



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

MINISTRY OF FINANCE

No. 31

2016

DETERMINATION OF CONDITIONS IN TERMS OF SECTION 4(1)(F) OF THE STOCK EXCHANGES CONTROL ACT, 1985

Under section 4(1)(f) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), I determine the conditions, as set out in the Schedule, with which a person contemplated in section 4(1)(f), who, as a regular feature of that person's business, administers or holds in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form part, must comply with.

C. SCHLETTWEIN
MINISTER OF FINANCE

Windhoek, 11 February 2016

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PART 1

DEFINITIONS AND OBJECT OF CONDITIONS

Definitions

1. (1) In these conditions, a word or an expression to which a meaning has been assigned in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) has that meaning and unless the context otherwise indicates -

“auditor” means a person, registered as an accountant and auditor under section 23 of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951) and who is a member of the Institute of Chartered Accountants of Namibia referred to in that Act;

“capitalisation issue” means a form of a secondary issue where a company’s cash reserves are converted into new shares that are given to existing shareholders relative to existing shareholding;

“client” means a person to whom the person contemplated in section 4(1)(f) provides securities services, including a person that acts as an agent for another person in relation to those services in which case it will include the agent or exclude the other person if the contractual arrangement between the parties indicates this to be the intention;

“company” means a company incorporated under the Companies Act, 2004 (Act No. 28 of 2004) or a prior law;

“entity” means a company, any other juristic person, a trust, partnership, fund, association, joint venture and any other unincorporated organisation, the government of Namibia or a branch of the government, the government of a foreign country or a branch of that government;

“document of title” means a bill of sale, certificate of title, title deed, certified deed or other formal documentation that confers or proves ownership and that enables its holder to receive, retain, sell, or otherwise dispose of the document and the goods or property listed in it;

“foreign investment manager” means a company that is in the business of investment management and is registered, licensed, recognised, approved or otherwise authorised to render the service or conduct the business of investment management by a foreign regulator acceptable to the Registrar;

“induce” means an act, instance or conduct, including mass marketing campaigns that attempts to persuade, influence or encourage a particular person to become a client;

“investments” means investments in securities as defined in the Act and in the Unit Trusts Control Act;

“investment manager” means a company that is in the business of administration of investments and approved in terms of section 4(1)(f) of the Act, and satisfies the requirements of these conditions and for the purpose of these definition “administration of investments” means -

- (a) the buying, selling or otherwise dealing with investments on behalf of another person;
- (b) an offer or agreement regarding the buying, selling or dealing with investments on behalf of another person, irrespective of whether an investment manager is required to exercise his or her discretion;
- (c) the giving of securities advice in relation to the buying, selling or otherwise dealing in securities; or
- (d) the implementation on behalf of another person of a decision to buy, sell or deal with investments, but does not include -
 - (i) the giving of advice on the merits of such transactions without receiving funds or assets from a client; or
 - (ii) the performance of the functions of a company or institution which is registered as trustee under the Unit Trusts Control Act and which manages and administers investments and investment management has a corresponding meaning;

“institutional investor” means a professional investment manager, collective investment scheme, stock broker, insurance company, commercial bank, pension fund, hedge fund, unlisted investments fund and any fund that pools large sums of money and invests those sums in securities, property and other investment assets;

“key responsible person” means a person with a significant ownership or decision-making role in the business and includes a director, controlling officer or any other person responsible for managing

or overseeing, either alone or together with other such responsible persons, the activities of the investment manager relating to the rendering of any investment management services and for the purpose of this definition a person is regarded to have significant ownership if the person -

- (a) owns or controls, directly or indirectly including through trusts or bearer share holdings for any person, 20 percent or more of the shares or voting rights of the entity;
- (b) together with an associate owns or controls, directly or indirectly, including through trusts or bearer share holdings for any person, 20 percent or more of the shares or voting rights of the entity;
- (c) exercises control over the management of the person in his or her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner;

“liquid asset” means an asset that can be converted into cash in a short time with little or no loss in value including accounts receivable, demand and time deposits and all other such instruments that qualify for investment in the money market;

“mandate” means a mandate referred to in paragraph 16;

“netting” means an arrangement that has more than two parties and under which the obligations owed by the parties to each other are offset such that only the net amount become payable to either party;

“nominee company” means a company that holds assets in its own name in trust on behalf of another person such as the beneficial owner and set up under a custodial agreement for purposes of primarily holding and administering securities or other assets on behalf of their beneficial owners;

“option” means a financial derivative that represents a contract sold by one party, known as the option writer, to another party, known as the option holder, that offers the buyer, the right but not the obligation to buy or call or sell or put a security or other financial asset at an agreed-upon price, known as the strike price, during a certain period of time or on a specific date, known as the exercise date;

“portfolio manager” means a natural person who is employed by an investment manager to perform investment management functions on behalf of the investment manager or a foreign investment manager;

“principal office” means the main place of business of an investment manager;

“scrip dividend” means a corporate distribution to shareholders, declared out of profits and at the discretion of the directors of the company and which is paid in the form of a promissory note that is discountable at a future date or in the form of shares in lieu of a cash dividend;

“solicit” means an act, instance or conduct, including mass marketing campaigns that is intended to induce people in Namibia or an act, instance or conduct that is likely to induce people in Namibia to use a financial service or product that is provided;

“the Act” means the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

“Unit Trusts Control Act” means the Unit Trusts Control Act, 1981 (Act No. 54 of 1981);

“unit trust scheme” has the meaning assigned to it in the Unit Trusts Control Act.

- (2) For the purposes of the definition of “key responsible person”, “associate” -

- (a) in relation to an individual, means -
- (i) the spouse of the individual;
 - (ii) the child, parent, stepchild, step-parent or sibling of the individual and the spouse of any such person;
 - (iii) another person who has entered into an agreement or arrangement with the individual relating to the acquisition, holding or disposal of, or the exercise of voting rights in respect of, shares or other ownership interests in an entity;
 - (iv) a trust controlled by the individual;
- (b) in relation to an entity, means -
- (i) a company or other juristic person or unincorporated body controlled, directly or indirectly, by or the affairs or part of the affairs of which are managed or administered by or at the direction or instructions of, the individual or any person referred to in paragraphs (a);
 - (ii) any entity which is controlled, directly or indirectly, by or the affairs or part of the affairs of which are managed or administered by or at the direction or instructions of the corporate body, juristic person or unincorporated entity;
 - (iii) any entity -
 - (aa) which controls, directly or indirectly the company, juristic person or unincorporated entity;
 - (ab) which manages or administers the affairs or part of the affairs of the company, juristic person or entity; or
 - (ac) on whose directions or instructions the affairs or part of the affairs of the company, juristic person or entity are managed or administered; or
 - (ad) a participating employer, where the company, juristic person or unincorporated entity is a retirement fund.

Object of conditions

2. The object of these conditions is to lay down requirements for the activities of an investment manager insofar as those activities fall within the ambit of section 4 of the Act.

PART 2

CONDITIONS APPLICABLE TO INVESTMENT MANAGERS

Approval of investment managers

3. (1) The Registrar may approve a company, which as a regular feature of its business administers investments, if the company complies with the Act and these conditions.

(2) The application for registration as an investment manager must be made in the form corresponding with Annexure C-1.

Existing investment managers

4. Companies approved by the Registrar as investment managers in terms of subsection 4(1)(f) of the Act are on the date of commencement of these conditions regarded to be approved as investment managers under these conditions, but such companies must within six months, after the date of commencement of these conditions, comply with these conditions.

Compliance and failure to comply with conditions and requirements by investment manager

5. (1) If the Registrar is satisfied that an investment manager has contravened or failed to comply with the Act or these conditions, the Registrar may require the investment manager by notice in writing to provide the Registrar, within 21 calendar days from the date of the notice, with written reasons as to why the approval granted in terms of section 4(1)(f) of the Act should not be withdrawn or the procuring of new investments by the investment manager should not be prohibited.

(2) The Registrar may, at the request of the investment manager, extend the time within which the reasons requested in terms of subparagraph (1) must be provided to the Registrar.

(3) On receipt of the reasons in terms of subparagraph (1) or (2), the Registrar may -

- (a) state a period within which the investment manager has to take appropriate action, to the satisfaction of the Registrar, to rectify any contravention or failure; or
- (b) prohibit the investment manager from procuring further investment management business until such time as the Registrar is satisfied that the investment manager has taken appropriate action to rectify any contravention or failure; or
- (c) withdraw the approval referred to in paragraph 3(1) by notice in writing, if the reasons are not acceptable or if appropriate actions were not taken within the period referred to in subparagraph (a).

(4) The Registrar must notify, all relevant institutions licenced in terms of the Act, the general public and any industry association or a party of such industry, of the withdrawal contemplated in subparagraph (3)(c).

Money or securities lodged with investment managers

6. (1) When documents of title are lodged with an investment manager on behalf of a client the investment manager must, within 48 hours or any such time frame as may be determined from time to time by the Registrar through a written notice to the investment manager, provide written confirmation of receipt of documents of title to the client or a representative of the client which contains a description of the documents, sufficient to identify them.

(2) An investment manager must comply with the obligations of accountable institutions which relate to money laundering and financing of terrorism activities as prescribed under the Financial Intelligence Act 2012, (Act No. 13 of 2012) or any regulation, notice, order, circular, determination or directive issued in terms of that Act.

Prohibitions

7. An investment manager may not directly or indirectly -

- (a) by means of any statement, promise, forecast or by any other action that the investment manager knows to be misleading or which is likely to be misleading -

- (i) induce a client to enter into a mandate with the investment manager; or
- (ii) induce the client to enter into any other agreement relating to investments;
- (b) sell to or provide a third party with a client's details, without the client's prior written approval;
- (c) exercise a vote in a ballot conducted by a unit trust management company unless explicitly authorised or instructed by a client;
- (d) effect a change in its owners, members or shareholders without the prior written approval of the Registrar;
- (e) transfer its control to another person without prior written approval of the Registrar;
- (f) change its directors without prior written approval of the Registrar;
- (g) buy for own account any investment owned by any client or sell any investment owned by the investment manager to any client unless the investment manager has taken consideration to ensure with confidence that the risk to the client will be prevented and the investment manager has disclosed and documented with sufficient detail, the general nature to the client before undertaking business with the client;
- (h) buy and sell listed securities, except through a member of a licensed exchange;
- (i) exercise voting rights on behalf of clients to gain control of a company listed on a licensed stock exchange, except where such voting rights are exercised to protect the interests of clients on whose behalf the investments are held or on the instructions of such clients;
- (j) engage in the netting of transactions;
- (k) change the name under which it conducts business, without the prior written consent of the Registrar;
- (l) charge the client any kind of fee for terminating the mandate other than accrued fees for services rendered before the termination; or
- (m) solicit funds from investors without prior approval from the Registrar.

Duties of investment managers

- 8.** An investment manager must -
- (a) appoint fit and proper persons as its key responsible persons;
 - (b) satisfy the Registrar that the persons appointed as key responsible persons comply with the fit and proper requirements set out in Annexure E-1;
 - (c) on application for approval as an investment manager, disclose to the Registrar complete details of the career history of its portfolio managers;
 - (d) on application for approval as an investment manager, fully disclose to the Registrar, information on any matters in which its owners, directors, members, shareholders, portfolio managers or trustees were involved, which information might be relevant

- in the Registrar's assessment of the good character fitness and propriety and integrity of the investment manager to manage investments;
- (e) observe high standards of integrity and fair dealing in managing investments;
 - (f) act in the best interests of the clients;
 - (g) act with due skill, care, diligence and good faith;
 - (h) observe high standards of market conduct;
 - (i) provide to the client in a comprehensible and timely manner, any reasonable information regarding the investment of the client, market practices and the risks inherent in the different markets and products;
 - (j) obtain and transmit to a client any information, which the unit trust scheme or listed company must disclose in terms of any law, unless the client has, in writing, specifically requested the investment manager not to provide such information if such client is able to access the information made available by the investment manager through electronic means on a continuous basis;
 - (k) if applicable, obtain from the client the necessary information about the circumstances and investment objectives of the client to enable the investment manager to act in the best interests of that client;
 - (l) avoid any conflict between the interests of the investment manager and the interests of the client and if a conflict of interest does arise, the investment manager must -
 - (i) adequately disclose details of such conflict to the client while maintaining the confidentiality of other clients; or
 - (ii) decline to act for that client;
 - (m) disclose to the client all fees and other charges, whether direct or indirect, relating to the management of that client's investments;
 - (n) disclose to the client all material consequential benefits received by the investment manager as a result of managing the investments of that client;
 - (o) explain to the client, how fees and other charges are calculated and charged, in sufficient detail to enable the client to understand the method of calculation;
 - (p) maintain written confirmation, signed by the client concerned, that all information required to be disclosed by the investment manager as set out in items (i) to (o) have been disclosed to the client and that the client understands such information so as to make an informed decision;
 - (q) ensure that its staff members are at all times properly qualified and trained for the performance of their duties; and
 - (r) maintain a meaningful record of complaints lodged against it, and provide to the Registrar on request a record of all complaints and the information recorded and such record must include the nature of the complaint, the manner in which it was resolved and whether or not the client was satisfied with the outcome.

Accounting records

9. (1) An investment manager must maintain accounting records on a continual basis so that these records are at all times kept up to date.

(2) An investment manager must preserve and keep in safe custody the accounting records referred to in subparagraph (1) for a period of at least five years.

Appointment and duties of auditors

10. (1) An investment manager must appoint and at all times have an independent auditor or a firm of auditors to conduct, in accordance with International Auditing Standards, an audit of its annual financial statements and to report whether the financial statements compiled, in accordance with International Accounting Standards and the Companies Act, 2004 (Act No. 28 of 2004), fairly present its financial position as at the date of such statements and the results of the operations and cash flow information for the period then ended.

(2) The investment manager must provide the Registrar within 90 days after its financial year end with audited annual financial statements.

(3) For the purpose of subparagraph (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 investment manager, direct the investment manager to appoint another independent auditor.

(4) If an auditor resigns or the appointment of an auditor is terminated by an investment manager -

(a) the investment manager concerned must immediately notify the Registrar in writing and submit to the Registrar a written statement of the reasons for the termination or in the opinion of the investment manager the reasons for the resignation; and

(b) the auditor must immediately submit a written statement to the Registrar of the reasons for the resignation or in the opinion of the auditor, the reasons for the termination, stating any matter relating to the affairs of the investment manager of which the auditor became aware of in the performance of the duties as auditor, which in the opinion of the auditor may be of concern to the Registrar.

Providing information to Registrar

11. (1) An investment manager must, with respect to itself or a particular nominee company or independent custodian, provide the Registrar with such information concerning the relevant shareholders, directors, members, partners, key responsible persons, portfolio managers or trustees or any other information related to its business, as the Registrar may from time to time require.

(2) An investment manager must, on a quarterly or bi-annual basis or at any time as the Registrar may require, provide the Registrar with information relating to funds under its management on behalf of institutional investors, companies or any other person.

Compliance officer and compliance report

12. (1) An investment manager must -

(a) appoint a compliance officer or designate one of its senior employees with no investment functions as a compliance officer and that officer must complete and sign the annual compliance report and liaise with the Registrar; or

- (b) appoint an auditor to complete and sign the compliance report, in which case it must designate one of its senior employees to liaise with the Registrar.
- (2) An investment manager may appoint and designate a person who is not one of its senior employees as a compliance officer but such person must comply with subparagraph (5) and be approved by the Registrar;
- (3) The Registrar may object to the appointment of a particular compliance officer in which case the Registrar must discuss the reasons for the objection with the investment manager and the compliance officer and in which case the Registrar must in writing direct the investment manager to appoint another compliance officer.
- (4) If a compliance officer vacates his or her office, an investment manager concerned must, within 60 days after that has occurred or any such period as may be determined from time to time by the Registrar through a written notice, appoint or designate a new compliance officer and inform the Registrar in writing of the reasons why the compliance officer has vacated office and the name of the new compliance officer.
- (5) An investment manager may only appoint or designate a person as a compliance officer if such person, excluding the auditor of the investment manager, complies with the fit and proper requirements set out in Annexure E-1.
- (6) An investment manager must, within three months after the end of its financial year, provide the Registrar with a compliance report either -
- (a) in the form corresponding with Annexure A-1 if a compliance officer has been appointed in terms of subparagraph (1)(a) or (2), completed and signed by the compliance officer; or
- (b) in the form set out in Annexure B-1 if an auditor has been appointed in terms of subparagraph (1)(b), completed and signed by the auditor.
- (7) Despite the completion and signing of the compliance report by the compliance officer or auditor as contemplated in subparagraph (6), the investment manager remains fully responsible and accountable for ensuring compliance with the Act and these conditions.

Financial soundness

- 13.** (1) An investment manager may not be an unrehabilitated insolvent or be under liquidation or provisional liquidation.
- (2) An investment manager must have a start-up capital of at least N\$250 000 (two hundred and fifty thousand dollars) for employment in the business.
- (3) The assets of an investment manager, excluding goodwill and any other intangible assets must at all times exceed its liabilities, excluding loans validly subordinated in favour of creditors.
- (4) An investment manager must maintain sufficient current assets to cover current liabilities at all times.
- (5) An investment manager must maintain liquid assets equal to 13/52 weeks of annual expenditure at all times.

Ceasing, dissolution or liquidation of business or withdrawal of approval

14. (1) An investment manager must immediately notify the Registrar in writing if it intends to cease conducting business or if its business is to be wound up or liquidated.

(2) If an investment manager ceases to conduct business or its approval is withdrawn by the Registrar, the auditor of the investment manager must within 45 days after the date of such ceasing, dissolution or withdrawal provide a report on those facts to the Registrar.

(3) In the case of a winding-up or liquidation of the investment manager, the auditor of the liquidator must provide the report contemplated in subparagraph (2).

(4) The report contemplated in subparagraphs (2) and (3) must confirm that all cash and documents of title relating to assets and a final statement of account have been delivered to the various clients, but if an investment manager is unable to comply fully with this condition, the report must contain full particulars concerning the documents which have not been delivered full reasons therefore as well as a plan with dates on which compliance will take place.

PART 3
CONDITIONS APPLICABLE TO INVESTMENT MANAGERS

Portfolio managers

15. (1) An investment manager must ensure that only a person whom the investment manager has authorised as a portfolio manager manages the investments of clients.

(2) An investment manager must keep a record of all portfolio managers and certified copies of all applicable qualifications obtained by such portfolio managers at the principal office, which records must be made available to the Registrar on request.

(3) If an investment manager appoints a portfolio manager the investment manager must by written application seek the approval of the Registrar on behalf of the portfolio manager so appointed, within 30 days of such appointment.

(4) If an investment manager seeks withdrawal of approval of an existing portfolio manager, the investment manager must in writing notify the Registrar of the withdrawal within 30 days of such occurrence.

- (5) An investment manager may appoint a person as a portfolio manager, if –
- (a) a court of law has not convicted such person during a period of ten years preceding his or her appointment of any criminal offence involving dishonesty;
 - (b) an employer has not dismissed such person for any act of dishonesty during a period of ten years preceding his or her appointment;
 - (c) such person complies with the standards of training, experience and other qualifications as is suitable to carry out his or her duties;
 - (d) such person is the owner, co-owner, a director, an employee of the investment manager or if the investment manager forms part of a group of companies, an employee seconded from within the group of companies or an independent contractor contracted to not more than one investment manager; and
 - (e) such person complies with the fit and proper requirements as set out in Annexure E-1 to these conditions.

(6) An investment manager must immediately notify clients concerned of any additions to or removals from its record of portfolio managers.

(7) If the portfolio management services are outsourced to another investment manager -

- (a) the investment manager must employ a natural person who complies with the requirements of subparagraph (5) as a portfolio manager;
- (b) the mandate entered into between the investment manager and a client, must clearly identify the investment manager so appointed for portfolio management services; and
- (c) the client must be informed in writing that he or she has recourse directly against the investment manager and not against such other investment manager appointed for portfolio management services.

(8) If the investment manager has outsourced its portfolio management services to more than one investment manager, the investment manager must have adequate systems, procedures and controls in place to ensure that the other investment managers appointed for portfolio management services manage the investments in accordance with the investment objectives of each client.

(9) If the portfolio management services are outsourced to an investment manager based outside Namibia, its investment management activities must be regulated by a foreign regulator acceptable to the Registrar.

(10) If the portfolio management services are outsourced to an investment manager based in Namibia, it must be approved by the Registrar as an investment manager in terms of these conditions.

(11) The Registrar may object to the appointment of a particular portfolio manager and may, if reasons for the objection have been communicated to the investment manager, direct the investment manager to withdraw the authorisation of that particular portfolio manager.

(12) A person appointed as a portfolio manager must possess as a minimum, one or more of the qualifications and the corresponding experience set out in Annexure D-1.

Mandate

16. (1) An investment manager must enter into a written mandate with its client.

(2) The investment manager and the client may agree to enter into an electronic mandate, but in such case appropriate controls and personal identification procedures must be put in place.

(3) The mandate contemplated in subparagraph (1), records the arrangements made between the parties and must -

- (a) state the investment objectives of the client and whether there are any investment or jurisdiction restrictions that apply to the management of the investments;
- (b) state whether and to what extent the investment manager may invest in foreign investments;
- (c) contain a general statement pertaining to the risks associated with investing in local and foreign investment;

- (d) state in whose name the investments are to be registered and whether they are, for example, to be registered in the name of -
 - (i) the client or a nominee company by the client;
 - (ii) the nominee company of the investment manager or a nominee company within the group of companies of which the investment manager forms part;
 - (iii) the nominee company of a member, in the case of an investment manager who deals through a member of a licensed exchange; or
 - (iv) a nominee company of any depository institution or a registered central securities depository or of any bank registered or licensed in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998);
 - (e) state the name of the banking institution, name of the account and account number of the trust account opened at a banking institution or other bank account opened in the name of the client in which the investment manager must deposit, and where applicable, from which the investment manager must withdraw, moneys received in connection with the management of investments;
 - (f) state, where applicable, at which intervals any cash accruals, including dividends and interest, which the investment manager receives on behalf of a client, must be paid to the client;
 - (g) state the basis on which, the manner in which and the intervals at which the client will remunerate the investment manager for management of investments on his or her behalf and for the purposes of this provision it is considered that the basis of the remuneration has not been stipulated if the remuneration must be calculated with reference to a source outside the mandate or if it is placed within the discretion of any person;
 - (h) state whether the investment manager receives commission, incentives, fee reductions or rebates from an unit trust scheme or a member of a licensed exchange for placing a client's funds with them;
 - (i) provide the client with the option to receive reports and statements in electronic or printed form;
 - (j) empower either party to the mandate to terminate the mandate after notice in writing of not more than 60 calendar days;
 - (k) state, where applicable, with which laws the client has to comply with;
 - (l) provide full particulars of non-traditional or complex investments, including cost structure and risk profile, which are presented to clients; and
 - (m) state whether the investment manager may vote on behalf of its clients in respect of their investments.
- (4) An investment manager must submit the initial mandate to the Registrar and the mandate so submitted becomes the specimen mandate of the investment manager, unless the Registrar objects in writing within 30 calendar days from the date of such submission, the investment manager may use the submitted specimen mandate.

(5) The Registrar may subsequent to his or her acceptance of a mandate in terms of subparagraph (4) instruct the investment manager to make specific amendments to the specimen mandate or that any other information be disclosed that is considered necessary in the interest of the client.

(6) An investment manager may not amend the specimen mandate in terms of subparagraph (5) without prior written notification to all affected clients and at least 60 calendar days prior written notification to the Registrar.

(7) If the mandate of an investment manager is terminated -

(a) the investment manager must at once return all cash, assets and documents of title to the client and must simultaneously provide the client with a detailed final statement of account; and

(b) if cash, assets and documents of title are in possession of a custodian or nominee company, the investment manager must at once issue an instruction to such custodian or nominee company to return such cash, assets or documents of title to the client.

(8) On the withdrawal by the Registrar of the approval of an investment manager, all mandates are, despite any notice period in terms of the mandate, automatically cancelled without prejudice to the rights and obligations of the parties.

(9) An investment manager approved in terms of section 4(1)(f) of the Act before the commencement date of these conditions must submit to the Registrar, a specimen mandate that conforms to these conditions on the commencement of these conditions.

(10) The Registrar may in writing make an objection to the mandate referred to in subparagraph 9, within 30 calendar days from the date of submission.

Reporting to clients

17. (1) An investment manager must provide a written report to a client which complies with subparagraph (2) -

(a) on request by the client; or

(b) at regular intervals which may not exceed three months at a time, unless the client consents in writing not to receive the report because such client is able to access the information made available by the investment manager through electronic means on a continuous basis.

(2) A report to a client in terms of subparagraph (1) must contain such information as is reasonably necessary to enable the client to -

(a) produce a set of financial statements;

(b) determine the composition of the assets comprising the investment and the changes therein over the period reported on; and

(c) determine the market value of the assets comprising the investment and the changes therein over the period reported on.

(3) Despite subparagraph (2), an investment manager must on request by a client, provide detailed information about the following matters:

- (a) original cost of investments held, as well as the current market value of the investments;
- (b) assets purchased or sold during the period;
- (c) cash receipts and payments during the period;
- (d) income earned and expenditure incurred during the period;
- (e) non-cash transactions during the period including, without limiting the generality of the foregoing, capitalization issues and scrip dividends and option expiries;
- (f) assets received or delivered to a client or custodian during the period;
- (g) profits and losses realized during the period; and
- (h) with regard to foreign investments -
 - (i) the conditions in terms of which the investment took place;
 - (ii) the manner in which such investment was made;
 - (iii) the countries in which the investment was made;
 - (iv) the specific exchange on which the investment is listed, if applicable;
 - (v) the country in which, in the case of unit trusts, the unit trust scheme is licensed or registered, if applicable;
 - (vi) the name and address of the foreign investment manager used, if applicable; and
 - (vii) a certified copy of the licence or a copy of the approval letter, authorisation, or registration of the foreign investment manager.

Professional indemnity and fidelity insurance

18. (1) An investment manager must maintain an indemnity insurance or fidelity insurance cover or both such insurances sufficient to cover the risk of losses due to fraud, dishonesty, negligence or any other dishonest acts or breaches of professional duty of its employees, directors or representatives.

(2) The nature and extent of the insurance contemplated in subparagraph (1) must be adequate and appropriate to the level and size of the business operations undertaken by the investment manager.

(3) If an investment manager forms part of a group of companies, the professional indemnity insurance or fidelity insurance cover may be obtained at group level, but -

- (a) each entity that is covered by the group policy must be clearly identified in the policy documentation;
- (b) the amount of cover must be sufficient to cover the amounts required for each individual entity's situation, and

- (c) each entity that is covered must have a certified copy of the policy documentation available for scrutiny by the Registrar should it be required.

(4) The minimum professional indemnity or fidelity insurance cover must be N\$1,000,000 (one million dollars) or any such amount as may be determined by way of written notice from time to time by the Registrar.

Nominee companies

19. (1) An investment manager may establish a nominee company with the sole object of being the registered holder and custodian of the investments of clients.

(2) The functions of the nominee company must be limited to its object as specified in subparagraph (1) and to such other functions as may be necessary to achieve the object.

(3) The memorandum and articles of association of a nominee company must preclude it from incurring any liabilities other than those to persons on whose behalf it holds assets and if any other liabilities are incurred in the name of the nominee company, the investment manager must meet them.

(4) The nominee company must enter into an irrevocable agreement with the investment manager in terms of which the investment manager must pay all expenses for and incidental to its formation, activities, management and liquidation, unless the memorandum and articles of association of the nominee company already provides for such an obligation.

PART 4 GENERAL PROVISIONS

Extensions of time and exemption

20. (1) If these conditions require an investment manager to do anything within a specific period of time, such period may on written request with reasons be extended by the Registrar on such conditions as the Registrar considers necessary.

(2) An investment manager may in writing request the Registrar to exempt it from complying with any of these conditions.

(3) The Registrar may grant an exemption in terms of subparagraph (2) for such a period and on such conditions as the Registrar may determine and if the Registrar is satisfied that -

- (a) the rendering of any investment management service by the applicant is already partially or wholly regulated by any other law; or
- (b) the application of the condition to the applicant will not cause the applicant or clients of the applicant financial or other hardship or prejudice; and
- (c) the granting of the exemption will not -
 - (i) conflict with the public interest;
 - (ii) prejudice the interests of clients; and
 - (iii) frustrate the achievement of the objects of these conditions.

Powers of the Registrar

21. The Registrar may -
- (a) draft codes of conduct for investment managers and portfolio managers relating to -
 - (i) the making of adequate disclosures of relevant material information;
 - (ii) disclosures of actual or potential own interests, in relation to dealings with clients;
 - (iii) adequate and appropriate record keeping;
 - (iv) avoidance of fraudulent and misleading advertising, canvassing and marketing;
 - (v) proper safe-keeping, separation and protection of funds and transactional documentation of clients;
 - (vi) where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover, and mechanisms for adjustments of such guarantees or cover by the Registrar in any particular case; and
 - (vii) any other matter which is necessary or expedient to be regulated in such code for the better achievement of the objects of these conditions;
 - (b) after consultation with the Minister and with representative bodies of the investment management industry regarding such draft codes of conduct, publish such codes in the *Gazette*; and
 - (c) inspect or instruct an inspector to conduct an inspection on an investment manager under the Act or the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984).

ANNEXURE A – 1**Report to the Registrar by the compliance officer of an investment manager in terms of Paragraph 12 of the Conditions determined under section 4(1)(f) of the Stock Exchanges Control Act 1985, (Act No. 1 of 1985) (“the Conditions”)****Scope**

In accordance with Paragraph 12 of the Conditions determined under section 4(1)(f) of the Stock Exchanges Control Act 1985, (Act No. 1 of 1985), I have reviewed the compliance of NAME OF INVESTMENT MANAGER) (“the investment manager”) with the Act and the Conditions.

Findings

My findings are reported below and are for the year ended

1. The investment manager had N\$ cash and N\$ assets (at market value) under its management at the reporting date.
2. Any change was / was not effected with regard to the owners, members or shareholders of the investment manager, without prior written approval of the Registrar.
3. Change in directors was effected / was not effected without prior written approval of the Registrar.
4. All mandates included in the sample inspected were / were not in writing or electronic format and comply / do not comply with Paragraph 16 and the specimen mandate approved by the Registrar. Where electronic mandates were entered into, appropriate controls and personal identification procedures were / were not put in place.
5. The investment manager had at the reporting date the following portfolio manager(s) who complied with / did not comply with the requirements of Paragraph 15(1) and 15(5).
6. The investment manager had at the reporting date appointed the following foreign based investment managers or members of foreign licensed exchanges who managed clients’ investments in foreign jurisdictions.
7. The investment manager duly maintained / did not maintain as contemplated in Paragraph 15(2) a record of portfolio manager.
8. Changes occurred in portfolio manager during the year under review which were / were not reported to the Registrar. The following changes in portfolio manager took place without the Registrar having been informed.
9. Assets not held in the names of the respective clients at the reporting date were held in the names of the following nominee companies:

OR

Assets were held in the names of the respective clients at the reporting date.

10. Claims were / were not made against the insurance held by the investment manager in accordance with Paragraph 18. Where claims were made, the detail thereof is as follows.

11. Meaningful records of complaints lodged against the investment manager were / were not maintained. A list of complaints unresolved for more than 4 months since the date of first notification to the investment manager is attached.
12. The investment manager maintained in force / did not maintain in force, professional indemnity and/ or fidelity insurance of at least N\$1,000,000 (one million dollars).
13. The investment manager is /is not un-rehabilitated insolvent or currently under liquidation or provisional liquidation.
14. The assets of the investment manager (excluding goodwill and any other intangible assets) at all times exceeded/did not exceed its liabilities (excluding loans validly subordinated in favour of creditors).
15. The investment manager maintained/did not maintain sufficient current assets to cover current liabilities at all times.
16. The investment manager maintained/did not maintain liquid assets equal to 13/52 weeks of annual expenditure at all times.
17. Details of non-compliance that has not been specifically identified in paragraphs 1 to 16 of this Annexure.

Summary:

The investment manager has conducted its business within the limitations imposed in terms of section 4 of the Stock Exchanges Control Act and the Conditions determined thereunder.

OR

Except for the aforementioned instances of non-compliance which have / have not subsequently been corrected, the investment manager has conducted its business within the limitations imposed in terms of those sections and Conditions.

Compliance Officer

Date

Address

ANNEXURE B -1**Report to the Registrar by the independent auditor of an investment manager in terms of Paragraph 12 of the Conditions determined under sections 4(1)(f) of the Stock Exchanges Control Act, (Act No. 1 of 1985) (“the Conditions”)****Section A****Scope**

In accordance with Paragraph 12 of the Conditions determined under section 4(1)(f) of the Stock Exchanges Control Act, 1985 (“the Act”), we have performed the procedures agreed with you and report below on the compliance by (NAME OF INVESTMENT MANAGER) (“the investment manager”) with the Act, the Regulations and the Conditions. Our engagement was undertaken in accordance with the Statement of Namibian Auditing Standards applicable to agreed upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the Registrar. Our procedures were performed solely to assist the Registrar in evaluating whether or not the investment manager has complied with the Act, the Regulations and the Conditions in respect of the matters referred to below and should be used only for that purpose.

Our procedures were as follows:

1. We requested the investment manager to provide us with the total market value of assets under management as at (current year end). We agreed this total market value to the investment manager’s client accounting records.
2. We obtained the investment manager’s shareholder register as at and reviewed this to establish whether any changes were effected, with regards to the shareholders of the investment manager as well as to establish whether prior written approval of the Registrar was sought in accordance with Paragraph 7(d).
3. We obtained the investment manager’s register of directors as at and reviewed this to establish whether changes were effected with regards to directors of the investment manager and whether prior written approval of the Registrar was sought in accordance with Paragraph 7(f).
4. We obtained a listing of all clients of the investment manager as at (current year end) and compared this with a listing obtained last year as at (previous year end) to identify new clients. In respect of these new clients during the year ended (current year end) we inspected a representative sample of their mandates to determine if these comply with Paragraph 16(3).
5. We requested the investment manager to provide us with a copy of its specimen mandate, which was submitted to the Registrar for his/her satisfaction in terms of Paragraph 16(4) together with confirmation that the Registrar granted his/her satisfaction to the mandate.
6. For the year under review, we requested the investment manager to provide us with its records of complaints lodged against it, to determine whether or not the records were maintained in accordance with Paragraph 8(r). We extracted a list of complaints unresolved for a period of more than 4 months since the date of first notification to the investment manager.
7. We obtained the record of portfolio manager that the investment manager is required to keep in accordance with Paragraph 15(2).
8. We extracted a representative sample of the names of portfolio manager from the record of portfolio manager. For each of the selected portfolio managers, we requested the investment manager to provide us with proof of their qualifications and experience as required by Paragraph 15(5).

9. We compared the record of portfolio manager as at (previous year end) with the record of portfolio manager at (current year end). We obtained proof from the investment manager that differences between the lists had been reported to the Registrar in accordance with Paragraph 15(2).
10. We obtained a list of foreign investment managers based outside the borders of the Republic of Namibia that managed funds on behalf of the investment managers' clients and are satisfied that they are regulated by a foreign regulator in accordance with Paragraph 15(9).
11. We requested the investment manager to provide us with the management accounts for the 4 months,, and (randomly chosen) of the year under review to determine whether or not the investment manager complied with Paragraph 13.
12. We obtained a copy of the contract of insurance maintained in terms of Paragraph 18.
13. For the year under review, we requested the investment manager to provide us with detail with regard to claims made against the insurance maintained by the investment manager in terms of Paragraph 18.

Our findings are reported below:

1. According to information provided to us by the investment manager it had N\$ assets at market value under management as at (current year end). We have not confirmed the existence or market values of these assets and accordingly do not provide any assurance on their existence and market value.
2. According to the information contained in the investment manager's shareholders' register as at, no changes in shareholders, were effected without prior written approval of the Registrar.
3. According to the information contained in the investment manager's register of directors as at, no changes in directors were effected without prior written approval of the Registrar.
4. The selected mandates were in writing and complied with Paragraph 16(3).
5. Approval of the specimen mandate submitted to the Registrar on (date) was received from the Registrar on (date). The selected mandates complied substantially with the specimen mandate.
6. Records of complaints lodged against the investment manager were maintained in accordance with Paragraph 8(r). A list of complaints unresolved for a period of more than 4 months since the date of first notification to the investment manager is attached:
7. The investment manager had at (current year end), according to the record of portfolio manager, the following portfolio manager:
8. Records of the qualifications and experience of selected portfolio manager were kept as required by Paragraph 15(2).
9. According to the record of portfolio manager, no changes occurred in portfolio manager during the year under review, which have not been reported to the Registrar.
10. A foreign regulator in accordance with Paragraph 15(9) regulated the foreign investment manager based outside the borders of the Republic of Namibia. As at (current

year end), the following foreign based investment manager managed foreign funds on behalf of the clients of the investment manager:

11. We confirm that for the 4 months,, and the investment manager complied with the requirements of Paragraph 13.
12. For the year under review, the investment manager maintained in force, a professional indemnity and/ or fidelity insurance contract of at least N\$1,000,000 (insert contract number and cover amount) with (name of insurer) and the premiums were fully paid.
13. For the year under review the following claims were made against the insurance maintained by the investment manager in terms of Paragraph 18.

Because the above procedures do not constitute either an audit or a review made in accordance with the International Auditing Standards, we do not express any assurance relating thereto.

Had we performed additional procedures or had we performed an audit or review in accordance with the International Auditing Standards, other matters might have come to our attention that would have been reported to you.

Our report is solely for the purpose set out in the first paragraph of this report and for your information and is not to be used for any other purpose, nor to be distributed to other parties. This report relates only to the matters specified above, and does not extend to any financial statements of the investment manager taken as a whole.

Section B

At the request of the Registrar, we have reviewed whether or not the investment manager has conducted its business within the limitations imposed in terms of section 4 of the Act and the Conditions determined thereunder for the year ended Conducting the business within the limitations imposed in terms of those sections and Conditions is the responsibility of the management of the investment manager. We report on such compliance. This report is furnished solely for the information of the Registrar.

Scope

We conducted our review in accordance with International Auditing Standards applicable to review engagements. This standard requires that we plan and perform the review to obtain moderate assurance with regard to the investment manager's compliance with the section 4 of the Act and the Conditions determined thereunder. Our review was limited to discussion with company personnel responsible for financial, accounting and compliance matters, to an analysis of certain information, and to questions put to the appointed contact person between the Registrar and the investment manager about compliance with those sections and Conditions. We also utilized the information obtained in Section A of this report. We have not performed an audit and, accordingly, we do not express an audit opinion.

Review opinion

Based on our review, nothing of significance has come to our attention that causes us to believe that the investment manager had not complied with the sections and Conditions in question.

REGISTERED ACCOUNTANTS AND AUDITORS
CHARTERED ACCOUNTANTS (CA) SA/(CA) (NAM)
DATE
ADDRESS

ANNEXURE C-1

APPLICATION FORM

APPLICATION FOR REGISTRATION AS AN INVESTMENT MANAGER

An application for registration as an Investment Manager in terms of the Section 4(1)(f) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) (“the Act”) must comply with the requirements and be accompanied by the information and documentation set out herein:

| | | | |
|----------------|--|-----------------|--|
| Public Company | | Private Company | |
|----------------|--|-----------------|--|

Please tick whichever is relevant

| |
|---------------------------------------|
| Section A. Company information |
|---------------------------------------|

1. General

- Full name of applicant
- Principal Office Address
- Postal Address
- Telephone Number
- Facsimile
- Website, if any
- E-mail address
- Financial year end of the company
- Company’s registration No
- Namibian Tax reference no
- Contact Person name and number

2. Financial Resources

We hereby confirm that the company has a start-up capital of N\$250 000 for employment in the business and will maintain liquid resources that cover 13 weeks of annual expenditure at all times.

| | Paid-up share capital | Proof |
|------------------|------------------------------|---------------|
| | | Yes/No |
| Start-up capital | N\$250 000 | |

3. Auditor

- Full name of Auditor
- Contact Person
- Postal Address
- Physical Address
- Telephone No
- Facsimile

4. Directors

<Provide details of each director, using a separate sheet as attachment where applicable>

- Full name of director
- Identification No
- Nationality
- Postal address
- Telephone No
- Email address

5. Shareholders

<Provide details of each shareholder, using a separate sheet as attachment where applicable; if it is a company, provide contact person's details>

- Full name of shareholder
- Identification/Company registration No
- Nationality/ Country of Incorporation
- Postal address
- Telephone No
- Email address of shareholder or contact person

6. Chief Executive Officer

- Full name
- Identification No
- Nationality
- Postal address

- Telephone No
- Email address

7. Portfolio Manager

- Full name
- Identification No
- Nationality
- (If not Namibian, provide letter stating the exceptional circumstance)
- Postal address
- Telephone No
- Email address

8. Bank Details

- Name of Bank
- Branch Name
- Account No

<Proof of bank account to be attached>

9. Custodian Details

- Name of Custodian

SECTION B: (Honesty and Integrity) (Legal Persons – Applicant Company)

If the answer to any of the questions is yes, provide full details on a separate page and attach certified documents to the form:

| | | YES | NO |
|---|--|-----|----|
| 1 | Has an adverse finding been made against the company within a period of ten years preceding the date of application in any civil or criminal proceedings by a court of law (whether in Namibia or elsewhere)? | | |
| 2 | Has the company, within a period of ten years preceding the date of application, been found guilty by any professional or financial services industry body (whether in Namibia or elsewhere), of an act of dishonesty, negligence, incompetence or mismanagement? | | |
| 3 | Has the company, within a period of ten years preceding the date of application, been denied membership of anybody referred to in question 2 above on account of an act of dishonesty, negligence, incompetence or mismanagement? | | |
| 4 | Has the company, within a period of ten years preceding the date of application, been found guilty by any regulatory or supervisory body (whether in Namibia or elsewhere) or has an authorization to carry on business been refused, suspended or withdrawn by any such body on account of an act of dishonesty, negligence, incompetence or mismanagement? | | |

| | | | |
|---|---|--|--|
| 5 | Has the company been the subject of any investigation or disciplinary proceedings by any regulatory authority (whether in Namibia, or elsewhere) or exchange, professional body or government body or agency? | | |
| 6 | Has the company ever been refused authorization to carry on business by any regulatory body (whether in Namibia or elsewhere), or has such authorization ever been suspended or revoked by any such body, because of negligence, incompetence or mismanagement? | | |
| 7 | Has the company ever been placed under judicial management, insolvency processes or any other processes of a similar nature? | | |
| 8 | Has the company ever been found to be liable under the Financial Intelligence Act, 2012, (Act No. 13 of 2012), and/or the Prevention of Organized Crime Act, 2004 (Act No. 29 of 2004) and/or the Combating of Financing of Terrorist Act, 2012 (Act No. 12 of 2012) and/or any other similar crime in any country? | | |
| 9 | Do you have any additional information, which should be brought to the Registrar's attention, which may have an impact on the evaluation, by the Registrar of your good character and integrity? | | |

SECTION C: Operational Ability, AML Requirements and Duties

| 1. | Operational ability | YES | NO |
|-----------|--|------------|-----------|
| (a) | Do your compliance arrangements specify how often compliance with procedures are monitored and reported? | | |
| (b) | Do you have a documented process to ensure the maintenance of the adequacy of your compliance and monitoring arrangements? | | |
| (c) | Do you have documented processes to ensure that records for training programs attended are kept, including continued education training for your key responsible person? | | |
| (d) | Do you have documented processes for the supervision and monitoring of your representatives to ensure they comply with laid down policies and procedures? | | |
| (e) | Do you have adequate access to communication facilities including at least, a full-time telephone or cell phone service, typing and document duplication facilities? | | |
| (f) | Do you have adequate storage and filing systems for the safekeeping of records, business communications and correspondence? | | |
| (g) | Will any substantial activities of the entity be outsourced? | | |
| (h) | Do you have written service level agreements in place for outsourced activities? | | |
| (i) | Do you have a process in place to ensure that providers selected for any outsourced functions are suitable? | | |
| (j) | To whom will you be outsourcing these activities? Independent party Related party Both | | |
| (k) | What is the name of the entity to whom you intend outsourcing? | | |
| (l) | What function(s) will be outsourced? | | |
| 2. | Internal controls structure, procedures and controls | | |
| (a) | Do you have internal controls structure, procedures and controls in place which include the following? | YES | NO |
| (i) | segregation of duties, roles and responsibilities where such segregation is appropriate from an operational risk mitigation perspective; | | |

| | | | |
|--------|--|--|--|
| (ii) | access rights and data security on electronic data, where applicable; | | |
| (iii) | physical security of the providers' assets and records, where applicable; | | |
| (iv) | documentation relating to business processes, policies and controls, and technical requirements; | | |
| (v) | system application testing, where applicable; | | |
| (vi) | disaster recovery and back-up procedures on electronic data, where applicable; | | |
| (ii) | training for all staff regarding the requirements of the Conditions; | | |
| (viii) | a business continuity plan; | | |
| (b) | Compliance with the Financial Intelligence Act, 2012 (Act No. 13 of 2012), and other anti-money laundering legislation. | | |
| (i) | Do you have written internal rules in place (Know Your Customer, Customer Due Diligence, Reporting of suspicious transactions) as required by the Financial Intelligence Act, 2012 (Act No. 13 of 2012)? | | |
| (ii) | Do you have processes in place to ensure that employees receive training in respect of and are aware of their obligation to report suspicious transactions? | | |
| (iii) | Do you have anti-money laundering control policies, procedures and systems in place? | | |
| (iv) | Do you have processes to incorporate any additional requirements as may be required under the Financial Intelligence Act, 2012 (Act No.13 of 2012), and/or any other anti-money laundering legislation? | | |
| (v) | Do you have process in place to train staff in relation to anti-money laundering legislation? | | |

3. Duties

1.1 In addition, we will:

- (a) Comply with the provisions of the Conditions and the Act;
- (b) Comply with the provisions of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);
- (c) Pay levies; and
- (d) Submit returns as required by the Registrar.

SECTION D: (Honesty and Integrity) (Key Responsible Person)

To be completed by all Key Responsible Persons ("KRP") (Print and complete for each KRP as applicable)

| | Name of KRP: | | |
|---|--|------------|-----------|
| | Capacity of KRP: | | |
| | | YES | NO |
| 1 | Has an adverse finding been made against you within a period of ten years preceding the date of application in any civil or criminal proceedings by a court of law (whether in Namibia or elsewhere), in which you were found to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty? | | |
| 2 | Have you within a period of ten years preceding the date of application been found guilty by any professional or financial services industry body (whether in Namibia or elsewhere), of an act of dishonesty, negligence, incompetence or mismanagement? | | |
| 3 | Have you within a period of ten years preceding the date of application been denied membership of anybody referred to in question 2 above on account of an act of dishonesty negligence, incompetence or mismanagement? | | |

| | | | |
|----|---|--|--|
| 4 | Have you within a period of ten years preceding the date of application been found guilty by any regulatory or supervisory body (whether in Namibia or elsewhere) or has an authorization to carry on business been refused, suspended or withdrawn by any such body on account of an act of dishonesty, negligence, incompetence or mismanagement? | | |
| 5 | Have you at any time prior to the date of application been disqualified or prohibited by any court of law (whether in Namibia or elsewhere) from taking part in the management of any company or other statutorily created, recognized or regulated body, irrespective whether such disqualification has since been lifted or not? | | |
| 6 | Have you been the subject of any investigation or disciplinary proceedings by any regulatory authority (whether in Namibia, or elsewhere) or exchange, professional body or government body or agency? | | |
| 7 | Have you ever been refused authorization to carry on business by any regulatory body (whether in Namibia or elsewhere), or has such authorization ever been suspended or revoked by any such body, because of negligence, incompetence or mismanagement? | | |
| 8 | Have you at any time prior to the date of application been disqualified or prohibited by any court of law (whether in Namibia or elsewhere) from taking part in the management of any company or other statutorily created, recognized or regulated body, irrespective whether such disqualification has since been lifted or not? | | |
| 9 | Are you subject to an order of a competent court holding you to be mentally unfit or disordered? | | |
| 10 | Have you within a period of ten years preceding the date of application been removed from office on account of misconduct relating to fraud or the misappropriation of money, whether in the Republic or elsewhere? | | |
| 11 | Have you within a period of ten years preceding the date of application been a director or member of a governing body of an entity at the time that such entity has been de-registered in terms of public regulation? | | |
| 12 | Have you within a period of ten years preceding the date of application received a grant of amnesty or free pardon for any offence? | | |
| 13 | Has your estate ever been sequestrated? | | |
| 14 | Have you ever been convicted of an offence or found to be liable under the Financial Intelligence Act, 2012 (Act No.13 of 2012 (FIA), and/or the Prevention of Organized Crime Act, 2004 (Act No. 29 of 2004 and/or the Combating of Financing of Terrorist Act, 2012 (Act No. 12 of 2012) and/or any other similar crime in any country? | | |
| 15 | Do you have any additional information, which should be brought to the Registrar's attention, which may have an impact on the evaluation by the Registrar of your good character and integrity? | | |

Key Responsible Person Declaration

I, _____ (full names) hereby declare the following:

This statement consists of _____ pages, each initialled by me. The content of this statement is true and correct to the best of my knowledge and belief.

I undertake that, as long as I continue to be _____ of the investment manager, I will notify the Registrar of any material changes to, or affecting the completeness or accuracy of, the information supplied to the Registrar in this statement as soon as possible, but in any event no later than 30 days from the day that the changes come to my attention.

I know and understand the content of this declaration. I do not have objections to taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.

SIGNATURE OF DEPONENT

I hereby declare that the deponent has sworn to and signed this statement in my presence at _____ on the ____ day of _____ 20____ and he/she declared as follows: that the facts herein contained fall within his/her personal knowledge and that he/she understands the contents hereof; that he/she has no objection to taking the oath; that he/she regards the oath as binding on her conscience.

COMMISSIONER OF OATHS

FULL NAMES _____

CAPACITY _____

ADDRESS _____

Note: The Registrar may call upon the applicant to furnish him/her with further information relevant to the application. The registrar is not obliged to consider incomplete applications.

Applicant's Declaration

We: _____
(Name of company applying for the registration as an Investment Manager)

- **Declare** that all the information provided in this application (including all attachments) is complete, true and correct.
- **Read and understood** the provisions in the Conditions and hereby declare that we will comply with these provisions and any other provisions as may be determined by the Registrar.
- **Understand** that if any information in this application changes before this application is approved, we must notify the Authority in writing immediately of the changes.

(To be signed by either two directors or the Chief Executive Officer and a director of the entity applying as an Investment Manager.)

.....
Full Name

.....
Signature

.....
Date

.....
Full Name

.....
Signature

.....
Date

Commissioner of Oath

.....
Signature

.....
Date and Stamp

ANNEXURE D-1

A person appointed as a portfolio manager shall possess as a minimum, one or more of the qualifications and the corresponding experience set out in the table below or as amended by way of written notice by the Registrar from time to time.

| QUALIFICATION | EXPERIENCE |
|---|---|
| A business degree (Finance, Commerce, Accounting, Economics or related business qualification) from an accredited university | 3 years Industry related experience at middle management. |
| Matric with Commercial or Business related subjects (mathematics, economics, accounting and computer science or any other business subject) | 10 years Industry related experience. |
| Chartered Financial Analyst | 1 year Industry related experience. |
| Other qualifications to be evaluated by the Registrar on a case by case basis | Determined by Registrar on a case by case basis |

ANNEXURE E-1**Fit and Proper Requirements**

Persons appointed in key positions by an investment manager must comply with the following requirements:

1. Members of the board and senior management of investment managers must provide strategic leadership that influences the financial position and future direction of the investment manager and as such persons in these positions must have the necessary qualities, competencies and experience that will allow them to perform the duties and carry out the responsibilities required of the position in the most effective manner.
2. The expectations on the suitability of persons in key positions are an extension of the corporate governance framework and are also aimed at ensuring that the financial institution is led by persons of integrity, credibility and competency.
3. The requirements for fit and proper in relation to key responsible persons set out the obligations of the investment manager to assess and determine the fitness and propriety of key responsible persons.
4. The requirements contemplated in Paragraph 3 of this Annexure, further define -
 - (a) the minimum fit and proper criteria applicable to key responsible persons; and
 - (b) the responsibilities of the investment manager to adopt and ensure effective implementation and compliance to the fit and proper requirements.
5. The fit and proper policies of the investment manager must also provide for any person within the investment manager to disclose information to the board that may be relevant for a fit and proper assessment and afford protection to such persons against any discriminatory actions by the investment manager for providing the information.
6. Investment managers must take all reasonable steps to ensure that each key responsible person to be appointed or already appointed to assume key functions is aware of, and understands, the investment manager's fit and proper policy and their obligation to continue to meet the fit and proper requirements on an on-going basis.
7. The board is primarily responsible for ensuring that all key responsible persons fulfil fit and proper requirements and for conducting assessments of the fitness and propriety of directors, members of board committee and the chief executive officer.
8. For key responsible persons, other than those specified under paragraph 7 of this Annexure, decisions on appointments and assessments of fit and proper may be made by the chief executive officer or a designated committee under the delegated authority of the board.
9. The assessment procedure contemplated in paragraphs 7 and 8 of this Annexure must be clearly provided for in the investment manager's policies and procedures with appropriate reporting by the chief executive officer or the designated committee to the Board.
10. The Registrar expects that the fit and proper assessments on each key responsible person be conducted both prior to initial appointments and at regular intervals, at least annually or whenever the board becomes aware of information that may materially compromise a key responsible person's fitness and propriety to ensure that the key responsible persons fulfil the fit and proper criteria at all times.

11. The board is also expected to review the list of key responsible persons for the investment manager and be satisfied that the list is comprehensive and has taken into account all key positions within the investment manager.
12. The fit and proper assessments must be supported by relevant information in relation to a key responsible person.
13. Where significant reliance is placed on information that is obtained from the person being assessed and that information is material to the determination of the person's fitness and propriety, the board is expected to take reasonable steps within permissible written laws to verify the information against independent sources.
14. The investment manager must retain, documentation of fit and proper assessments for each key responsible person, for a reasonable period and the period must be specified in the investment manager's fit and proper policy.
15. The investment managers must safeguard the confidentiality of information collected and assessments made as contemplated in this paragraph.
16. To support the supervisory assessment process to determine the rigour and effectiveness of the fit and proper assessment policies and procedures within an investment manager, the following information must be made readily available for inspection by the Registrar on request -
 - (a) investment manager's internal fit and proper policies and procedures;
 - (b) list of key responsible persons within the investment manager; and
 - (c) documentation of fit and proper assessment for each key responsible person.
 - (d) where the board has assessed that a person -
 - (i) is not fit and proper for a position, the board may not appoint the person to the said position; and
 - (ii) is no longer fit and proper for a position, board must take reasonable steps to remove the person from such position as soon as practicable and in the interim, institute necessary measures to mitigate risks associated with the person continuing to hold the position and under these circumstances, the board must notify the Registrar immediately of such a fact.
17. The Registrar exercises judgment and discretion in assessing fitness and propriety of investment managers' key responsible person and will take into account all relevant matters including, but not limited to the -
 - (a) education and experience;
 - (b) competence and operational ability;
 - (c) honesty and integrity; and
 - (d) financial soundness,

to ensure that a key responsible person who is not fit and proper may not directly or indirectly manage or control an investment management company.

18. Subject to an evaluation of the particular circumstances, the Registrar determines whether a key responsible person meets the standard of fit and proper with reference to the following criteria:
 - (a) a person is fit and proper if that person has met the required educational and experience requirements; and
 - (b) competence and operational ability are demonstrated by a person who possesses the relevant competence, experience and ability to understand the technical requirements of the business, the inherent risks and the management process required to perform his role as a key responsible person in the relevant capacity effectively.
19. In assessing a person's competence and capability, the board must consider matters including, but not limited to the following:
 - (a) whether the person has the appropriate qualification, training, skills, practical experience and commitment to effectively fulfil the role and responsibilities of the position and in the case of directors, having regard to their other commitments; and
 - (b) whether the person has satisfactory past performance or expertise in the nature of the business being conducted.
20. A person is fit and proper, if that person -
 - (a) is not disqualified from being a director of a company in terms of section 225 and section 226 of the Companies Act, 2004 (Act No. 28 of 2004);
 - (b) has not breached a fiduciary obligation;
 - (c) has not perpetrated or participated in grossly negligent, deceitful, or otherwise discreditable business or professional practices;
 - (d) has not been reprimanded, disqualified or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
 - (e) has not been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behaviour in that management;
 - (f) is not of bad repute in any business or financial community or any market;
 - (g) was not the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person, including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct, and which reflected adversely on the person's competence, diligence, judgment, honesty or integrity; and
 - (h) has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.
21. Financial soundness is assessed on the following:

- (a) whether there are any indicators that the person will not be able to meet his/her debts as they fall due;
 - (b) whether relevant solvency requirements are met;
 - (c) whether the person has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
 - (d) whether the person has been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
 - (e) whether the person has made arrangements with creditors, filed for sequestration or liquidation or been adjudged bankrupt or had assets sequestered; and
 - (f) whether the person has been able to provide the Registrar with a satisfactory credit reference.
22. A key responsible person must demonstrate that he or she meets the fit and proper requirements on authorisation and on an on-going basis.
23. Failure by a key responsible person to meet any one of the criteria set out in paragraphs 18, 19, 20 and 21 does not need necessarily lead to an automatic refusal of an application, revocation of an authorisation, revocation of an exemption or other regulatory action by the Registrar.
24. The significance and relevance of a specified person failing to satisfy the Registrar that he or she meets a specific criterion depends on -
- (a) the seriousness of, and surrounding circumstances resulting in, the specified person not meeting the specific criteria;
 - (b) the relevance of the failure by the specified person to meet the specific criteria to the duties that are, or are to be, performed and the responsibilities that are, or are to be, assumed by the specified person; and
 - (c) the passage of time since the failure by the specified person to meet the specific criteria.
25. An investment manager must have a documented policy relating to fitness and propriety and such policy must be approved by the board of directors.
26. A management company must take all reasonable steps to ensure all relevant specified persons are aware of and understand the provisions of its fit and proper policy.
27. The fit and proper policy must form part of the investment manager's risk management framework.
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