

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

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**UNIT TRUSTS CONTROL  
AMENDMENT BILL**

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*(As read a First Time)*

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*(Introduced by the Minister of Finance)*

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**EXPLANATORY NOTE:**

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[            ] Words in bold type in square brackets indicate omissions from existing provisions.

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**BILL**

**To amend the Unit Trusts Control Act, 1981, so as to improve the regulation and supervision regarding the establishment, carrying on and management of unit trust schemes; to empower the registrar to approve the change of the name of a management company and the change of shareholding or directors, and certain appointments, to direct removal from office of certain persons, to make determinations regarding securities and other assets that may be included in or excluded from a unit portfolio of a unit trust scheme and minimum and maximum restrictions and conditions thereof, and the method for determining the value for unlisted assets; to increase certain penalties; and to provide for incidental matters.**

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:

**Amendment of section 1 of Act No. 54 of 1981, as amended by section 8 of Act No. 51 of 1988 and section 57 of Act No. 3 of 2001**

**1.** Section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981) (in this Act referred to as “the principal Act”), is amended -

(a) by the insertion after the definition of “approved securities” of the following definition:

“assets’ means the investments comprising or constituting a unit portfolio of a unit trust scheme, and includes any income accruals derived therefrom;”;

(b) by the deletion of the definitions of “approved securities” and “liquid assets”;

(c) by the insertion of the following definition after the definition of “Minister”:

“open-ended investment company’ means a company with an authorised share capital which is structured in such a manner that it provides for the issuing of different classes of shares to investors, each class of shares representing a separate portfolio with a distinct investment policy;”;

(d) by the substitution for the definition of “securities” of the following definition:

“‘securities’-

- (a) means assets consisting of -
- (i) shares, stocks and depository receipts in public companies;
  - (ii) notes;
  - (iii) bonds;
  - (iv) debentures;
  - (v) units in a unit trust scheme;
  - (vi) instruments based on -
    - (aa) an index as determined by an exchange;
    - (bb) an asset or group of assets, whether such group of assets is represented by an index or not;
  - (vii) money market instruments;
  - (viii) derivative instruments, including a warrant, option contract or future contract;
  - (ix) an instrument declared by the registrar by notice in the *Gazette*;
  - (x) rights in the securities referred to in subparagraphs (i) to (ix); and
  - (xi) the securities contemplated in subparagraphs (i) to (x) that are listed on a foreign stock exchange; and
- (b) excludes any security contemplated in paragraph (a) and specified by the registrar by notice in the *Gazette*;
- (e) by the substitution for the definition of “trust deed” of the following definition:
- “‘trust deed’ means the agreement between a management company and a trustee, and includes a document of incorporation whereby a unit trust scheme is established and in terms of which it is administered;”;
- (f) by the substitution for the definition of “underlying securities” of the following definition:
- “‘underlying securities’, in relation to a unit portfolio, means the securities and other assets comprised in or constituting the unit portfolio and includes any moneys derived or resulting from the management of the unit portfolio which are held by or are due to the management

company or the trustees for the benefit of the holders of unit certificates in that unit portfolio;”;

- (g) by the substitution for the definition of “unit portfolio” of the following definition:

“‘unit portfolio’ means a group of securities and assets including any amount of cash in which members of the public are invited or permitted by a management company to acquire [units], pursuant to a unit trust scheme, [**and includes any amount in cash forming part of the assets pertaining to such unit portfolio**] units of a specific class which as a result of their specific characteristics differ from any other class of units;”;

- (h) by the substitution for the definition of “unit trust scheme” of the following definition:

“‘unit trust scheme’ means any scheme or arrangement [**in the nature of a trust**], in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited [**or permitted, as beneficiaries under the trust,**] 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;” and

- (i) by the insertion after the definition of “unit trust scheme” of the following definition:

“‘unlisted assets’ means securities other than stock exchange securities and such other securities determined by the registrar by notice in the Gazette.”

**Amendment of section 3 of Act No. 54 of 1981, as amended by section 10 of Act No. 91 of 1988**

2. Section 3 of the principal Act is amended -

- (a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) [a] has and maintains the prescribed share capital, paid-up share capital and non-distributable reserves [which together amount to not less than R2 000 000] actually employed or immediately available for employment in its unit trust business;” and

- (b) by the substitution for subsection (4) of the following subsection:

“(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding [N\$2 000] N\$500 000 or to imprisonment

for a period not exceeding five years or to both such fine and such imprisonment.”.

**Insertion of section 5A in Act No. 54 of 1981**

3. The following section is inserted after section 5 of the principal Act:

**“Change of management company name and shareholding or directors, and appointment and removal of directors and management staff**

**5A** (1) Despite anything to the contrary in any other law, a management company may not without the prior approval of the registrar –

- (a) change the name under which it is registered;
- (b) use or refer to itself by a name other than the name under which it is so registered;
- (c) use or refer to itself by an abbreviation or a derivative of name under which it is so registered;
- (d) allow the acquisition of shares or any other interest in the management company resulting in the holding of 25 per cent or more of the value of all the shares or other interest in the management company;
- (e) directly or indirectly transfer its control to another person; or
- (f) change its directors.

(2) A management company must appoint fit and proper persons approved by the registrar as its directors or management staff members.

(3) An application for approval of appointment contemplated in subsection (2) must -

- (a) be submitted to the registrar in the form and manner determined by the registrar;
- (b) be accompanied by information to satisfy the registrar that the applicant complies with the fit and proper requirements in respect of –
  - (i) honesty and integrity;
  - (ii) competence and operational ability; and
  - (iii) financial soundness determined by the registrar,

by notice in the *Gazette*.

(4) The registrar may by notice require a management company to terminate the appointment of a director or management staff member, if

pursuant to subsection (3) and (5) the director or staff member is not fit and proper to hold such position.

(5) When the registrar intends to act as contemplated in subsection (4), the registrar must –

- (a) give notice to the management company and the director or management staff member concerned of the intention of the registrar and the reasons therefore; and
- (b) afford the management company and director or management staff member an opportunity to be heard.

(6) Upon receipt of the notice referred to in subsection (5), the director or management staff member is deemed to have been suspended from duty pending the determination of the registrar after affording the director or staff member an opportunity to be heard.”.

#### **Substitution of section 6 of Act No. 54 of 1981**

4. The following section is substituted for section 6 of the principal Act:

##### **“Nature of securities which may be included in unit portfolios**

6. (1) The registrar in concurrence with the Minister, by notice in the *Gazette*, may determine securities and other assets which may be included in a unit portfolio of a unit trust scheme and the minimum or maximum or both minimum and maximum restrictions and conditions subject to which such securities, classes of securities, or other assets may be included in a unit portfolio.

(2) Despite subsection (1), the registrar in concurrence with the Minister, by notice in the *Gazette*, may determine securities and assets which may be excluded from a unit portfolio and the minimum or maximum or both minimum and maximum restrictions and conditions subject to which such securities, classes of securities or assets may be so excluded from a unit portfolio.”.

#### **Amendment of section 7 of Act No. 54 of 1981**

5. Section 7 of the principal Act is amended by the addition of the following subsection:

“(3) The registrar, by notice in the *Gazette*, may determine the method for determining the value of unlisted assets.”.

#### **Substitution of section 8 of Act No. 54 of 1981**

6. The following section is substituted for section 8 of the principal Act:

**“Initial size of unit portfolio**

**8** Every unit portfolio formed pursuant to a unit trust scheme which contemplates the creation of an unlimited number of units in such unit portfolio, shall comprise, as at the date on which the management company commences the selling of units to the public, the prescribed underlying securities [and cash to the market value of at least N\$500 000].”.

**Substitution of section 9 of Act No. 54 of 1981, as substituted by section 12 of Act No. 51 of 1988**

7. The following section is substituted for section 9 of the principal Act:

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

**9.** (1) Every management company must of its own resources have at all times invested in every unit portfolio a prescribed amount and shall hold the units in respect of such investment as the beneficial owner.

(2) The registrar, on application by a management company, may grant the management company exemption from compliance with the amount prescribed under subsection (1) and determine the amount to be invested by the company in every unit portfolio.

(3) The registrar may at any time revoke the exemption and the determination referred to in subsection (2) after giving the management company concerned an opportunity to be heard.”.

**Amendment of section 11 of Act No. 54 of 1981**

**8.** Section 11 of the principal Act is amended -

(a) by the substitution for subsection (5) of the following subsection:

“(5) The auditor shall report to the management company and the registrar any irregularity or undesirable practice in the conduct of the business of the management company or of any unit trust scheme managed by it which has come to his or her notice or knowledge.”; and

(b) by the addition of the following subsection:

“(6) The registrar, by notice in the *Gazette*, may determine further reports which the registrar may require the auditor to render and the form which such reports may take.”.

**Amendment of section 20 of Act No. 54 of 1981, as amended by section 13 of Act No. 51 of 1988**

**9.** Section 20 of the principal Act is amended-

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) maintains a paid-up capital and unimpaired reserves together amounting to [**not less than R1 000 000**] the prescribed amount.”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) Any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine not exceeding [**N\$2 000**] N\$500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”.

**Amendment of section 29 of Act No. 54 of 1981, as amended by section 15 of Act No. 51 of 1988**

**10.** Section 29 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on convention to a fine not exceeding [**N\$2 000**] N\$500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”.

**Amendment of section 37 of Act No. 54 of 1981**

**11.** Section 37 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) Any person who contravenes any provision of this section shall be guilty of an offence and liable of conviction to a fine not exceeding [**N\$2 000**] N\$500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”.

**Amendment of section 42 of Act No. 54 of 1981**

**12.** Section 42 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) Regulations made under subsection (1) may prescribe penalties not exceeding a fine of [**N\$2 000**] N\$1 000 000 for the late rendition by any person of any balance sheet, account, statement, document or report required to be furnished in terms of any provision of this Act or for any other matter the Minister may consider necessary or expedient.”.

**Substitution of section 44 of Act No. 54 of 1981**

**13.** The following section is substituted for section 44 of the principal Act:

**“General penalties**

**44.** Any person who is, in terms of any provision of this Act, guilty of an offence in respect of which no penalty is specifically provided, shall be liable to a fine not exceeding [**N\$600**] N\$250 000 or to imprisonment for a



period not exceeding [**18 months**] three years or to both such fine and such imprisonment.”.

**Short title**

**14.** This Act is called the Unit Trusts Control Amendment Act, 2011.

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