

CIRCULAR : PF/CIR/01/2021

TO : THE PRINCIPAL OFFICERS AND TRUSTEES OF ALL REGISTERED PENSION FUND ORGANIZATIONS

EFFECTIVE DATE : 16 FEBRUARY 2021

SUBJECT : RETROSPECTIVE EFFECTIVE DATE OF RULES IN RESPECT OF PROSPECTIVE PARTICIPATING EMPLOYERS UNDER UMBRELLA FUNDS

1. INTRODUCTION

- 1.1. This Circular is issued by virtue of the functions and powers of the Namibia Financial Institutions Supervisory Authority and those of its Chief Executive Officer, in his capacity as the Registrar of Pension Funds in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956) ("the Act"), read with the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001), and is applicable to all registered pension fund organizations ("Funds") under the Act.
- 1.2. The purpose of this Circular is to provide the Registrar's position in respect of the practice whereby umbrella funds collect purported pension contributions and provide pension benefits to employees of a prospective employer ("participating employer"), prior to the registration of rules which set out the requirements for admission, the circumstances under which membership ceases, the conditions under which a member or other person may become entitled to a benefit and the nature and extent of such benefit in respect of participating employer in the umbrella fund.

2. CURRENT PRACTICE

The Registrar has observed the practice whereby umbrella funds admit, into fund membership, employees of a prospective (participating) employer, collect purported pension contributions from such employees and consequently, provide pension benefits prior to approval and registration of the rules in respect of a participating employer in terms of the Act.

3. THE LAW

3.1. Section 13 of the Act provides that:

"Subject to the provisions of this Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming."

3.2. Section 11 of the Act provides that the rules of a Fund shall contain provisions with regards to, among other things, the requirements for admission to membership and the circumstances under which membership is to cease; and the conditions under which any member or other person may become entitled to any benefit and the nature and extent of any such benefit.

3.3. Section 12 of the Act stipulates:

"(1) A registered fund may, in the manner directed by its rules, alter or rescind any rule or make any additional rule, but no such alteration, rescission or addition, shall be valid –

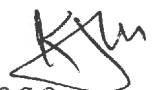
- (a) ...*
- (b) unless it has been approved by the registrar and registered as provided in sub-section (4)*
- (2) ...*
- (3) ...*



(4) *If the registrar finds that any such alteration, rescission or addition is not inconsistent with this Act, and is satisfied that it is financially sound, he shall register the alteration, rescission or addition and return a copy of the resolution to the principal officer with the date of registration endorsed thereon, and such alteration, rescission or addition, as the case may be, shall take effect as from the date determined by the fund concerned or, if no date has been so determined, as from the said date of registration.”*

4. THE REGISTRAR’S POSITION

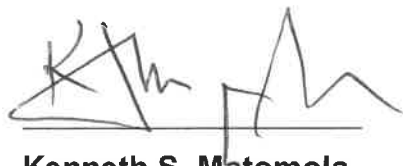
- 4.1. Fund rules are the constitution of the Fund therefore the conduct of the Fund must be authorized by the fund rules. Conduct of the Fund that is outside the fund rules has no legal effect or force.
- 4.2. The rules of the Fund set out the eligibility criteria for fund membership, that is, the rules define who may and who may not belong to the Fund. Accordingly, only persons who satisfy the eligibility requirements stipulated in the fund rules may be admitted to fund membership.
- 4.3. The enrolment or admission of employees of a prospective participating employer into fund membership by an umbrella fund necessitates the addition of requirements for admission, the circumstances under which membership ceases, the conditions under which a member or other person may become entitled to a benefit and the nature and extent of such benefit to the rules of the umbrella fund.
- 4.4. Rule amendments in respect of a participating employer under an umbrella fund have no binding effect before approval and registration under section 12 of the Act.
- 4.5. Therefore, the practice of collecting purported pension contributions from and providing pension benefits to employees of a prospective participating employer prior to the approval and registration of applicable rules under an umbrella fund is unlawful. Umbrella funds may admit into fund membership,



collect pension contributions and provide the attendant pension benefits only after the approval and registration of applicable rules. Accordingly, umbrella funds must desist from the above practice.

The Registrar therefore requires full cooperation and support in this process by all Funds and stakeholders at large.

Should you require more clarity on this Circular, kindly contact the Manager of the Pension Funds and Friendly Societies at telephone number 061-290 5000.

A handwritten signature in black ink, appearing to be 'K. Matomola', written over a horizontal line.

Kenneth S. Matomola

Registrar of Pension Funds