

13 May 2020

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

CIRCULAR NO: PF/CIR/02/2020

EFFECTIVE DATE: 13 MAY 2020

**SUBJECT: MASTER RULES AMENDMENT EMPOWERING
TRUSTEES TO PERMIT TEMPORARY CONTRIBUTION
REDUCTIONS OR SUSPENSIONS**

1. INTRODUCTION

- 1.1. This Circular is issued by virtue of the Namibia Financial Institutions Supervisory Authority's ("the Authority") functions and powers, 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 Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001), and is applicable to all registered pension fund organizations under the Act.
- 1.2. This Circular provides the Authority's position on the inclusion of clauses that empower trustees to permit temporary contribution reductions or suspensions by participating employers in the Master rules.



2. THE CURRENT PRACTICE

The Authority has received proposed amendments to Master rules which provides, *inter alia*, that a participating employer may, due to supervening impossibility and subject to the consent of eligible members, apply for the temporary contribution reductions or suspensions of members and/or the temporary contribution reductions or suspensions of the participating employer, that will not be required to meet the cost of any premium necessary to provide the Risk Benefits and the amount required to cover the fees and expenses of the Fund. Further, the proposed amendments to Master rules stipulate that the approval of the aforesaid application for temporary contribution reductions or suspensions shall be at the sole discretion of the trustees.

3. THE LAW

3.1. 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) if it purports to affect any right of a creditor of the fund, other than as a member or shareholder thereof; or*
- (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."

3.2. Section 13A of the Act provides:

"Notwithstanding any provision of the rules of a registered fund to the contrary, any contribution payable in respect of any member of the fund to the fund shall be paid directly to the fund by or on behalf of the member within a period of seven days after the expiration of the period in respect of which the contribution is being paid, and the person managing the business of the fund shall, not later than the first business day following the day on which the fund received the contribution, deposit the contribution in the name of the fund with an institution registered under the Banks Act, 1965 (Act No. 23 of 1965), or the Building Societies Act, 1965 (Act No. 24 of 1965): Provided that in the case of a fund referred to in section 2(3)(a)(ii) the contributions may within the said period of seven days be paid by or on behalf of such member directly to the insurer administering the fund."

3.3. Section 37(1) of the Act criminalizes non-compliance with the provisions of section 13A.



4. THE AUTHORITY'S POSITION

- 4.1. For the Registrar to approve Master rule amendments empowering the trustees to alter fund contribution rates, the proposed amendments to the Master rules, that empower trustees to permit temporary contribution reductions or suspensions to a participating employer, must clearly set out the circumstances and conditions under which the trustees may permit temporary contribution reductions or suspensions. To this end the rules must set out the following:
- 4.1.1. A description of the circumstances under which the trustees may permit a contribution reductions or suspensions of a participating employer. Such circumstances must amount to the destruction or suspension or severe restriction of the business activity of an employer due to economic, social and environmental or political instability or *vis majeure*.
- 4.1.2. The requirements for the relief to be granted, which must as a minimum include:
- 4.1.2.1. A requirement that the relief can only be granted, if necessary, to avoid and or minimise job losses.
 - 4.1.2.2. A requirement that employees must have accepted a general reduction in remuneration.
 - 4.1.2.3. A requirement that Fund members are informed of the temporary reductions or suspensions in contribution and the impact thereof on their benefits.
 - 4.1.2.4. The reductions or suspensions should not be for a period longer than 4 months at a time. Which time may be extended by a further period of 4 months at a time, upon application by the affected employer. Such application for further relief must be supported by the information necessary for the trustees to perform the assessment required under 4.1.2.5.
 - 4.1.2.5. A requirement for the employer to disclose the following information to the fund:



4.1.2.5.1. The circumstances that befallen them, necessitating the relief.

4.1.2.5.2. How circumstances have rendered them unable to pay full remuneration to its employees;

4.2. The trustees must inform the Registrar within 5 days of granting the contribution reductions or suspensions. The communication to the Registrar must disclose:

4.2.1. The employer name,

4.2.2. Business sector,

4.2.3. Number and ages of fund members affected,

4.2.4. A description of the exceptional circumstances facing the employer,

4.2.5. A description of the impact of those circumstances on the employer's business,

4.2.6. A description of the impact of the relief on possible job losses,

4.2.7. A description of the impact of the relief on employee remuneration,

4.2.8. The type of relief sought by the employer,

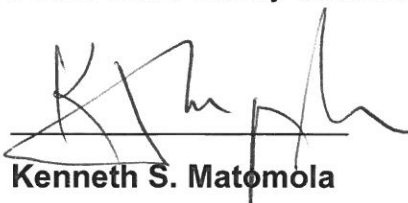
4.2.9. The member communication required under 4.1.2.3; and

4.2.10. The period of duration for the relief granted.

4.3. The trustees must inform the Registrar when the relief granted is lifted or extended, within 5 days of such lifting or extension.

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 Department at telephone number 061-290 5000.



Kenneth S. Matomola

Registrar of Pensions Funds