

12 December 2014

**TO:** Principal Officers of all registered Pension Funds

**CC:** All Pension Fund Administrators

Chairperson: RFIN

**DIRECTIVE:** PI/PF/DIR/01/2014

**EFFECTIVE DATE:** 2 January 2015

**SUBJECT: VOLUNTARY TERMINATION OF AN EMPLOYER'S PARTICIPATION IN AN UMBRELLA FUND**

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## **1 Introduction**

**1.1** This Directive is issued by virtue of NAMFISA's functions and powers and those of its CEO in his capacity as the Registrar of Pension Funds ("the Registrar") in terms of the Namibia Financial Institutions Supervisory Authority Act, No. 3 of 2001 ("NAMFISA Act"), and is applicable to all pension fund organizations registered under the Pension Funds Act, no. 24 of 1956 ("PF Act").

**1.2** The purpose of this Directive is to clarify the process that must be followed in the event that a participating employer terminates its participation in an umbrella fund and to direct Principal Officers to submit a report to the Registrar containing certain information in such cases. As such, Circular PI/PF/4/2003, dated 17 June 2003, relating to the voluntary termination of a participating employer under an umbrella scheme, is hereby revoked and replaced with this Directive number PI/PF/DIR/01/2014.

## **2 The current practice**

The termination of employers' participation in umbrella funds occur due to various reasons. Under the circumstances, there is a need to direct the industry with respect to the process to



be followed in the event that a participating employer terminates its participation in an umbrella fund.

### **3 The law**

3.1 In terms of section 3 of the NAMFISA Act, one of the functions of NAMFISA is to exercise supervision, in terms of that Act or any other law, over the business of financial institutions and over financial services.

3.2 In terms of section 4(2)(h) of the NAMFISA Act, NAMFISA may do anything which is necessary or expedient to perform its functions.

3.3 Section 28 of the PF Act lays down the process to be followed in the event that a fund is voluntarily terminated or dissolved.

3.4 Section 12 of the PF Act, read with Regulation 24 made under the PF Act, lays down the procedure that a fund must follow when it alters or rescinds any rule in the manner directed by its rules.

3.5 In terms of section 11 of the PF Act, the rules of a fund shall contain provisions 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 and the manner in which and the circumstances under which the fund shall be terminated or dissolved.

### **4 Conclusion**

4.1 The rules of an umbrella fund must provide for the conditions under which a member or other person may become entitled to a benefit and the nature and extent of such benefit in the event that a participating employer terminates its participation in the umbrella fund. The rules of an umbrella fund must further provide for the manner and circumstances under which a participating employer may terminate its participation in the umbrella fund.



4.2 Only those assets of the umbrella fund attributable to the members connected to the participating employer who terminated its participation in the umbrella fund must be handled in the manner provided by the rules of the said umbrella fund.

4.3 When an employer terminates its participation in an umbrella fund, the entire umbrella fund will not necessarily be dissolved if there are other employers who remain in the umbrella fund. Hence the said umbrella fund will not be required to appoint a liquidator as provided in section 28 of the PF Act. Be that as it may, the said termination of a participating employer under an umbrella fund in effect constitutes a partial dissolution of the business of the particular umbrella fund. Thus, in order to assist the Registrar to effectively execute one of NAMFISA's functions to exercise supervision over the business of financial institutions, the industry is required to furnish a report to the Registrar which is similar to that provided for in section 28 of the PF Act.

4.4 As a result of the termination of an employer's participation in an umbrella fund, the said umbrella fund will be necessitated to rescind its special rules, if any, pertaining to the participating employer in question.

4.5 This Directive does not apply in the case where a participating employer terminates its participation in an umbrella fund for purposes of transferring business from that umbrella fund to any other person. In such cases the process stipulated in section 14 of the PF Act must be followed.

## **5 The Directive**

5.1 Accordingly, in the event that a participating employer terminates its participation in an umbrella fund, the Registrar hereby directs all Principal Officers of registered umbrella funds to furnish a report by the valuator or the actuary of the umbrella fund to the Registrar within three calendar months from the effective date of such termination or within three calendar months from the date that the umbrella fund was notified of such termination (should such notification be subsequent to the



effective date of the termination). The said report must contain the following information:

- 5.1.1 A full disclosure of the reasons for the termination of the participating employer under the umbrella fund, including a confirmation from the said participating employer that it has in fact terminated its participation in the umbrella fund or gave notice to terminate its participation in the umbrella fund;
  - 5.1.2 The effective date of the said termination;
  - 5.1.3 An account showing the assets and liabilities of the umbrella fund in respect of the members connected to the participating employer in question;
  - 5.1.4 A list of all the members connected to the participating employer in question, indicating their fund credits; and
  - 5.1.5 The manner in which it is proposed to realize the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members connected to the participating employer in question.
- 5.2 As soon as the assets of the said umbrella fund in respect of the members connected to the participating employer in question is distributed in full, the Principal Officer of the said umbrella fund is further directed to furnish a certified copy of a bank statement together with a letter from the bank indicating that the account, in respect of the participating employer in question, if any, is closed. In the event that the said umbrella fund does not keep separate bank accounts in respect of each participating employer, the Principal Officer of the said umbrella fund is required to furnish a reconciliation statement showing a zero balance in respect of the participating employer in question. In the case of an umbrella fund which is exempted in terms of section 2(3)(a)(ii) of the PF Act, the Principal Officer of the said umbrella fund is

directed to furnish either an investment statement or a reconciliation statement showing a zero balance in respect of the participating employer in question.

- 5.3 The umbrella fund in question is further directed to rescind its special rules, if any, pertaining to the participating employer in question in accordance with the procedure laid down in section 12 of the PF Act, read with Regulation 24 under the PF Act, only after it has complied with paragraphs 5.1.1 to 5.1.5 and 5.2 above.

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

Should you require more clarity on this Directive, kindly contact the Manager of the Pension Funds Department at telephone number 061-290 5000.



**Phillip N. Shiimi**  
**Registrar of Pension Funds**