

GOVERNMENT NOTICE

RETIREMENT FUNDS

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. X

2018

**STANDARDS MADE UNDER THE FINANCIAL INSTITUTIONS AND MARKETS
ACT, 2018**

The Namibia Financial Institutions Supervisory Authority has under section 410 of the Financial Institutions and Markets Act, 2018 (Act No. X of 2018), made the standards set out in the Schedule.

**Gersom Katjimune
Chairperson**

Windhoek,

2018

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

DRAFT STANDARD

REQUIREMENTS FOR THE RULES OF A FUND AND ANY AMENDMENT OF SUCH
RULES

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: RF.S.5.4

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2018 [Act No. • of 2018]**Requirements for the rules of a fund and any amendment of such rules****Standard No. RF.S.5.4**

issued by NAMFISA under sections 271, 272 and 410(6)(m) of the Financial Institutions and Markets Act, 2018

Definitions

1. (1) In this Standard, “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.
- (2) Words and phrases defined in the Act have the same meaning in this Standard unless the context indicates otherwise, including without limitation, the following-
 - (a) as defined in section 1 of the Act:
 - (i) auditor;
 - (ii) NAMFISA;
 - (iii) principal officer;
 - (iv) retirement fund;
 - (v) subsidiary;
 - (vi) valuator.
 - (b) as defined in section 249 of the Act:
 - (i) beneficiary fund;
 - (ii) board;
 - (iii) defined benefit fund;

- (iv) defined contribution fund;
- (v) dependant;
- (vi) employer;
- (vii) fund;
- (viii) fund administrator;
- (ix) member;
- (x) retirement benefits;
- (xi) rules; and
- (xii) sponsor.

Applicability

2. This Standard applies to all retirement funds registered under the Act and to its boards, principal officers and fund administrators.

Requirements for rules

3. The rules of a retirement fund must not be inconsistent with the Act and this Standard, it must be in the official language of the Republic of Namibia and, subject to clause 6, it must provide for the following matters-
 - (a) the full name of the retirement fund, including a reference to any name changes that the retirement fund may have undergone;
 - (b) the dates of the first and subsequent financial year ends;
 - (c) the address of the principal office of the retirement fund;
 - (d) the objects of the retirement fund;
 - (e) a list of definitions, in alphabetical order, defining any terms which are frequently used in the rules and which bear a special connotation;

- (f) a detailed description of the eligibility conditions for joining the retirement fund and the circumstances under which membership shall cease, with specific reference to the following:
- (i) the class or classes of persons who are, or may in due course become, eligible to join the retirement fund;
 - (ii) whether membership is to be compulsory or not, and, if applicable, any period within which current employees may exercise a choice with respect to membership;
 - (iii) the conditions of membership relating to deferred members, if any; and
 - (iv) mutual transfer arrangements with any other retirement fund, if any;
- (g) the calculation and payment of contributions to the retirement fund by members or on behalf of members;
- (h) the fines and forfeitures (if any) to be imposed on any employer or member and the consequences of non-payment of any contribution or fine;
- (i) the nature and extent of the retirement benefits granted by the retirement fund, and the payment of those benefits to any member, dependant or other person entitled to such benefits, in respect of the following, except that where the sponsor of the retirement fund is not an employer, provision need not be made for retirement benefits in respect of subparagraphs (v), (vi), (vii) or (viii):
- (i) normal retirement;
 - (ii) early retirement;
 - (iii) retirement due to ill-health;
 - (iv) death before retirement;
 - (v) resignation;
 - (vi) dismissal;
 - (vii) retrenchment;
 - (viii) redundancy; and

where applicable:

- (A) late retirement:
 - (B) deferred benefits; and
 - (C) death after retirement.
- (j) a specific description of participation in the retirement fund differentiating among retirement funds established for the benefit of:
- (i) employees of a principal employer and its subsidiaries;
 - (ii) employees of various employers that do not fall within the ambit of clause 3(j)(i); and
 - (iii) persons not referred to in clauses 3(j)(i) or 3(j)(ii);
- (k) the appointment or election of a board of trustees to manage the business of the fund consisting of persons who are fit and proper to hold such office in accordance with the requirements of Standard No. GEN.S.10.2;
- (l) the appointment of a principal officer by the board of trustees who is fit and proper to hold such office in accordance with the requirements of Standard No. GEN.S.10.2;
- (m) the term of office of board members and the chairperson of the board, provided these terms may not exceed five years and three years, respectively, which terms may be renewed on similar terms;
- (n) powers of the board of trustees, the removal and/or dismissal from office of any member of the board of trustees or the principal officer, and the method of determining their remuneration, if any;
- (o) the appointment, powers, and removal from office of other officers of the fund;
- (p) the manner of calling the annual general meeting and any special general meeting of members, if any such meetings are held, the quorum necessary for the transaction of business at such meetings and the manner of voting thereat, and the requirement that annual general meetings, if any, must be held within six months after the financial year-end of the fund;

- (q) the investment powers of the retirement fund, as determined by the board of trustees;
- (s) the appointment of a valuator of the fund who is fit and proper within the meaning of Standard No. GEN.S.10.2 and independent within the meaning of Standard No. GEN.S.10.8, and provisions regarding the triennial investigation, valuation and report if the retirement fund is subject to the provisions of sections 267 and 268 of the Act;
- (t) the appointment of the auditor of the retirement fund;
- (u) the manner in which contracts and other documents binding the retirement fund must be executed;
- (v) the manner of amending or rescinding any rules, and of making additional rules;
- (w) the manner in which any disputes between the retirement fund and its members or between the retirement fund and any other person whose claim is derived from a member must be settled;
- (x) the safe custody of title deeds or any other securities belonging to or held by the retirement fund;
- (y) subject to the provisions of the Act, the manner in which and the circumstances under which the retirement fund must be terminated or dissolved, with specific reference to:
 - (i) total and partial dissolution;
 - (ii) the appointment of a liquidator, to be approved by NAMFISA;
 - (iii) any transfers of participating employers to any other retirement fund; and
 - (iv) the position of persons whose membership ceased during a minimum of the 12-month period immediately prior to the date of the termination or dissolution;
- (z) the amalgamation of the retirement fund with any other financial institution or financial intermediary;
- (aa) the transfer of the business of the retirement fund, or any part thereof, to any other financial institution or financial intermediary;

- (bb) the manner in which unclaimed benefits must be dealt with upon:
 - (i) the death of a member, including any deferred member;
 - (ii) the termination or dissolution of the retirement fund;
 - (iii) the withdrawal of a member from the retirement fund; and
 - (iv) the inability of the retirement fund to locate the member, a dependant or other person entitled to such benefits;
 - (cc) the opening of a bank account in the name of the retirement fund;
 - (dd) the policy of insurance effected to indemnify the retirement fund against losses owing to the dishonesty or fraud of any of its board of trustees, officers or employees or such other indemnification as NAMFISA may allow; and
 - (ee) such other matters as NAMFISA may require.
4. (1) The rules of a retirement fund must state the right of-
- (a) members, upon request, to be provided, free of charge, with a copy of :
 - (i) the rules/consolidated rules of the fund upon becoming a member; and
 - (ii) any amendment to, rescission of, or addition to the rules of the fund at the time of its implementation and/or upon becoming a member;
 - (b) members, beneficiaries, nominees or persons authorized by a member, beneficiary or nominee, to inspect, free of charge, any of the documents referred to in sub-clauses 4(1)(a)(i) and 4(1)(a)(ii), at the principal office of the fund and to make extracts therefrom; and
 - (c) members, beneficiaries, nominees or persons authorized by a member, beneficiary or nominee to be provided with a copy of:
 - (i) the rules of the fund, in addition to the copy referred to in sub-clause 4(1)(a)(i);
 - (ii) the most recent financial statements of the fund; and

- (iii) the most recent report by a valuator prepared pursuant to section 268 of the Act,
- (2) The copies of any documents referred to in sub-clauses 4(1)(b) and 4(1)(c) must be provided:
 - (a) free of charge if requested in electronic form; or
 - (b) for a reasonable charge if requested in hard copy or paper form.
- 5. A retirement fund referred to in section 255 of the Act and a beneficiary fund referred to in section 256 of the Act must amend its rules to comply with this Standard within six months of the date on which this Standard comes into effect.
- 6. The rules of a retirement fund must comply with the following requirements as to format:
 - (a) the rules must be printed in at least 1.0 line spacing on A4 paper of at least 80 grams;
 - (b) the rules must be printed on one side of the paper only with a margin of at least 20 mm on the left side of the paper;
 - (c) headings and subheadings must be printed in bold print;
 - (d) definitions must be printed in capital letters and used in that way throughout the text;
 - (e) the document must not contain any underlining; and
 - (f) the document shall at the front contain a detailed table of contents, with references to the relevant page numbers.
- 7. The rules of a retirement fund must be certified as follows on the first page or on the cover if the rules are in the form of a booklet: “Certified that these are the rules of the XYZ Retirement Fund (*substitute “XYZ Retirement Fund” with the full name of the fund*) which will become effective on the date of registration of the fund” or “on the specified date” in the case of a fund referred to in clause 5.
- 8. The rules and any amended, rescinded or additional rule must be signed on the first page as follows:
 - (a) where the fund is managed by one individual, there must be two signatures, by:

- (i) that individual; and
 - (ii) the principal officer;
- (b) where the fund is managed by a board of trustees, there must be three signatures, by:
- (i) the chairperson of the board of trustees;
 - (ii) one other trustee of the board; and
 - (iii) the principal officer; and
- (c) where, in the case of sub-clause (b), the principal officer is also a member of the board of trustees, there must be three signatures in that another member of the board in addition to the chairperson and the principal officer must also sign the document.
9. Within thirty days from the date of the passing of a resolution for the amendment or rescission of any rule or for the adoption of any additional rule, but not later than thirty days prior to the implementation of any such amended, rescinded or additional rule, the board of the fund shall submit to NAMFISA, together with the text of the amended, rescinded or additional rule, and in the manner prescribed by NAMFISA-
- (a) a copy of the resolution adopted by the board of trustees together with a certificate signed to the effect that the resolution has been adopted in accordance with the provisions of the rules of the fund;
 - (b) if the fund is a defined contribution fund or a beneficiary fund, a certificate from the valuator confirming that the amended, rescinded or additional rule has no effect on the current or prospective financial position of the fund;
 - (c) if the amended, rescinded or additional rule affects the financial condition of a fund that is a defined benefit fund, a certificate by a valuator as to:
 - (i) the financial soundness of the amendment, rescission or addition; and
 - (ii) the impact of the amendment, rescission or addition on:
 - (A) the funding and solvency position of the fund; and
 - (B) the contribution requirements of the fund;

and

- (d) a statement explaining the reason for the amendment, rescission or additional rule.
10. The resolution and certificate referred to in clause 9(a) is not necessary in the case of a consolidation of the existing rules, but will apply in the case of a consolidation that contains amended, rescinded or additional rules.
 11. In accordance with clause 4(1)(a)(ii), the principal officer of the fund must, within one month of its implementation, communicate details of any rule amendments to each member, and upon request by a member, send to such member a copy of any amendments to, rescissions of or additions to the rules of the fund.