

**GOVERNMENT NOTICE**

**MINISTRY OF FINANCE**

No.

2015

**REGULATION MADE IN TERMS OF THE FINANCIAL INSTITUTIONS AND  
MARKETS ACT, 2015**

The Minister of Finance has, under section 438(5) of the Financial Institutions and Markets Act, 2015 (Act No • of 2015), made the regulations set out in the Schedule.

MINISTER OF FINANCE

WINDHOEK

2015

**FINANCIAL INSTITUTIONS AND MARKETS ACT, 2015 [Act No. • of 2015]****Loans and guarantees which may be granted to a member by a fund****Regulation No. RF.R.5.5**

*made by the Minister of Finance under section 438(5)(j) of the Financial Institutions and Markets Act, 2015*

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**Definitions**

1. In this Regulation-
  - (a) “Act” means the *Financial Institutions and Markets Act, 2015* [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
  - (b) “immovable property” includes a customary land right and a right of leasehold as defined in section 1 of the *Communal Land Reform Act, 2002* (Act No. 5 of 2002); and
2. Words and phrases defined in the Act have the same meaning in this Regulation, unless the context indicates otherwise, including, without limitation-
  - (a) as defined in section 1 of the Act-
    - (i) affiliates;
    - (ii) board;
    - (iii) company;
    - (iv) corporate body
    - (v) NAMFISA; and
    - (vi) spouse.
  - (b) as defined in section 242 of the Act-
    - (i) employer;
    - (ii) dependent;
    - (iii) fund;
    - (iv) member;
    - (v) retirement fund; and
    - (vi) rules.

**Loans and guarantees which may be granted to a member by a fund**

3. A fund may, if its rules so permit and subject to this Regulation, grant a loan to a member by way of investment of its funds or furnish a guarantee in favour of a person other than a member of the fund in respect of a loan granted or to be granted by that person to a member to enable the member-
  - (a) to redeem a loan granted to the member against security of-
    - (i) a pledge by the member to the fund of the benefit contemplated in clause 5(b);  
or
    - (ii) immovable property which either belongs to the member or to his or her spouse, or to the member and his or her spouse, and on which a residence has been or will be erected which is occupied or will be occupied by the member or a dependant of the member;
  - (b) to acquire immovable property on which a residence has been or will be erected, for occupancy by the member or a dependant of the member;
  - (c) subject to clause 4, to erect a residence on immovable property in respect of which either the member or his or her spouse has, or the member and his or her spouse have, obtained ownership or the right to ownership through a right of occupancy as contemplated in clause 4, and which will be occupied by the member or a dependant of the member; or
  - (d) subject to clause 4, to make additions or alterations to or to maintain or repair a residence in respect of which either the member or his or her spouse has, or the member and his or her spouse have, obtained ownership or the right to ownership through a right of occupancy as contemplated in clause 4, and which is occupied or will be occupied by the member or a dependant of the member.
4. Clause 3(c) and (d) shall apply only if the right of occupancy of the immovable property or residence is secured by virtue of the operation of any custom or law, other than an agreement of lease or similar temporary measure with a fixed term of less than thirty years at the time the loan is granted,, entitling such member, or his or her dependants, to the right of occupancy of such immovable property or residence or any specified portion thereof.
5. A loan or guarantee by a fund, contemplated in clause 3, shall not be granted or furnished, unless secured in full by:
  - (a) a first mortgage on any immovable property of which the member or his or her spouse or both have ownership;

- (b) a pledge by the member concerned to the fund of the benefits to which the member is entitled in terms of the rules of the fund; or
  - (c) both such mortgage and such pledge contemplated in sub-clauses (a) and (b).
6. A loan or guarantee by a fund contemplated in clause 3 shall not be granted or furnished if the member concerned is already liable to the fund in respect of any other loan granted to the member or guarantee furnished to the member in respect of any other immovable property.
7. A loan by a fund contemplated in clause 3 shall not be granted unless the rate of interest on the loan is equal to the sum of the percentage of the repo rate charged by the Bank of Namibia plus an additional 4 percent per annum.
8. A loan contemplated in clause 3 shall not be granted by a fund, unless the capital sum in respect of the loan together with interest thereon, is redeemable, in equal weekly or monthly installments, over a period not exceeding either the remainder of the member's employable years until retirement or the duration of the right of leasehold or the customary land right, whichever is the shorter period.
9. A loan or guarantee contemplated in clause 3 shall not exceed, at the time it is granted or furnished, where it is secured:
- (a) in accordance with clause 5(a), the amount equal to 90 percent of the fair value of the hypothecated immovable property concerned;
  - (b) in accordance with clause 5(b), the lesser of the amount of-
    - (i) subject to Standard RF.S.5.7, the lowest benefit in terms of the rules which the member would receive on termination of his or her membership of the fund, net of income tax as envisaged in section 269(1)(a) of the Act; or
    - (ii) the fair value of the hypothecated immovable property concerned;
  - (c) in accordance with clause 5(c), the lesser of:
    - (i) the amount equal to the aggregate of 90 percent of the fair value of the hypothecated immovable property concerned and, subject to Standard RF.S.5.7, the amount of the lowest benefit in terms of the rules which the member would receive on termination of his or her membership of the fund, net of income tax as envisaged in section 269(1)(a) of the Act; or
    - (ii) the fair value of the hypothecated immovable property concerned.

10. The percentages referred to in clause 9(a) and (c) may be increased to 100 percent, subject to the employer of the member furnishing to the fund an irrevocable guarantee in respect of so much of the loan or the amount of the guarantee as may exceed 90 percent.
11. Where a transaction for the purchase of an immovable property is pending and a purchase price has already been agreed upon, or where such an immovable property was acquired by purchase not more than six months before the date on which the estimate is made, the fair value of the property shall not be fixed at an amount higher than the true purchase price of the property, as declared or to be declared by the parties concerned for transfer duty purposes.
12. Where a transaction for the erection of, or additions or alterations to a residence is contemplated, the estimate of the fair value of the immovable property shall not be fixed at an amount higher than the fair value contemplated in clause 11 plus an amount equal to the cost of such erection, additions or alterations, as the case may be.
13. Notwithstanding anything to the contrary contained in the rules of a fund, a fund shall not, directly or indirectly:
  - (a) grant a loan to, or furnish a guarantee in respect of, a member or make any of its funds available, whether by way of an investment or otherwise, to be utilised in any manner by the fund or any other person for a loan to a member or a guarantee on behalf of a member, other than:
    - (i) a loan contemplated in clause 3 and which complies with the provisions of this standard
    - (ii) a guarantee contemplated in clause 3 and which complies with the provisions of this standard; or
  - (b) grant a loan to, or invest in the shares of a corporate body controlled by a member of the board, an officer or a member of the fund or a director of a corporate body which is an employer participating in or contributing to the fund, or any of its affiliates
14. A fund may, if its rules so permit, contribute to any other fund registered under the Act, or any medical aid fund, friendly society or insurer registered under the Act, which is conducted for the benefit of the members of the said fund.
15. NAMFISA may, under exceptional circumstances, and on such conditions and for such periods as NAMFISA may determine, temporarily exempt any fund from compliance with any provision of clause 3 or clause 13(a) and (b) of this Regulation.