

03 FEBRUARY 2022

DIRECTIVE : PF/DIR/01/2022

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

EFFECTIVE DATE : 03 FEBRUARY 2022

SUBJECT : PENSION FUND RULES MUST SET OUT THE MEMBERSHIP ELIGIBILITY REQUIREMENTS AND THE CONDITIONS UNDER WHICH MEMBERS MAY BECOME ENTITLED TO ANY BENEFIT AND THE NATURE AND EXTENT OF ANY SUCH BENEFIT

1. INTRODUCTION

- 1.1. This Directive is issued by virtue of the Namibia Financial Institutions Supervisory Authority's functions and powers and those of its Chief Executive Officer in his capacity as the Registrar of Pension Funds ("the Registrar") 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 Directive is to direct Funds to ensure that their rules set out the following matters as stipulated in the Act:
 - 1.2.1. the membership eligibility requirements;

- 1.2.2. all the conditions under which a member or dependant of a deceased member may become entitled to a Pension Fund benefit; and
 - 1.2.3. the nature and extent of any Pension Fund benefit.
- 1.3. This Directive further requires Funds, whose approved rules are inconsistent with sections 11(c) and 11(d) of the Act to ensure that such rules are brought in line with the aforesaid provisions of the Act.

2. CURRENT PRACTICE

- 2.1 The Registrar has observed the following inconsistencies in the rules of some Funds:
 - 2.1.1 Fund rules that do not set out the requirements for admission to membership of the Fund and the circumstances under which such membership is to cease as required by section 11(c) of the Act; and
 - 2.1.2 Fund rules that do not set out the conditions under which a member or dependant of a deceased member may become entitled to a pension fund benefit and the nature of pension fund benefits and extent of such pension fund benefit as required by section 11(d) of the Act.
- 2.2. Furthermore, the Registrar observed a general lack of due care and diligence in the preparation of Fund rules or amendments thereto, leading to undue delays and in some cases multiple submissions of the same application.

3. THE LAW

- 3.1. In terms of section 1 of the Act, a “*pension fund organization*” is defined as follows:
 - “(a) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members or former members; or

(b) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons.”

- 3.2. Further, a pension fund organization includes any association or business which in addition to carrying on business in connection with any of the objects specified in paragraph (a) or (b) of the definition of “*pension fund organization*”, also carries on business in connection with any of the objects for which a friendly society may be established as specified in section 2 of the Friendly Societies Act, 1956 (Act No. 25 of 1956) or which is or may become liable for the payment of any benefits provided for in its rules, whether or not it continues to admit or to collect contributions from or on behalf of members.
- 3.3. In terms of paragraph (c) of the definition of “rules” in section 1 of the Act, the term “rules” includes the provisions relating to the benefits which may be granted by and the contributions which may become payable to the fund.
- 3.4. In terms of section 5 of the Act, once registered as a pension fund organization under the Act, a Fund becomes a juristic person capable of suing and being sued in its name and doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its approved rules.
- 3.5. Section 11(c) of the Act requires Fund rules to set out the requirements for admission to Fund membership and the circumstances under which such membership is to cease.

- 3.6. Section 11(d) of the Act stipulates that the rules of a fund shall contain provision in regard to the conditions under which any member or other person may become entitled to any benefit and the nature and extent of any such benefit.
- 3.7. Section 10 of the Act prohibits Funds from carrying on any business other than the business of a pension fund without the approval of the Registrar and section 37 criminalizes non-compliance with section 10 of the Act.

- 3.8. Section 13 of the Act stipulates 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.”

4. CONCLUSION

- 4.1. Fund rules are founding documents of Funds, thus, they are central to the existence and purpose of Funds.
- 4.2. The rights and obligations of the members in respect of Pension Fund benefits and contributions that are payable to the Fund must be governed by the rules of the Fund. The rules of a Fund is an agreement between the Fund and the members (including dependants of a deceased member) and are subservient to the Act.
- 4.3. The primary purposes of a Fund are to serve as a retirement saving vehicle with the objectives to provide an income to the members upon reaching their retirement dates and to provide income for the dependants of deceased members upon such members' death. In addition, should a member become disabled before retirement age, the Fund may provide a disability benefit. Fund rules must thus ensure that the Fund achieves the aforesaid objectives.

- 4.4. The rules of the Fund must set out the eligibility criteria for Fund membership, that is, the rules must define who may belong to the Fund. Further, the Fund rules must stipulate the circumstances under which Fund membership will come to an end.
- 4.5. Fund rules that do not set out the eligibility criteria for Fund membership and the circumstances under which Fund membership comes to an end are inconsistent with the requirements of section 11(c) of the Act.
- 4.6. Fund rules must set out the conditions under which a member or dependant of a deceased member may become entitled to a Pension Fund benefit. Furthermore, the Fund rules must set out the nature and extent of the Pension Fund benefits.
- 4.7. In order for the Fund rules to comply with section 11(c) of the Act, it must set out the nature and extent of the benefit which a member or dependant of a deceased member will receive, as well as the conditions that may impact the entitlement to the payment of such benefit. The actual benefit and possible restrictions or conditions precedent under which such benefit is payable can only be known if they are explicitly set out in the rules.
- 4.8. Fund rules that do not set out the conditions under which a member will become entitled to a Pension Fund benefit are inconsistent with the requirements of section 11(d) of the Act. Further, Fund rules that do not set out the nature and extent of a Pension Fund benefit are inconsistent with section 11(d) of the Act.
- 4.9. The Registrar is cognizant of approved Fund rules that do not meet the requirements of sections 11(c) and 11(d) of the Act and such rules are invalid to the extent of their inconsistency with the Act.

5. DIRECTIVE

- 5.1. Funds whose approved rules are inconsistent with the provisions of the Act, including sections 10 and 11, are invalid to the extent of the inconsistency and cannot be applied and or enforced by the Funds.

- 5.2. The responsibility for preparing Fund rules vests solely with the Fund. Funds must take due care and diligence in the preparation of Fund rules. It is important to ensure that rules are prepared in accordance with the requirements of the Act and such other matters as the registrar may have approved.
- 5.3. Funds, whose approved rules are inconsistent with the Act, including sections 10 and 11 of the Act are directed to ensure that such rules are brought in line with the provisions of the Act.

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 Directive, kindly contact the Manager of the Pension Funds and Friendly Societies Division at telephone number 061-290 5000.



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REGISTRAR OF PENSION FUNDS