



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS SURVIVING IN TERMS OF

Unit Trusts Control Act 54 of 1981
section 46(2)

**Regulations under the Unit Trusts Control Act, 1947,
as amended**

Government Notice R.1378 of 1963

[\(RSA GG 595\)](#)

came into force on date of publication: 6 September 1963

These regulations were initially made in terms of section 40 of the Unit Trusts Control Act 18 of 1947 (SA), which was repealed by the Unit Trusts Control Act 54 of 1981 (RSA).

Pursuant to section 46(2) of the Unit Trusts Control Act 54 of 1981 (RSA), they are deemed to have made in terms of that Act.

The Government Notice containing these regulations repeals the previous regulations issued under the Unit Trusts Control Act 18 of 1947 (SA) in SA Government Notice No. 2697 dated 24 December 1947.

ARRANGEMENT OF REGULATIONS

[The individual regulations have no headings, but are grouped under part headings.]

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1. In these regulations, unless the context otherwise indicates -
 - (a) all expressions shall have the same meanings as in the Act;
 - (b) “the Act” means the Unit Trusts Control Act, 1947, as amended;
 - (c) “section” means a section of the Act; and
 - (d) any regulations made under or for the purposes of any provision of the Act which is by section *thirty-five* applied to and in respect of a management company in property shares and a trustee under a unit trust scheme in property shares, shall likewise apply to such a management company and trustee.

APPEALS TO THE MINISTER UNDER SECTION *two*.

2. Any person who desires to appeal to the Minister, as provided in section *two*, against any decision of the Registrar shall within one month after the pronouncement of the decision at issue, lodge a written notice of appeal with the Registrar, which shall clearly set out the decision it is desired to appeal against and the grounds for the appeal.

3. Upon receipt of the notice of appeal mentioned in regulation 2 the Registrar shall prepare a statement of the reasons for his decision. The Registrar shall despatch a copy of the statement to the appellant by registered post, and require the appellant to declare, in writing, within 30 days of the despatch of the statement, or within such further period as the Registrar may, upon application before the expiry of the said 30 days, approve, whether he proposes to continue with his appeal or not.

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4. If the appellant declares that he does not propose to continue with his appeal or if he does not furnish the Registrar with a reply within the period prescribed in regulation 3, the appeal shall lapse.

5. If the appellant declares, within the period prescribed in regulation 3, his intention to continue with his appeal, he shall, together with his declaration, lodge with the Registrar a reply to the statement mentioned in regulation 3.

6. Upon receipt of the appellant's declaration and reply the Registrar shall as soon as may be transmit to the Minister -

- (a) the notice of appeal mentioned in regulation 2;
- (b) the statement prepared by him and mentioned in regulation 3;
- (c) the declaration and reply mentioned in regulation 5; and
- (d) all other relevant documents.

7. The Minister may require the appellant or the Registrar to furnish him, in writing, with any further or other information which he may consider necessary for a just decision on the appeal.

8. Upon receipt of the Minister's notification of his decision on the appeal the Registrar shall immediately communicate that decision to the appellant by registered post.

APPEALS TO THE SUPREME COURT UNDER SECTION *seven*.

9. If a management company desires to appeal under sub-section (3) of section *seven* of the Act to the Supreme Court against the Minister's decision, it shall not later than one month after such decision has been communicated to its secretary or other representative, lodge with the Registrar of the Provincial or Local Division of the Supreme Court having jurisdiction in the place where the head office of the management company is situated, written notice of appeal and shall at the same time lodge with the Minister and the Registrar of Unit Trust Companies true copies of such notice.

10. Such notice shall set out concisely the substance of the Minister's decision which is appealed against, the reasons why the appellant contends that such decision should be set aside or varied and to what extent or in what way the appellant claims such decision should be varied.

11. The appellant shall, on lodging notice of appeal, give security for an amount which will in the opinion of the Registrar of the Court sufficient to satisfy such order in respect of costs as the Court may make.

12. Within one month after receipt by him of the copy of the notice referred to in regulations 9 and 10 the Registrar of Unit Trust Companies shall furnish to the Registrar of the Supreme Court Concerned a report setting out the relevant facts and circumstances as known to him and including a statement of his views on the question at issue.

[The word "concerned" is erroneously capitalised in the *Government Gazette*, as reproduced above.]

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PARTICULARS OF CAPITAL RESERVE MAINTAINED BY THE MANAGEMENT COMPANY
TO WHICH SECTION *forty-two* OF ACT NO. 11 OF 1962 APPLIES.

[The Unit Trusts Control Amendment Act 11 of 1962 (RSA GG 197) amends the Unit Trusts Control Act 18 of 1947, which has now been replaced by the Unit Trusts Control Act 54 of 1981.

Section 42 of Act 11 of 1962 is an independent provision which reads as follows:

Exclusion of certain existing management companies from certain provisions of Act

42. Notwithstanding anything to the contrary contained in this Act, a registered management company which was managing a unit trust scheme in securities other than property shares immediately before the commencement of this Act may continue to manage such scheme in accordance with the trust deed existing at such commencement in all respects as if the provisions of this Act [Act 11 of 1962], except section *twenty-four* [which amended section 26 of Act 18 of 1947], had not been enacted: Provided that no further units shall be created for sale under such scheme.]

13. Every management company to which section *forty-two* of Act No. 11 of 1962 applies shall within two months (or such longer period as the Registrar may, on application by the company, allow) after the close of each accounting year of the company, furnish to the Registrar a certificate by the company's auditors showing the following particulars in respect of the company as at the close of each such accounting year:-

- (a) The amount of its paid-up share capital;
- (b) the amount of its capital reserve;

and in cases where the total of the amounts referred to in (a) and (b) above is less than five hundred thousand rand -

- (c) the total values, respectively, of unit certificates issued by it and in the hands of holders, valued at the original selling price thereof, under -
 - (i) any unit trust scheme the duration whereof is limited to ten years or less or in respect of which the management company's collection charge amounts to three *per centum* or more of the yield distributed to holders of unit certificates; and
 - (ii) any other unit trust scheme.

CALCULATION OF MANAGEMENT COMPANY'S CAPITAL RESOURCES
FOR PURPOSES OF SECTIONS *three* AND *ten*.

14. For the purposes of paragraph (b) of sub-section (2) of section *three* and paragraphs (a) and (b) of sub-section (1) of section *ten* the management company's capital resources shall be calculated, in so far as its funds are invested in the unit trust scheme managed by it, on the basis of the made-up price of units.

INFORMATION TO BE FURNISHED BY MANAGEMENT COMPANY
IN TERMS OF SECTION *ten* (1).

15. The particulars concerning the management company's income to be furnished in terms of paragraph (g) of sub-section (1) of section *ten* shall distinguish between the gross profit derived from an appreciation in value of units disposed of by the management company and the gross profit derived from the buying and selling of units for the management company's own account (jobbing).

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16. The review of fluctuations in the selling and repurchase prices of units prescribed by paragraph (h) of subsection (1) of section *ten* may be in general terms but must mention specifically the highest and the lowest selling prices and the highest and the lowest repurchase prices during the period in question.

PAPERS TO BE LODGED WITH THE REGISTRAR IN TERMS OF SECTION *ten* (4).

17. (1) Every management company shall before the proposed date of publication thereof lodge with the Registrar two copies of every advertisement, brochure or pamphlet proposed to be published by the Company or any of its authorised agents and of every proposed addition to or variation of any advertisement, brochure, or pamphlet published by them.

(2) All such copies shall bear or be accompanied by a covering certificate, signed on behalf of the directors of the company by a director or other responsible officer authorized thereto by the directors, that the matter which it is proposed to publish complies with the requirements of section *eleven* or, in cases where the provisions of subsections (1) and (2) of section *thirty-four* apply, with the requirements of those provisions and of sub-sections (1), (2) and (3) of section *eleven*.

(3) No management company shall publish any advertisement, brochure or pamphlet lodged with the Registrar in terms of sub-regulation (1) unless it has received notification from the Registrar that he approves of the terms thereof.

(4) Sub-regulations (1), (2) and (3) shall not apply to any publication in respect of which the Registrar has exempted the company under the proviso to sub-section (4) of section *ten*.

18. Every management company shall, not later than fourteen days after the date of first publication thereof, lodge with the Registrar two specimens, as published, of every advertisement, brochure and pamphlet in respect of which the Registrar has exempted the company from the obligation to lodge copies with him prior to publication thereof.

19. The copy of the return or notice referred to in paragraph (b) of sub-section (4) of section *ten*, shall be lodged with the Registrar by the management company within the period referred to in sub-section (7) of section *seventy* of the Companies Act, 1926 (Act No. 46 of 1926).

**[The Companies Act 46 of 1926 was repealed by the Companies Act 61 of 1973,
which has been replaced by the Companies Act 28 of 2004.]**

ROUNDING-OFF OF DIVIDEND PAYMENTS IN TERMS OF SECTION *nineteen* (2).

20. No management company shall round off, in terms of sub-section (2) of section *nineteen*, any amount to be paid by way of dividends in such a manner that the amount of dividend for distribution will include any part of the underlying securities included in the unit portfolio concerned or of the proceeds of capital gains, rights or bonus issues.

CALCULATION OF SELLING AND REPURCHASE PRICES OF
UNITS AS REQUIRED BY SECTION *twenty-two*.

21. For the purpose of prescribing the manner in which the selling price and the repurchase price of units are to be calculated, as required by paragraphs (b) and (c) of sub-section (2) of section *twenty-two*, the trust deed may determine that the lowest dealing offered prices and

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the highest dealing bid prices, respectively, on a recognised Stock Exchange may be used in the respective calculations.

STATEMENTS TO BE FURNISHED BY A MANAGEMENT COMPANY IN PROPERTY
 SHARES UNDER SECTIONS *thirty-one* (1) AND *thirty-two* (1).

22. The statements which a registered management company in property shares is required to furnish to the Registrar in accordance with the provisions of sub-section (1) of section *thirty-one* and sub-section (1) of section *thirty-two* shall be signed on behalf of the directors of the company by a director or other responsible officer authorised thereto by the directors.

DETAILS UNDER SECTION *thirty-four* (2) TO BE BROUGHT UP IN ITS ACCOUNTS
 BY A MANAGEMENT COMPANY IN PROPERTY SHARES.

23. Every management company in property shares shall bring up in its accounts the details referred to in subsection (2) of section *thirty-four*.

DOCUMENTS AND PARTICULARS TO BE FURNISHED BY THE MANAGERS OF PARTICIPATION
 MORTGAGE SCHEMES WHEN APPLYING FOR EXEMPTION IN TERMS OF SECTION *thirty-six*.

24. Every application made in terms of paragraph (b) of sub-section (3) of section *thirty-six* for the exemption from the provisions of the Act of an existing or proposed participation mortgage scheme shall be made by or on behalf of the person managing, or who will manage, such scheme and shall be accompanied by the following documents:-

- (a) A description of the manner in which the scheme is operated or proposed to be operated;
- (b) two copies of the rules of the scheme or every other document (fully completed as to terms and conditions) which constitutes the scheme;
- (c) two copies of the notification of participation (fully completed as to terms and conditions) issued to participants in mortgages;
- (d) if a nominee company is operated in conjunction with the scheme, two copies of the Memorandum and Articles of Association of such nominee company; and
- (e) two copies of every fidelity insurance policy maintained for the purposes of the scheme or two copies of a memorandum furnishing particulars of any other fidelity provision maintained for the purposes of the scheme.

PENALTY FOR LATE RENDITION OF ACCOUNTS, ETC.

25. Any person who has failed to make a return or to transmit or deposit with the Registrar any balance-sheet, account, statement, report or other document within the time prescribed by the Act or within any extended period allowed by the Registrar in terms of sub-section (3)*bis* of section *forty*, may, without derogation from the provisions of section *forty-two* of the Act, thereafter be permitted by the Registrar to furnish such return or to transmit or deposit such balance sheet, account, statement, report or other document on payment of a penalty as determined by the Registrar, which penalty shall not exceed R10 for every day during which such person has remained in default, nor in the aggregate the amount of two hundred rand provided for in sub-section (3) of section *forty*.