

**CIRCULAR : PF/CIR/03/2020**

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

**EFFECTIVE DATE : 9 DECEMBER 2020**

**SUBJECT : HOUSING LOAN FACILITY FOR PENSION FUND MEMBERS**

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## **1. INTRODUCTION**

- 1.1. This Circular 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 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 Circular is to provide clarity and guidance regarding housing loans granted by Funds or housing loan guarantees furnished by Funds. This Circular further addresses the deduction from a defaulting member's fund credit or accumulated retirement savings in order to settle the debt arising from a housing loan granted by a Fund or in respect of a housing loan guarantee furnished by a Fund.
- 1.3. Circular PI/PF/3/2003, dated 13 June 2003, relating to interpretation of housing loans and guarantees, is hereby revoked and replaced with this Circular PF/CIR/03/2020.

## **2. THE CURRENT PRACTICES**

The Registrar has observed the following practices by some Funds:

- 2.1. the granting of housing loans by Funds to members in circumstances where the property concerned does not belong to the members or their spouses or where the property is not occupied by members or dependants of the members, without obtaining prior exemption in terms of section 19(6)(a) of the Act;
- 2.2. the granting of housing loans by Funds to members for purposes other than housing as contemplated in section 19(5)(a) of the Act, without obtaining prior exemption in terms of section 19(6)(a) of the Act;
- 2.3. the granting of housing loans by Funds to members or furnishing of housing loan guarantees by Funds in amounts exceeding the cost of additions, alterations, maintenance or repairs to a dwelling; and
- 2.4. the construction of Fund rules that permit Funds to make deductions from members' fund credit or accumulated retirement savings in order to settle housing loan debts, in the event that such members default on the housing loans granted to them by the Funds. The aforementioned rules permit Funds to make such deductions despite the fact that the said members of the Fund have not become entitled to a benefit at the time that the deduction is made. This results in the reduction of the value of the members' fund credit or accumulated retirement savings.

## **3. THE LAW**

- 3.1. Section 11(d) of the Act provides that the Fund rules must contain conditions under which any member or other person may become entitled to any benefit and the nature and extent of any such benefit.
- 3.2. Section 19(5) of the Act permits a Fund to grant housing loans and to furnish guarantees in respect of housing loans granted to members of the Fund by persons other than the Fund.

3.3. Section 19(5)(c) of the Act provides that:

*“A loan contemplated in paragraph (a) shall not exceed where it is secured in accordance with –*

*(i) paragraph (b)(i)(aa), 90 per cent of the market value of the hypothecated property concerned;*

*(ii) paragraph (b)(i)(bb), 90 per cent of the amount of the benefit which the member would receive if he were to terminate his membership of the fund voluntarily as at the time of the taking up of the loan; or*

*(iii) paragraph (b)(i)(cc), the amount equal to the aggregate of 90 per cent of the market value of the hypothecated property concerned and 90 per cent of the amount of the benefit which the member would receive if he were to terminate his membership of the fund voluntarily as at the time of the taking up of the loan.”*

3.4. Section 19(6)(a) of the Act provides that:

*“The registrar may, under exceptional circumstances, and on such conditions and for such periods as he may determine, temporarily exempt any fund from compliance with any provision of subsection (4), (5) or (5B)(a).”*

3.5. Section 37A(1) of the Act prohibits the reduction, transfer, cession, pledge or hypothecation of a benefit or right to such benefit or right in respect of contributions made by or on behalf of a member, except to the extent specifically permitted in terms of the Act, Income Tax Act, 1981 (Act No. 24 of 1981) and the Maintenance Act, 2003 (Act No. 9 of 2003). Section 37D of the Act specifies the deductions that are permitted in terms of the Act.

3.6. Section 37D(a) of the Act stipulates as follows:

*“A registered fund may -*

*(a) deduct any amount due to the fund in respect of -*

*(i) a loan granted to a member in terms of section 19(5)(a) from the benefit to which the member or a beneficiary is entitled in terms of the rules of the fund; or*

*(ii) any amount for which the fund is liable under a guarantee furnished in respect of a loan by some other person to a member for any purpose referred to in section 19(5)(a), but the fund is not liable to such other person in an amount greater than the amount of benefit which the member would receive if he were to terminate his membership of the fund voluntarily as at the time the guarantee is called up and notwithstanding that the amount originally guaranteed might be greater.”*

#### **4. THE REGISTRAR’S POSITION**

4.1. Funds may grant loans or furnish guarantees in respect of a loan granted to its members by a person other than the Fund only for the purposes stipulated in section 19(5)(a) of the Act and not for any other purpose, unless prior exemption is obtained from the Registrar in terms of section 19(6)(a).

4.2. The maximum housing loan granted by a Fund or housing loan guarantee furnished by a Fund, which is secured by a first mortgage registered on any property belonging to the member shall not exceed 90 per cent of the market value of the property concerned. The maximum housing loan granted by a Fund or housing loan guarantee furnished by a Fund, which is secured by a pledge of the member’s benefit shall not exceed 90 per cent of the amount of the withdrawal benefit that the member would receive upon termination of membership of the Fund as at the time of the taking up of the loan.

If the loan or guarantee is secured by both a first mortgage bond and a pledge of the member's withdrawal benefit, the loan or guarantee shall not exceed an amount equal to the aggregate of 90 per cent of the market value of the property concerned and 90 per cent of the withdrawal benefit that the member would receive upon termination of membership of the Fund as at the time of the taking up of the loan.

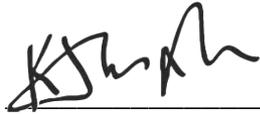
- 4.3. A housing loan granted by a Fund or a housing loan guarantee furnished by a Fund in respect of an addition, alteration, maintenance or repairs to a dwelling shall not exceed the cost of such addition, alteration, maintenance or repairs.
- 4.4. Except where prior exemption is obtained under section 19(6)(a), Funds may not grant a housing loan or furnish a housing loan guarantee where the property concerned is not owned by the member or a spouse of the member or where the property concerned is or will not be occupied by the member or dependant of the member.
- 4.5. In terms of section 37D(a) of the Act, a deduction of any amount due to the Fund in respect of a housing loan granted by the Fund to a member or a housing loan guarantee furnished by the Fund, from a member's benefit, is only permissible when it is done at the time that such member or a beneficiary is (or becomes) entitled to the said benefit in terms of the Fund rules.
- 4.6. Fund rules that permit the Fund to deduct any amount due to the Fund in respect of a housing loan granted by the Fund to such member or a housing loan guarantee furnished by the Fund, from a defaulting member's fund credit or accumulated retirement savings (while the said member is not entitled to any benefit in terms of the Fund rules), is inconsistent with sections 37A and 37D of the Act.

## 5. GENERAL

Funds are required to ensure compliance with all the provisions of section 19 of the Act when granting housing loans or furnishing housing loan guarantees, provided that Funds may under exceptional circumstances apply for prior exemption from section 19(5) or 19(5B)(a) in terms of section 19(6)(a) of the Act. A contravention by a Fund of any provision of section 19 of the Act constitutes a criminal offence in terms of section 37 of the Act and such Fund may accordingly be held criminally liable in terms of the said section.

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



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**Kenneth S. Matomola**  
**Registrar of Pension Funds**