

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

CIRCULAR: UT/CIS/1/2015

**TO: PENSION FUNDS
UNIT TRUST MANAGEMENT COMPANIES
INVESTMENT MANAGERS**

DATE: 6 JANUARY 2014

SUBJECT: PENSION FUNDS' COMPLIANCE WITH REGULATIONS 28 & 29 VIS-À-VIS UNLISTED INVESTMENTS

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1. It has come to the attention of the Namibia Financial Institutions Supervisory Authority ("NAMFISA") that there is uncertainty regarding compliance with regulations 28 and 29 of the Regulations to the Pension Funds Act, No. 24 of 1956, vis-à-vis the requirement for a fund to invest in unlisted investments.
 2. NAMFISA has received numerous requests for confirmation on whether pension funds are permitted to gain their exposure to unlisted investments, for regulation 28 purposes, by investing in unit trust schemes as defined in the Unit Trusts Control Act, No. 54 of 1981, and in this manner, comply with regulation 28 on a "look through" basis at a unit trust scheme level.
 3. In addition, confirmation was requested on whether proposed amendments to the Unit Trusts Control Act permitting unlisted securities to constitute 10 percent of the market value of securities in a unit portfolio will also apply to a pension fund where it invests in a unit trust scheme.
 4. In this regard, this circular letter serves to assist the industry with understanding the requirements of regulations 28 and 29 vis-à-vis unlisted investments.
 5. Regulation 28 provides the limits to which pension funds may invest in certain asset classes. Accordingly, sub-regulation (4) sets the limits for investments in unlisted investments at a minimum of 1.75 percent and a maximum of 3.5 percent of the market value of the investment of a fund.

6. Sub-regulation 28 (7) acknowledges that pension funds may invest in unit trust schemes. Hence, where a pension fund invests in a unit trust scheme, such an investment is regarded as a proportionate investment, of the fund's total assets, in the unit portfolio's underlying securities. This means that such an investment is, for purposes of Regulation 28, an equal investment in whatever securities and assets that makes up the unit portfolio.
7. However, since Regulation 29 requires, among other things, that all investments by a pension fund in unlisted investments must be held by a Special Purpose Vehicle ("SPV"), for the purpose of satisfying the requirement under sub-regulation 28 (4) a pension fund may not invest in a unit trust scheme with a unit portfolio which includes unlisted investments.
8. In view of all the above, NAMFISA confirms that pension funds may not gain their exposure to unlisted investments by investing in a unit trust scheme. We further confirm that, considering that the purpose of Regulation 28 is to regulate the investments of pension funds, the obligation to comply with its provisions falls squarely on pension funds.

For further information or clarification with regard to the above please do not hesitate to contact our Mr. Marvin Daniels at telephone number (061) 290 5149 or via e-mail: mdaniels@namfisa.com.na.

Yours Sincerely,



PHILLIP SHIIMI
REGISTRAR: PENSION FUNDS