

GOVERNMENT NOTICE

MINISTRY OF FINANCE

No. 1

2011

**REGULATIONS MADE UNDER PENSION FUNDS ACT:
PENSION FUNDS ACT, 1956**

The Minister of Finance has under section XX of the Pension Funds Act, 1956 (Act No. 24 of 1956), made the Regulations set out in the Schedule.

**S. Kuugongelwa-Amadhila
Minister of Finance**

Windhoek,

2011

REGULATIONS FOR INVESTMENT OF PENSION FUND ASSETS IN UNLISTED INVESTMENTS

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Definitions

1. In these regulations “the Regulations” means the Regulations published under Government Notice No. R.98 of 26 January 1962, as amended by Government Notices Nos. R. 2144 of 28 September 1984, R. 1790 of 16 August 1985, R. 1037 of 28 May 1986, R. 232 of 6 February 1987, R. 1452 of 7 July 1989, 103 of 15 June 1994, 143 of 1 August 1994, 56 of 15 March 1995, 108 of 15 June 1995, 30 of 4 February 2008 and XX of XX January 2011.
2. The following regulation is hereby added to the Regulations:

REGULATIONS FOR INVESTMENT OF PENSION FUND ASSETS IN UNLISTED INVESTMENTS

PART I

INTRODUCTORY PROVISIONS

Object of Regulations

- 29.(1) The object of these Regulations is to provide a framework for the investment of pension fund assets in unlisted investments.

Definitions

- (2) In these Regulations “the Act” means the Pension Funds Act, 1956, including any subordinate measure made thereunder, and any word or expression to which a meaning has been assigned in the Act or subordinate measure, bears that meaning, and unless the context indicates otherwise–

“**administration of unlisted investments**” means the function performed by an Unlisted Investment Manager in terms of the Management Agreement with a Special Purpose Vehicle, and administer shall have a corresponding meaning;

“**auditor**” means an auditor registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) and who is resident in Namibia;

“**committed capital**” means at any point in time, the total amount of money committed to a Special Purpose Vehicle by an investor in terms of subregulation (15)(b)(i) pursuant to a subscription agreement, and capital commitment has a corresponding meaning;

“**contributed capital**” means at any point in time, the portion of the committed capital which has been transferred from an investor to a Special Purpose Vehicle, and capital contribution has a corresponding meaning;

“**co-investor**” means any person other than a pension fund or an unlisted investment manager that invests in a Special Purpose Vehicle;

“**drawdown**” means an amount of money transferred by an investor to a Special Purpose Vehicle;

“**drawdown period**” means the period in which the Special Purpose Vehicle has the right to drawdown committed capital;

“**financial institution**” means a financial institution as defined in section 1 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No 3 of 2001);

“**investment plan**” means the document in terms of which the Special Purpose Vehicle will invest in unlisted investments and all matters incidental thereto;

“**investor**” means a pension fund or a co-investor that invests money in a Special Purpose Vehicle;

“**portfolio company**” means a company into which a Special Purpose Vehicle has invested into directly;

“**regulation 28**” means regulation 28 made under the Pension Funds Act, 1956 (Act No. 24 of 1956);

“**Special Purpose Vehicle**” means an entity registered in terms of subregulation (12);

“**subscription agreement**” means an agreement between an investor and a Special Purpose Vehicle that contains, at a minimum, the obligations of each party to each other, and any other information that the Registrar may require;

“**subscription interest**” means the capital commitment of an investor to a Special Purpose Vehicle;

“**trust property**” means any asset held or administered, directly or indirectly, by or on behalf of a pension fund;

“**portfolio investment**” means any unlisted investments held by a Special Purpose Vehicle; and

“**Unlisted Investment Manager**” means any person who is registered in terms of subregulation (40) and engages in the buying, selling or otherwise dealing with unlisted investments on behalf of a Special Purpose Vehicle.

PART II

UNLISTED INVESTMENTS

Requirements for unlisted investments

- (3) All unlisted investments pursuant to regulation 28(4) must be held by a Special Purpose Vehicle.
- (4) 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 shall be regarded as a proportionate investment in the portfolio investments of the Special Purpose Vehicle.
- (5) A pension fund shall be 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 subregulation (15)(b).
- (6) A pension fund may not directly or indirectly invest in any Unlisted Investment Manager, except insofar that such indirect investment is through a company listed on a stock exchange.

PART III

SPECIAL PURPOSE VEHICLES

Approval and change of name of Special Purpose Vehicle

- (7) Any person desirous to register a Special Purpose Vehicle must submit to the Registrar a written notification of the proposed name of the Special Purpose Vehicle, and may use the proposed name unless the Registrar objects in writing within 30 days from the date of such notification.
- (8) A registered Special Purpose Vehicle may change its name by submitting to the Registrar a written notification of the proposed change of name, and may use the proposed name unless the Registrar objects in writing within 30 days from the date of such notification.

Requirements for Special Purpose Vehicle

- (9) No person other than an entity which-
 - (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;
 - (ii) a trust under the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934) and is solely organized and operated for purposes of holding unlisted investments on behalf of investors; or
 - (iii) is approved by the Registrar on such terms and conditions as the Registrar may deem fit; and
 - (b) has submitted an Investment Plan for approval to the Registrar;
 - (c) has submitted its memorandum of association, trust deed or founding documents that are not inconsistent with the Investment Plan;
 - (d) has submitted a Management Agreement for approval to the Registrar;
 - (e) has submitted a generic subscription agreement;
 - (f) has at least three directors, trustees or controlling persons;

(g) has submitted the names of its directors, trustees or controlling persons, and confirmed that at least 50% of the directors, trustees or controlling persons are independent directors, trustees or controlling persons and not affiliated, directly or indirectly, with the Unlisted Investment Manager; and

(h) has submitted any further information that the Registrar may reasonably require,

may be or remain registered as a Special Purpose Vehicle.

Registration of Special Purpose Vehicle

(10) Every person who desires to register a Special Purpose Vehicle under these Regulations must lodge with the Registrar an application for registration in the prescribed manner and form and disclose the prescribed particulars.

(11) The Registrar may call upon the person to furnish further relevant information considered necessary by the Registrar.

(12) If the Registrar is satisfied that-

(a) the conditions set under subregulation (9) are met;

(b) the proposed directors, trustees or controlling persons are qualified under these Regulations to act as directors, trustees or controlling persons; and

(c) the manner in which the business of the Special Purpose Vehicle is to be carried on is:

(i) not inconsistent with the Act and these Regulations;

(ii) based on sound financial principles; and

(iii) in the public interest,

the Registrar may register the Special Purpose Vehicle and issue a certificate of registration.

(13) A Special Purpose Vehicle registered under subregulation (12) shall be regarded as a financial institution, as defined-

(a) in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984); and

(b) in section 1 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001),

which invests, keeps in safe custody, controls or administers trust property.

Restrictions on directors, trustees or controlling persons of Special Purpose Vehicle

(14) No person, who-

- (a)** in terms of section 225 and section 226 of the Companies Act, 2004 (Act No. 28 of 2004) is disqualified from being appointed or acting as a director of a company; or
- (b)** is a director or principal officer of a financial institution and such financial institution is not in compliance with any law governing financial institutions,

qualifies as a director, trustee or controlling person of a Special Purpose Vehicle, provided that the director, trustee or controlling person appointed by the Unlisted Investment Manager may not serve as the chairperson of the board of the Special Purpose Vehicle.

Capital of Special Purpose Vehicle

(15) A Special Purpose Vehicle-

- (a)** must have subscription interest as specified in the Investment Plan;
- (b)** must enter into a subscription agreement, not inconsistent with the Investment Plan, with an investor that is desirous of investing in the Special Purpose Vehicle, that specifies-
 - (i)** the total committed capital of the investor to the Special Purpose Vehicle; and
 - (ii)** the period within which the Special Purpose Vehicle has the right to drawdown the committed capital;

Provided that, if the drawdown is not effected, in respect of a pension fund, within a period of 24 months, the capital commitment lapses, unless the Special Purpose Vehicle and the pension fund agree upon an extension of the drawdown period, and such extension is approved by the Registrar;

- (c)** may, if so authorised by its memorandum of association and upon written approval by the Registrar, issue debentures, provided that-
 - (i)** the Special Purpose Vehicle has submitted to the Registrar all particulars of the debenture issuance, including the debenture trust deed; and
 - (ii)** the issuance of debentures is not inconsistent with the Investment Plan and the Companies Act, 2004 (Act No. 28 of 2004).

Powers, restrictions and duties of Special Purpose Vehicle

(16) A Special Purpose Vehicle shall have the power to-

- (a)** accept the sale or transfer of assets in terms of the approved Investment Plan;
- (b)** undertake, on its own or by agreement with any person, such activities as contained in the approved Investment Plan;
- (c)** create any indebtedness or encumbrances to defray administrative or other necessary expenses as specified in the approved Investment Plan; and
- (d)** pay out or invest its funds in accordance with the approved Investment Plan.

(17) No Special Purpose Vehicle may-

- (a)** undertake any activity other than that for which it is registered or contained in the approved Investment Plan;
- (b)** amend the Investment Plan, Management Agreement or the subscription agreement without the written approval of the Registrar;
- (c)** employ people or establish any business places other than its registered office; or
- (d)** merge with another entity or change its form without the written approval of the Registrar.

(18) A Special Purpose Vehicle must-

- (a)** act in accordance with the Investment Plan;
- (b)** represent the interests of the investors in the Special Purpose Vehicle;
- (c)** enter into a Management Agreement with the Unlisted Investment Manager for the management and administration of the Special Purpose Vehicle and, upon termination of the agreement and notice thereof to the Registrar, enter into a Management Agreement with another Unlisted Investment Manager;
- (d)** ensure that the Unlisted Investment Manager acts in accordance with the Management Agreement and the Investment Plan;
- (e)** monitor the performance of the Unlisted Investment Manager; and
- (f)** appoint an auditor.

(19) The directors, trustees or controlling persons, by majority of the quorum of the independent directors, trustees or controlling persons, of a Special Purpose Vehicle must review the proposed investment decisions by the Unlisted Investment Manager, and in writing-

- (a)** decline a proposed investment decision if the proposed investment decision is found to be inconsistent with the Investment Plan; or
 - (b)** otherwise approve a proposed investment decision,
- and keep a record of the decisions.

(20) In performing the functions under subregulations (18) and (19), the directors, trustees or controlling persons of a Special Purpose Vehicle must-

- (a)** observe utmost good faith and act with due skill, care and diligence;
- (b)** conduct the business of the Special Purpose Vehicle in a responsible way and not engage in practices which would prejudice the interests of investors, Unlisted Investment Managers, portfolio companies and other stakeholders;
- (c)** take a long-term view of the portfolio investments and not engage in speculative activity;
- (d)** promote and maintain ethical standards of conduct and deal fairly and honestly with investors, Unlisted Investment Managers, portfolio companies and other stakeholders;
- (e)** not disclose to third parties any confidential, financial or technical information acquired in the course of negotiations with Unlisted Investments Managers and potential portfolio companies, or in the course of business with Unlisted Investment Managers and portfolio companies, unless it has received permission for such disclosure;
- (f)** not use the Special Purpose Vehicle to promote their welfare or private interests; and
- (g)** be accountable to the investors by fully disclosing information in a manner that is clear, fair and not misleading.

(21) The directors, trustees or controlling persons of a Special Purpose Vehicle must require the Unlisted Investment Manager with which it has entered into a Management Agreement to abide by subregulation (20).

Financial year

- (22) Every registered Special Purpose Vehicle must, within a period of 30 days after its registration, notify the Registrar of the date on which its financial year ends.
- (23) The financial year of a registered Special Purpose Vehicle must not exceed a period of 12 months.
- (24) No registered Special Purpose Vehicle may without the prior written approval of the Registrar change its financial year.

Appointment and duties of auditor

- (25) A Special Purpose Vehicle must, subject to the written approval of the Registrar, appoint, and at all times have, an auditor.
- (26) No director, trustee or controlling person of a Special Purpose Vehicle, and no firm of which such director, trustee or controlling person is a member, may be appointed as an auditor of the Special Purpose Vehicle.
- (27) No director, officer or employee of an Unlisted Investment Manager, and no firm of which such director, officer or employee is a member, may be appointed as an auditor to the Special Purpose Vehicle.
- (28) 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, as the case may be, notify the Registrar in writing of the reasons.
- (29) The auditor of a Special Purpose Vehicle must, in addition to the duties imposed on him by the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951):
 - (a) audit the financial statements of the Special Purpose Vehicle as per subregulation (59);
 - (b) conduct an independent review, as part of their audit, of the valuations conducted by the Unlisted Investment Manager; and
 - (c) submit a report to the Registrar on compliance, or otherwise, with these Regulations, the Investment Plan, the Management Agreement and any other applicable law.
- (30) The auditor must report to the Registrar any irregularity or any other matter which the auditor has become aware of in his or her capacity as auditor of a Special Purpose Vehicle and which in his or her opinion may be of concern to the Registrar having regard to the Registrar's supervisory functions.

Deregistration of Special Purpose Vehicle

(31) A Special Purpose Vehicle shall be deregistered by the Registrar if -

- (a)** it fails to invest in unlisted investments within 24 months from the date of registration unless extended by the Registrar upon application not later than 3 months before the end of the 24 months period;
- (b)** holders of at least 75% of the contributed capital or subscription interest in the Special Purpose Vehicle have resolved to liquidate or terminate the Special Purpose Vehicle and the Registrar has approved such liquidation or termination;
- (c)** conditions for deregistration as specified in the Investment Plan occur; or
- (d)** the Registrar is satisfied that the Special Purpose Vehicle no longer meets the conditions upon which it was registered, or fails to comply with these Regulations or any other applicable law.

(32) The Registrar must give notice to and afford the Special Purpose Vehicle the opportunity to be heard prior to deregistration in terms of subregulations (31)(a) and (31)(d).

PART IV

UNLISTED INVESTMENT MANAGERS

Unregistered person may not administer unlisted investments

(33) No person may administer unlisted investments on behalf of pension funds pursuant to regulation 28(4) unless such a person is registered in terms of subregulation (40).

Approval and change of name of Unlisted Investment Manager

(34) Any person desirous to register an Unlisted Investment Manager must submit to the Registrar a written notification of the proposed name of the Unlisted Investment Manager, and may use the proposed name unless the Registrar objects in writing within 30 days from the date of such notification.

(35) A registered Unlisted Investment Manager may change its name by submitting to the Registrar a written notification of the proposed change of name, and may use the proposed name unless the Registrar objects in writing within 30 days from the date of such notification.

Requirements for Unlisted Investment Manager

(36) No person other than a company which-

- (a) is incorporated as either a public or private company under the Companies Act, 2004 (Act No. 28 of 2004) and its object is to administer unlisted investments;
- (b) has a registered office in Namibia;
- (c) has and maintains paid-up share capital and non-distributable reserves which, at any time may not be less than an amount equal to the maximum of:
 - (i) 1% of the sum of the committed capital of each Special Purpose Vehicle with which such person has entered into a Management Agreement; or
 - (ii) N\$1,000,000;
- (d) has at least three directors;
- (e) has submitted the names of its directors; and
- (f) has appointed a person to be its portfolio manager or chief executive officer, who is, unless the Registrar in exceptional circumstances otherwise determines, a Namibian citizen resident in Namibia,

may be registered as an Unlisted Investment Manager.

- (37) An Unlisted Investment Manager must, if at any time it ceases to comply with subregulation (36), within a period of one month thereafter report to the Registrar in writing to that effect.

Registration of Unlisted Investment Manager

- (38) Every company which desires to be registered as an Unlisted Investment Manager must lodge with the Registrar an application for registration in the prescribed manner and form and disclosing the prescribed particulars.

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

- (40) If the Registrar is satisfied that-

- (a) the conditions set under subregulation (36) are complied with;
- (b) the proposed directors are qualified under these Regulations to act as directors; and
- (c) the manner in which the business of the Unlisted Investment Manager is to be carried on is:
 - (i) not inconsistent with the Act and these Regulations;
 - (ii) based on sound financial principles; and
 - (iii) in the public interest,

the Registrar may register the applicant as an Unlisted Investment Manager and issue a certificate of registration.

- (41) An Unlisted Investment Manager registered under subregulation (40) shall be regarded as a financial institution, as defined-

- (a) in section 1 of the Financial Institutions (Investment of Funds) Act, 1984; and
- (b) in section 1 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001),

which invests, keeps in safe custody, controls or administers trust property.

Restrictions on directors of Unlisted Investment Manager

(42) A person does not qualify as a director, portfolio manager or chief executive officer of an Unlisted Investment Manager, if the person-

- (a)** is disqualified in terms of section 225 and section 226 of the Companies Act, 2004 (Act No. 28 of 2004) from being appointed or acting as a director of a company;
- (b)** is a director or principal officer of a financial institution and such financial institution is not in compliance with any law governing financial institutions; or
- (c)** is a trustee or a principal officer of a pension fund.

Duties of Unlisted Investment Manager

(43) An Unlisted Investment Manager must-

- (a)** have exclusive authority to manage and administer the portfolio investments of a Special Purpose Vehicle in accordance with the Investment Plan and in terms of the Management Agreement;
- (b)** have the right, power and authority to do on behalf of the Special Purpose Vehicle all things necessary or desirable to carry out its duties and responsibilities to fulfill the requirements of the Investment Plan and the Management Agreement, including to initiate, screen, select and conduct due diligence and perform valuations on potential portfolio investments;
- (c)** have the right to make investment decisions, not inconsistent with the Investment Plan and subject to subregulation (19), on behalf of the Special Purpose Vehicle;
- (d)** have the right to exercise the voting power conferred by the securities issued by a portfolio company and held in the Special Purpose Vehicle;
- (e)** monitor and report on the performance of portfolio investments of the Special Purpose Vehicle;
- (f)** structure and manage portfolio investments; and
- (g)** manage and administer the operations of the Special Purpose Vehicle.

(44) In performing the functions under subregulation (43), an Unlisted Investment Manager-

- (a)** may not receive any other type of compensation or commission, direct or indirect, except that specified in the Management Agreement;
- (b)** must observe utmost good faith and act with due skill, care and diligence;

- (c) must conduct its business in a responsible way and not engage in practices which would prejudice the interests of investors, Special Purpose Vehicles, portfolio companies and other stakeholders;
 - (d) must take a long-term view of the portfolio investments and not engage in speculative activity;
 - (e) must exercise the voting power in such a manner that best serves the interests of the Special Purpose Vehicle;
 - (f) must promote and maintain ethical standards of conduct and deal fairly and honestly with investors, Special Purpose Vehicles, portfolio companies and other stakeholders;
 - (g) may not disclose to third parties any confidential, financial or technical information acquired in the course of negotiations with potential portfolio companies, or in the course of business with portfolio companies, unless they have received explicit permission for such disclosure;
 - (h) may not be used to promote the welfare of, or assist its directors, officers or employees, except insofar as they benefit from the performance of the Special Purpose Vehicle in terms of the Management Agreement;
 - (i) must be accountable to the Special Purpose Vehicle by fully disclosing information in a manner that is clear, fair and not misleading; and
 - (j) must maintain adequate human, financial and operational resources for its business.
- (45) An Unlisted Investment Manager must require its directors, officers and employees to abide by these Regulations.

Co-investment requirement of Unlisted Investment Manager

- (46) An Unlisted Investment Manager is required to co-invest in any Special Purpose Vehicle with which it has entered into a Management Agreement a minimum of 1% of the contributed capital on the same terms and conditions as applicable to investors.

Financial year

- (47) Every Unlisted Investment Manager must, within a period of 30 days after registration, notify the Registrar in writing of the date on which its financial year ends.
- (48) The financial year of an Unlisted Investment Manager may not exceed a period of 12 months.

(49) No Unlisted Investment Manager may without the written approval of the Registrar change the financial year.

Appointment and duties of auditor

(50) An Unlisted Investment Manager must, subject to the written approval of the Registrar, appoint, and at all times have, an auditor.

(51) No director, trustee or controlling person of a Special Purpose Vehicle, and no firm of which such director, trustee or controlling person is a member, may be appointed as an auditor of the Unlisted Investment Manager.

(52) No director, officer or employee of an Unlisted Investment Manager, and no firm of which such director, officer or employee is a member, may be appointed as an auditor of the Unlisted Investment Manager.

(53) Whenever the appointment of an auditor is terminated, or the auditor has resigned, the Unlisted Investment Manager and auditor must within seven days from the date of such termination or resignation notify the Registrar in writing of the reasons.

(54) The auditor of an Unlisted Investment Manager must, in addition to the duties imposed on him by the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951):

(a) audit the financial statements of the Unlisted Investment Manager; and

(b) submit a report to the Registrar on compliance, or otherwise, with these Regulations, the Management Agreement and any other applicable law.

(55) An auditor must report to the Registrar any irregularity or any other matter which the auditor has become aware of in his or her capacity as auditor of an Unlisted Investment Manager and which in his or her opinion may be of concern to the Registrar having regard to the Registrar's supervisory functions.

Deregistration of Unlisted Investment Manager

(56) An Unlisted Investment Manager must be deregistered 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.

(57) The Registrar must give notice to and afford the Unlisted Investment Manager the opportunity to be heard prior to deregistration in terms of subregulations (56)(b).

PART IV

GENERAL

Reporting requirements for Special Purpose Vehicle

- (58)** A Special Purpose Vehicle must within 60 days after the end of each calendar quarter submit to the Registrar-
- (a)** unaudited financial reports of the Special Purpose Vehicle prepared for the quarter in question, and such unaudited financial reports must include-
 - (i)** a statement of assets and liabilities;
 - (ii)** a statement of profit and loss;
 - (iii)** a statement of holdings of securities; and
 - (iv)** a description of the nature of each portfolio investment, including the cost thereof.
 - (b)** details of portfolio investments and disposals made by the Special Purpose Vehicle, including minutes and resolutions as per subregulation (19) detailing such investment decisions;
 - (c)** details of the financial performance of portfolio companies, individually and on an aggregated basis, including details on capital expenditure and operational expenditure;
 - (d)** particulars of expenditure incurred by the Special Purpose Vehicle;
 - (e)** valuations for new portfolio investments;
 - (f)** details of drawdowns, total contributed capital and committed capital;
 - (g)** details of the number of permanent and temporary employees of the portfolio companies; and
 - (h)** any other information that the Registrar may require.
- (59)** A Special Purpose Vehicle must within 180 days after the end of the financial year as per subregulation (22), submit to the Registrar annual audited financial statements, prepared in accordance with International Financial Reporting Standards, containing, to the extent possible, all information listed under subregulation (58).

Reporting requirements for Unlisted Investment Manager

(60) An Unlisted Investment Manager must submit to the Registrar within 180 days after the end of the financial year as per subregulation (47), annual audited financial statements, prepared in accordance with International Financial Reporting Standards.

Investment Plan

(61) The Investment Plan of a Special Purpose Vehicle must, at a minimum, address-

- (a)** the object of the Special Purpose Vehicle;
- (b)** the investment objectives of the Special Purpose Vehicle;
- (c)** classes and limits of investments;
- (d)** risk management;
- (e)** details of the possession and ownership of assets;
- (f)** the term of the Special Purpose Vehicle;
- (g)** the share capital or subscription interest;
- (h)** the appointment of directors, trustees or controlling persons of the Special Purpose Vehicle, including but not limited to, the term, number and vacating of office;
- (i)** the proceedings of the directors, trustees or controlling persons meetings;
- (j)** the powers of the directors, trustees or controlling persons;
- (k)** the remuneration of the directors, trustees or controlling persons;
- (l)** the management and control of the Special Purpose Vehicle;
- (m)** the annual and general meeting;
- (n)** the capital commitments;
- (o)** the procedure for drawdown of capital commitments;
- (p)** the procedure for defaults in effecting payments for a drawdown;
- (q)** the accounting, auditing, financial year and annual financial statements;
- (r)** the bank accounts;

- (s) the capital accounts for investors;
 - (t) the allocation of income, gains and losses;
 - (u) reporting to the regulator and investors;
 - (v) the distribution policy;
 - (w) the valuation of portfolio investments;
 - (x) performance measurement;
 - (y) non-performing portfolio investments;
 - (z) the borrowing policy;
 - (aa) the issue of debentures, if any;
 - (bb) investor participants;
 - (cc) the transfer of business;
 - (dd) termination, de-registration or winding-up of the Special Purpose Vehicle;
 - (ee) confidentiality;
 - (ff) delegation of duties;
 - (gg) amendments to the Investment Plan;
 - (hh) conflict of interest;
 - (ii) arbitration;
 - (jj) fees and remuneration of Unlisted Investment Managers, auditors and, where applicable, Portfolio Companies; and
 - (kk) any other information determined by the Registrar.
- (62) Any provision in the Investment Plan inconsistent with these Regulations or any other law is void.

Management Agreement

(63) The Management Agreement must, at a minimum, address-

- (a)** the terms of appointment of the Unlisted Investment Manager;
- (b)** the circumstances under which the appointment of an Unlisted Investment Manager can be terminated prematurely, including the notice period;
- (c)** the duties of the Unlisted Investment Manager;
- (d)** staffing of the Unlisted Investment Manager;
- (e)** the manner in which the performance of the Unlisted Investment Manager shall be assessed;
- (f)** the valuation of portfolio investments;
- (g)** the reporting requirements;
- (h)** exclusivity, if any;
- (i)** management fees, performance fees and other remuneration;
- (j)** expenses borne by the Special Purpose Vehicle;
- (k)** warranties;
- (l)** confidentiality;
- (m)** restriction on subcontracting;
- (n)** arbitration;
- (o)** indemnity and breaches;
- (p)** termination; and
- (q)** any other information determined by the Registrar.

(64) Any provision of the Management Agreement that is inconsistent with any provision of the Investment Plan, these Regulations or with any other law shall be void.

Powers of Registrar

- (65)** The Registrar has in relation to Special Purpose Vehicles and Unlisted Investment Managers the powers vested in the Registrar by-
- (a)** the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001);
 - (b)** the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984);
 - (c)** the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984); and
 - (d)** any other law,
- to regulate and supervise Special Purpose Vehicles and Unlisted Investment Managers, and any matters incidental thereto.
- (66)** The Registrar has in relation to a Special Purpose Vehicle, after due notice the power to remove-
- (a)** a director, trustee or controlling person; and
 - (b)** an Unlisted Investment Manager.
- (67)** The Registrar has in relation to an Unlisted Investment Manager, after due notice, the power to remove a director, portfolio manager or chief executive officer if not qualified under these regulations or any other applicable law.
- (68)** When the Registrar intends to act as contemplated in subregulations (66) and (67), the Registrar must give notice to the Special Purpose Vehicle or Unlisted Investment Manager and the director, trustee, controlling person, portfolio manager or chief executive officer concerned of the Registrar's intention and the reasons therefore and afford the Special Purpose Vehicle or Unlisted Investment Manager and the director, trustee, controlling person, portfolio manager or chief executive officer concerned an opportunity to be heard.
- (69)** The Registrar may at any time inspect the affairs or any part of the affairs of a Special Purpose Vehicle or an Unlisted Investment Manager, or instruct an inspector to carry out such inspection in accordance with the Registrar's powers conferred by the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984).