

GOVERNMENT NOTICE

MINISTRY OF FINANCE

No.

2018

**REGULATION MADE IN TERMS OF THE FINANCIAL INSTITUTIONS AND
MARKETS ACT, 2018**

The Minister of Finance has, under subsection 465(8) of the Financial Institutions and Markets Act, 2018 (Act No • of 2018), made the regulations set out in the Schedule.

MINISTER OF FINANCE

WINDHOEK

2018

SCHEDULE

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2018 [Act No. • of
2018]

DRAFT REGULATION

THE PRESERVATION OF RETIREMENT BENEFITS

MINISTRY OF FINANCE

Regulation No: RF.R.5.10

DRAFT

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2018 [Act No. • of 2018]**The preservation of retirement benefits****Standard No. RF.S.5.8**

issued by the Minister of Finance under section 465(8)(m) of the Financial Institutions and Markets Act, 2018

Definitions

1. (1) In this Regulation:

- (a) “Act” means the *Financial Institutions and Markets Act, 2018* [Act No. • of 2018], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
- (b) “early withdrawal” means:
 - (i) the termination of the member’s participation in the retirement fund;
 - (ii) the termination of the retirement fund; or
 - (iii) the partial termination of the retirement fund should that involve the member concerned;
prior to the member becoming eligible for early retirement as defined in the rules of the retirement fund;
- (c) “minimum individual reserve” means the amount determined in accordance with Standard No. RF.S.5.7 (extract attached hereto as an Addendum);
- (d) “preserved retirement benefit” means a retirement benefit determined in accordance with this Regulation and which is payable to the member upon retirement, where retirement is as defined by the rules of the retirement fund as at the date of the member’s early withdrawal;
- (e) “preserved retirement benefit contract” means a contract issued by a financial institution registered under the Act that complies with the requirements of this Regulation; and
- (f) “preserved retirement benefit fund” means a fund administered by a financial institution registered under the Act that complies with the requirements of this Regulation.

(2) Words and phrases defined in the Act have the same meaning in this Regulation, unless the context indicates otherwise, including without limitation, the following;

(a) as defined in section 1 of the Act:

- (i) retirement fund;
- (ii) principal officer;

(b) as defined in section 242 of the Act:

- (i) beneficiary fund;
- (ii) board;
- (iii) defined benefit fund;
- (iv) defined contribution fund;
- (v) prescribed fund
- (vi) dependant;
- (vii) employer;
- (viii) fund;
- (ix) member;
- (x) retirement benefits;
- (xi) sponsor

Application

2. This Regulation applies to:

- (a) every retirement fund registered under the Act and to its board, principal officers and fund administrators; and
- (b) all retirement benefits that accrue to, and to contributions made by members of retirement funds following the date on which the Act comes into force.

Preservation of retirement benefits

3. Upon the early withdrawal of a member, a retirement fund must provide the member with a preserved retirement benefit in accordance with the following:

- (a) the member must be advised in writing of the member's right to elect a greater percentage than the percentage to be used to determine the amount of the preserved retirement benefit specified in this Regulation;
- (b) the member must be advised in writing of the amount of, and terms and conditions applicable to, the preserved retirement benefit within 30 days of the date of the early withdrawal;

- (c) the member must be advised in writing of the default option applicable to the member's preserved retirement benefit and of all alternative qualified optional forms of settlement available to the member;
 - (d) the terms and conditions applicable to the preserved retirement benefit must comply with clause 4 of this Regulation; and
 - (e) the preserved retirement benefit must be computed in accordance with clause 5 of this Regulation.
4. The following terms and conditions apply to a member's preserved retirement benefit:
- (a) the preserved retirement benefit must be payable at or following the date on which the retirement fund rules provide for the early retirement of the member;
 - (b) the preserved retirement benefit must remain an obligation of the retirement fund – the default option - unless the member elects an alternative qualified optional form of settlement in accordance with clause 6 of this Regulation;
 - (c) the early retirement benefit must provide for a benefit to be payable in accordance with section 276 of the Act in the event of the death of the member prior to the member's retirement; and
 - (d) the preserved retirement benefit must not be subject to commutation, seizure, garnishment or other form of alienation, and must be subject to sections 274, 275, 276 and 277 of the Act, irrespective of whether the preserved retirement benefit is dealt with in terms of clause 7, 8 or 9 of this Regulation.
5. The amount of a member's preserved retirement benefit equals 75% of the minimum individual reserve in respect of the member as at the date of early withdrawal or such greater percentage of the minimum individual reserve as the member specifies upon early withdrawal.
6. A qualifying optional form of settlement is:
- (a) a preserved retirement benefit contract that complies with clause 7;
 - (b) a preserved retirement benefit fund that complies with clause 8; or
 - (c) a retirement fund that complies with clause 9.
7. A preserved retirement benefit contract must:
- (a) be issued by a financial institution registered under the Act;

- (b) provide that retirement benefits are payable to the member no earlier than a specified date, being the date determined by the financial institution, provided that such date may not be earlier than the date on which the member reaches the age of 55 years;
 - (c) provide that in the event of the member's death prior to retirement the net value of the contract shall be payable in accordance with section 276 of the Act;
 - (d) provide that the benefit may not be commuted, surrendered or alienated prior to the specified date referred to in sub-clause (b);
 - (e) provide that the member has the right to transfer the value of the contract to another financial institution registered under the Act and provide a qualifying optional form of settlement on giving not less than 30 days' notice; and
 - (f) be compliant with all requirements necessary to ensure that the member's preserved retirement benefit continues to qualify for the same or more favourable income tax treatment as it would have qualified for under the rules of the retirement fund that provide for the preserved early withdrawal benefit under applicable legislation and regulation.
8. A preserved retirement benefit fund must:
- (a) be a fund that is acceptable to NAMFISA and that is organized and administered as a collective investment fund or other financial institution registered under the Act that provides investment management and administration services to retirement funds;
 - (b) provide that retirement benefits are payable to the member no earlier than a specified date, being the date determined by the preserved retirement benefit fund, provided that such date may not be earlier than the date on which the member reaches the age of 55 years;
 - (c) provide that in the event of the member's death prior to retirement the net value of the member's preserved retirement benefit shall be payable in accordance with section 276 of the Act;
 - (d) provide that the benefit may not be commuted, surrendered or alienated prior to the specified date referred to in sub-clause (b);
 - (e) provide that the member has the right to transfer the value of the member's preserved retirement benefit to another retirement fund or preserved retirement benefit fund registered under the Act and provide a qualifying optional form of settlement on giving not less than 30 days' notice;

- (f) be compliant with all requirements necessary to ensure that the member's preserved retirement benefit continues to qualify for the same or more favourable income tax treatment as it would have qualified for under the rules of the retirement fund that provide for the preserved early withdrawal benefit under applicable legislation and regulation;
 - (g) provide members with information regarding the suitability of the investment options available to them in light of their status as preserved retirement benefits, including without limitation information regarding the returns and risks that may reasonably be expected to accrue; and
 - (h) maintain an account for each member's preserved retirement benefit and provide a statement of the account not less than quarterly showing the distribution of the funds managed and transactions involving the account.
9. A retirement fund must:
- (a) provide in its rules that upon early withdrawal of a member, the preserved retirement benefit may remain an obligation of the retirement fund – the default option - unless the member elects an alternative qualified optional form of settlement in accordance with clause 6 of this Regulation;
 - (b) provide in its rules for the management of preserved retirement benefits transferred to it by members having such benefits as a result of their early withdrawal from another retirement fund as additional voluntary contributions of those persons; and
 - (c) comply with the requirements of sub-clauses 7 (b), (c), (d), (e) and (f).
10. Notwithstanding the provisions of clauses 7, 8 and 9, a financial institution that issues a preserved retirement benefit contract, the administrator of a preserved retirement benefit fund or the board of a retirement fund maintaining a preserved retirement benefit of a member **may** allow the commutation and surrender of an amount not to exceed 50% of the value of the preserved retirement benefit for payment to the member as a lump sum provided:
- (a) the member is not eligible to receive the preserved retirement benefit due to not having attained the age at which early retirement may take place; and
 - (b) the member furnishes certification made by a licensed physician that the member's health is severely and permanently impaired to an extent preventing gainful employment in any form, and that the member's expected lifetime has been significantly reduced.

ADDENDUM – Extract from Standard RF.S.5.7

Determination of member's minimum individual reserve

1. (1) The member's minimum individual reserve, in the case of a member of a defined contribution fund, shall be determined by the board in accordance with the following formula or on a methodology that NAMFISA approves as substantially equivalent:

Fixed Rate Contributions + Extra Benefits + Additional Contributions + Investment Income and Capital Gains – Expenses and Capital Losses

Or

$FC+EB+AC+IC-X$

Where:

- (a) **FC** represents fixed-rate contributions paid (both member and employer contributions), or amounts transferred, into the fund, by or on behalf of the member, where the fixed-rate contributions are defined in the rules;
- (b) **EB** represents amounts allocated by the board for the benefit of the member and surplus apportionment;
- (c) **AC** represents additional contributions paid voluntarily by the member or by the employer on the member's behalf;
- (d) **IC** represents investment income and capital gains, as determined by the board; and
- (e) **X** represents expenses and capital losses, as determined by the board, thus including other amounts, if any, permitted to be credited to or debited from the member's individual account.

(2) The expenses referred to in sub-clause (1)(e) include direct costs of establishing and operating the fund and any administrative, insurance and taxation costs relating to the establishment and operation of the fund.

2. In determining the minimum individual reserve of a member of a defined contribution fund, the board shall in consultation with the valuator, determine the value of the member's individual account as determined under clause 1 plus a share of any and all accounts as the board may decide should be included, in the proportion that the value of the member's individual account as at the effective date of the calculation bears to the total value of all members' individual accounts as at that date or such other method of apportionment as the board deems reasonable.

3. In determining the minimum individual reserve of a member of a defined benefit fund, the board shall determine the greater of:
- (a) the fair value equivalent of the present value of the member's accrued retirement benefits provided that:
 - (i) where there is no uniform rate of accrual over the full period of membership in the fund, the accrued deferred retirement benefits shall be calculated assuming a uniform rate of accrual as if the member had remained in service until the normal retirement date as defined in the rules of the fund, but such uniform rate of accrual shall not be less than the uniform rate of accrual that is calculated based on the period of service completed up to the date of calculation;
 - (ii) the determination of the present value of accrued retirement benefits shall be based on assumed rates of increase consistent with the minimum benefit increase requirement and on assumptions in regard to rates of discount, mortality, disability, retirement as prescribed by Standard No. RF.S.5 • for the determination, calculation and valuation of liabilities of retirement funds;
 - (iii) the term 'accrued retirement benefits' in this section shall include the portion of any lump sum benefit payable at the normal retirement date which corresponds to prior service; and
 - (b) an amount equal to the amount of the member's contributions, augmented as from the date of payment of a contribution by the net rate of return on the fund plus any amount payable in terms of the rules of the fund in excess of the member's contributions.