commission, ~~direct or indirect~~, except that specified in the management agreement;

(k) must not merge with another entity, transfer its business to another person or change its ownership or its shareholding structure, without the prior written approval of the registrar.

2.11.18 Amendment of regulation 31

31. An unlisted investment manager is required to co-invest in every ~~any~~ special purpose vehicle with which it has entered into a management agreement a

minimum of 4% 0.1% of the contributed capital on the same terms and conditions as applicable to investors.

2.11.19 Amendment of regulation 33(1)

33. (1) An unlisted investment manager must, ~~with the written approval of the registrar,~~ appoint and at all times have an auditor *who is in good standing with the Public Accountants' and Auditors' Board, established in terms of the Public Accountants' and Auditors Act' and must obtain the written approval of the registrar within 30 days as from the date of appointing its auditor.*

2.11.20 Amendment of regulation 34

34. (1) The registrar ~~must~~ may 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; ~~or~~.
 - (c) the unlisted investment manager fails to enter into a management agreement with a special purpose vehicle within 36 months from the date of registration, unless extended by the registrar upon application not later than 3 months before the end of the 36 months period; or
 - (d) the unlisted investment manager ceases 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 for 12 consecutive months.
- (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), ~~or~~ (c) or (d).
- (3) An unlisted investment manager, the auditor of the unlisted investment manager and the pension fund concerned must submit all information and documentation relating to the unlisted investment manager and portfolio companies to the registrar within 7 days of the notice of deregistration.

(4) The registrar must notify the relevant financial institutions and the general public of a deregistration in terms of subregulation (1).

2.11.21 Insertion of new regulation 34A

Current provision

The current regulations do not contain provisions in regard to the measures that must be taken following the deregistration of an unlisted investment manager (UIM).

Proposed amendment

Insertion of provisions relating to the measures that must be taken in the event of deregistration of a UIM.

2.11.22 Amendment of regulation 35(1)(a)

35. (1) A special purpose vehicle must within ~~60~~ 30 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~~ financial position;
 - (ii) a statement of profit and loss and other comprehensive income;
 - (iii) a statement of holdings of securities; and
 - (iv) a description of the nature of each portfolio investment, including the cost thereof.

2.11.23 Amendment of regulation 36

36. (1) An unlisted investment manager must submit to the registrar within ~~480~~ 90 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.

(2) An unlisted investment manager must within 30 days after 31 December and 30 June in each year submit to the registrar unaudited financial reports of the unlisted investment manager prepared for the six months in question, and such unaudited financial reports must include-

- (a) a statement of financial position;
- (b) a statement of profit and loss and other comprehensive income; and
- (c) any other information that the registrar may require.

2.11.24 Amendment of regulation 37

Proposed amendment

Regulation 37 is amended by the insertion of additional matters that must be addressed in the investment plan of the special purpose vehicle.

2.11.25 Amendment of regulation 38

Proposed amendment

Regulation 38 is amended by the insertion of additional matters that must be addressed in the management agreement.

2.11.26 Amendment of regulation 39

Proposed amendment

Regulation 39 is amended by the insertion of additional matters that must be addressed in the subscription agreement to better equip a pension fund to take appropriate measures in the event of non-compliance by the appointed SPV or UIM.

2.11.27 Amendment of regulation 40

Proposed amendment

Regulation 40 is amended by the insertion of the following additional powers of the registrar:

40. (2) The registrar may, by written notice, require any special purpose vehicle or unlisted investment manager to submit or furnish to the registrar any document or information relating to the affairs of the special purpose vehicle or unlisted investment manager, and it shall be the duty of the special purpose vehicle or unlisted investment manager to submit or furnish such document or information within the period specified in the notice.

2.11.28 Amendment of regulation 41

Regulation 41(4) is amended by the deletion of the requirement for prescribed fees to be paid for the inspection of documents at the office of the registrar.

2.11.29 Amendment of regulation 42

Regulation 42 is amended by insertion of the following additional provisions:

42. (2) A person who contravenes or fails to comply with regulation 7, 11(1), 11(2), 13(11), 16(2), 20(3), 21(2)(b), 21(2)(d), 22(3), 23(1), 26(2), 30(2)(k), 32(3), 33(1) or 40(2) is liable to the payment of a penalty of N\$500 for every day during which the person remains in default.

42. (3) A person who contravenes or fails to comply with any provision of regulation 22–13, 31 or 34A is liable to the payment of a penalty of N\$ 500 for every day during which the person remains in default.

2.11.30 Amendment of regulation 43

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 4–3 per cent per annum with effect from the date of publication of these regulations in the *Gazette*.

2.12 Additional amendments

Kindly note that various annexures and forms to the regulations have also been amended/updated or inserted accordingly.