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FREQUENTLY ASKED QUESTIONS BY RETIREMENT FUNDS VIS-À-VIS FIMA

Standards / Regulations No. & Clause	Comments / Description of issue:	NAMFISA Comments
GEN.S.10.2 clause 3(8) & 3(18) ***(GEN.S.10.2 - Fit and proper requirements)***	In terms of the Standard, when applying to NAMFISA for registration, the fund must furnish in terms of clause 3(8)(a): Personal questionnaire and declaration form in terms of clause 3(18)(a): Corporate questionnaire and declaration form Will NAMFISA issue the aforesaid documents?	NAMFISA will draft personal questionnaire and declaration form and the corporate questionnaire form will be prepared and Industry will be consulted on the form in due course.
GEN.S.10.8 clause 3(2) ***(GEN.S.10.8 - The independence of directors, members of a board, trustees, custodians, auditors and valuators and of any other person required to be independent under the Act)***	As per clause 3(2), in relation to a financial institution or financial intermediary, an individual will not be considered independent if, in respect of an election or appointment to a position with that financial institution or financial intermediary, the individual: (a) is employed, or has, within the immediately preceding year, been employed, by the financial institution or financial intermediary concerned, or (b) by an associate or affiliate of that financial institution or financial intermediary. To ensure that the board of trustees of a fund retains professional expertise and complies with the fit and proper requirements, it would be beneficial if a transition period be added after FIMA effective date during which the above requirement is waived.	FIMA provides for a 12 months transitional period within which funds need not to comply with all requirement of FIMA.

	A transition period should be added to the Standard during which the requirement in clause 3(2) is waived, e.g., transition to apply for the first 12 months after FIMA is effective.	
GEN.S.10.10 clause 2 ***(GEN.S.10.10 – Outsourcing)***	In terms of Clause 2, this Standard applies to every industry participant and the material business functions of that industry participant, and to all service providers with respect to the outsourcing of any such material business function. Is the use of a software an outsourced service? E.g., paying the service provider, a license fee for the software on which the administration system is operated. The license fee includes regular upgrades to the software. The operation of the administration system itself is not outsourced.	The decisive factor is custody and access to the data stored on the said outsourced system i.e., does the service provider has access to the data thereto etc.? Each case should be assessed on its merits
GEN.S.10.17 clause 3 ***(GEN.S.10.17 - Description of Plain Language)***	a. Clause 3(1)(d) requires that, in order to comply with standard GEN.S.10.17, a document must "be written to meet NAMFISA's certification requirements on plain language". It is not clear from this statement which certification requirements of NAMFISA are meant, is it those set out in sub-clause 3(3) of the Standard. b. Clause 3(4) requires that "All persons to whom this Standard applies must be satisfied that, after reading the relevant document, a client: (a) has understood the content, by so acknowledging in writing without duress; …". Shouldn't clause 3(4) be amended to remove the acknowledgement in writing without duress and replace it with 'acknowledge in writing without duress if prompted'.	a. A document must be written to meet NAMFISA's certification requirements on plain language set out in clause 3(3). b. This is a General Standard applicable to the whole FIM thus it applies to contracts/rules, benefit statements, benefit payments, loan agreements etc. There are documents, especially those giving rise to obligations and liability where it needs to be clear that the person signing signed without duress and understood what they were signing.

GEN.S.10.18 clause 5 ***(GEN.S.10.18 - The Fiduciary Responsibilities of Financial Institutions and Financial Intermediaries and of Their Directors, Members of Boards, Principal Officers and Other Officers)***	Clause 5 requires the following: "Financial institutions and financial intermediaries and their functionaries must keep a record of material dealings involving clients or investors, in order to be in a position to demonstrate the execution of fiduciary duties." Shouldn't the wordings "material dealings involving clients or investors" be defined?	This is another General Standard applicable to the whole FIM. The standard speaks about fiduciary duty towards the clients/investor. It goes without saying that material dealings involving clients or investors includes correspondences between a financial institution and consumer; records of decisions taken by a financial institution including the basis thereof. Material dealing between a financial institution and client and those between a financial intermediary and client will differs, depending on the nature of the relationship. Therefore, material dealings should be understood in the context of the relationship.
RF.S.5.4 clause 5 ***(RF.S.5.4 -Requirements for rules of a fund and any amendment of such rules)***	a. In terms of section 271(4) of the FIMA, the board of a fund has a period of 12 months within which to amend any rules of the fund which are inconsistent with FIMA, which period commences, as applicable, on the date of commencement of FIMA or on the date on which a regulation or standard relating to the rules comes into effect. b. In terms of clause 5 of RF.S.5.4, a retirement fund referred to in section 255 of the Act must amend its rules to comply with this Standard within 6 months of the date on which this Standard comes into effect. The period in clause 5 of RF.S.5.4 should be amended to be the same as in the Act, i.e., 12 months after date of commencement of Act/ standard/ regulation.	NAMFISA notes that the discrepancy between the transitional periods envisaged in section 271(4) of FIMA and RF.S.5.4 and confirms that the period provided under section 271(4) is the accurate one.
RF.S.5.9 clauses 4 and 6 ***(RF.S.5.9 - Compulsory beneficiary nomination forms)***	As per clause 4, fund members need to return the beneficiary nomination form sent to them annually by the fund, on or before 30th of January each year. Further, as per clause 6, members are entitled to amend their beneficiary nomination forms at any time by completing a new beneficiary nomination form. Is it permissible for fund to make use of electronic beneficiary nomination form	The standard does not prescribe a format. If witnessing, which is linked to authentication and admissibility as evidence can be resolved, the fund can have nomination forms in any format.

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	i.e., for members to complete the beneficiary nomination form on an online system or platform.	
RF.S.5.11 clause 5 ***(RF.S.5.11 - Alternative forms of payment of pensions for the purposes of defined contribution funds)***	Clause 5 lists the retirement income providers for the six different forms of retirement income that a member of a defined contribution fund may elect on retirement. A retirement fund may only offer the forms of retirement income referred to in clauses 3(e) and (f), which does not include a life annuity. Some defined contribution funds offer pooled pensions, which is a life annuity to the member and where the employer stands in for any shortfall between the actuarial value of the liabilities of these pensions and their underlying investment value. Shouldn't cclause 5 be amended to allow retirement funds to be a registered retirement income provider for life annuities in the form of pooled pensions as well.	The Standard will be aligned.
RF.S.5.11 clauses 7 & 8	In terms of clauses 7 & 8, registered retirement income providers must provide members with certain information prior to making an election of a form of retirement income, which includes details about the forms of retirement income as well as the longevity, investment, expense or insolvency risks which the member would be required to manage or to which the member may be exposed. Given the complex nature of information to be furnished to the members, shouldn't clause 8 be amended to include that the fund should advise members to make use of a qualified financial advisor when electing a form of retirement income.	Clauses 7 and 8 does not require funds to provide expert advise rather basic information about the products which is expected from every fund. The basic information is well within the competency and capability realm of a fund; and funds can't provide services they are unable to explain the basics thereof. Should a member desire expert advise, they may seek such advise.

RF.S.5.17 clause 3 & Schedule 1 ***(RF.S.5.17 - Report to persons having an interest in the compliance with Payment of contributions)***	The information required by the Standard to be provided annually to the member is excessive and might result in the member's attention not being drawn to the important information due to the excess of information. For example, the following requirements are seen to be not critical to the decision-making of the member in the benefit statement/ other annual communication and should be left out: Clause 3: a. Explanation of objectives of the fund b. The risks involved in its operations and conditions that would tend to maximise the likelihood of success c. Terms and conditions that would apply to the termination of the retirement fund Clause 6: d. Benefit statement to include member's current municipal address e. The value and net rate of return respectively of the investment portfolio at end of year split into portion corresponding to accumulated contributions of the member and portion corresponding to accumulated contributions of the employer	The information suggested for exclusion is crucial for the members to understand the nature of the fund and the conditions that may lead to it termination. There is a need to address the current information asymmetry and ensure that there is full disclosure of what the member is getting themselves into. This can only be achieved when the information prescribed in the standard is disclosed to the members of the fund
RF.R.5.3 clause 8 ***(RF.R.5.3 - The terms and conditions on which the board of a fund may distribute some or all of an actuarial surplus, pursuant to section 268(8))***	Why should this regulation not apply to defined contribution funds when it's written to apply to defined benefit fund? Alternatively, to what extent does this regulation apply to defined contributions funds?	In terms of clause 8, this regulation applies to defined contribution funds only to the extent that a defined contribution fund has excess amounts for distribution.

RF.R.5.7 *clause 3/ definition of "Prescribed Period"*	As per clause 3, where the transfer of a former member's transfer value has not been completed within the pprescribed pperiod which is 60, a retirement fund must pay interest on the transfer value, calculated from the expiration of the Prescribed Period up to the date on which the transfer is completed. However, there is no requirement that other conditions for the transfer have to be met by the member before expiry of 60 days. Shouldn't the regulation be amended to clarify that the "valid request in writing" envisaged in the regulation includes that all statutory requirements are in place as well in order for the fund to be able to process the transfer, including that a tax deduction directive has been issued for the member.	If there are an outstanding item the fund should communicate to the member that it is unable to process the transfer for whatever reason and inform the member that such transfer cannot be made until such reasons have been resolved. No need to specify as in the scenario sketched there is an impossibility of performance. It should be noted that it's the fund's responsibility to apply for tax directive.
Regulation RF.R.5.10 – *Compulsory Preservation*	For a member who withdraws after the FIMA effective date, regulation RF.R.5.10 which requires compulsory preservation of 75% of the minimum individual reserve (or fund credit) applies. The question is whether the 75% compulsory preservation applies: a. to the member's fund credit accrued up to the FIMA effective date as well or b. only on the member's fund credit accrued from the FIMA effective date until the withdrawal date?	Compulsory preservation applies to all retirement benefits that accrues and contributions made by members of the retirement fund. Accordingly, the prescribed 75% preservation applies to both accrued and accumulated benefits. In other words, the member's fund credit prior to effective date and post effective is subject to RF.R.5.10.
Section 276 of FIMA	Does the application of section 276 of FIMA to the death benefit of an active member result in prohibiting retirement funds from offering specified spouses and children's pension?	FIMA does not prohibit retirement funds from offering specified spouses and children's pension.
Section 276 of FIM	Will section 276 of FIMA apply to the distribution of a deceased beneficiary's benefit where the beneficiary continued to receive a benefit from the retirement fund and has outstanding benefits from the retirement fund at the time of death?	Section 276 stops with a death benefit payable upon death of an active/retired member. The fund's obligation was to its member to take care of their beneficiaries, not to the beneficiary. The outstanding benefits should be

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		paid into the estate as they are a benefit payable to the deceased and not their dependants or nominees. It goes without that retirement funds do not exist for the dependants of a beneficiary of a deceased member.
RF.R.5.7 – *Regulation on the rate of interest payable on benefits not transferred*	Although Schedule 1 of RF.R.5.7 prescribed a "notice of transfer" form, retirement funds already have existing notice of transfer form in one form or another and in some case, the said form is even programmed on an administration system, thus it will be difficult and impractical to amend the existing forms to comply with the form prescribed in the regulation. Is it possible to allow retirement funds to amend their current "Notice of Transfer" form to ensure that all the information as per Schedule 1 of RF.R.5.7 is included without the form being identical to the form in Schedule 1?	Schedule 1 of Regulation RF.R.5.7 is a notice of transfer form which must be completed by a member transferring their benefits to another fund. Accordingly, the notice of transfer presently used by retirement funds should be amended to contain all the information of Schedule 1 upon commencement of FIM. Upon commencement of FIM, retirement funds will be required to develop a form that meets the requirements of the law.
Section 249 of FIMA - *Definition of retirement benefit*	Which retirement benefits may a retirement fund offer under FIMA upon the disability or death of a member prior to retirement? In other words, are retirement funds permitted offer any risk / insured benefits that are specified in the Rules of the Fund, e.g., GLA, PHI and funeral benefits in addition to the fund credit of the member.	a. A benefit cannot be insured. Insurance business is the transfer of risk. A retirement fund does not have the risk of e.g., its life coming to an end and there by becoming unable to earn an income (this is a risk to the member, not to the fund). The risk the fund has is one of not having enough assets to provide the benefit it has promised the members (via its rules). The fund therefore takes out insurance to cover this risk. Here there is no relationship between the member and the insurer. The two never interact. If there is a claim the member goes to the fund, the fund assesses the claim if it meets the condition of the benefit provided. When that is satisfied the fund approaches its insurer to say, we have this claim but we do not have the means to honour it, so the

		insured event has arisen. Funds that have this arrangement currently will be fine. b. However, currently a common arrangement is one where the fund kind of act as an intermediary by collecting the premiums from you (the member) and pay it over to the insurer. If you (the member) have a claim, the member should contact the insurer and they will take it from there. The insurer assesses and decides whether or not the benefit will be paid and to what extent it will be paid regardless of the benefit promised in the rules. So, it basically hinges on who or what is insured. c. Therefore, a fund can only insure its liability for benefits "payable to individuals on or after their retirement or on their disability, death or termination of employment prior to retirement or on separation from a retirement fund or to their survivors, dependants or nominees". d. The language and structuring of the benefits is very important - a retirement fund can offer risk benefits provided its offered by the fund to its member.
	Can NAMFISA to publish a list of the main differences between the Pension Funds Act and the FIM Act applicable to retirement funds?	No, we are not empowered to do so. We are however working on a rules template which may assist in ensuring fund rules cover all required aspects.

Section 261 of FIMA	How does NAMFISA envisage umbrella funds complying with section 261(3) of FIMA? For a fund with 1 or 2 participating employers it would probably be possible for the active and retired members of the fund to elect the members of the board because it would be relatively easy to reach the members via the participating employer. How do you suggest this will work with an umbrella fund with a large number of unrelated participating employers + deferred pensioners + survivor members+ retired members? This will be a huge administrative exercise with resulting excessive costs in relation to the minimum benefit to members. Is there a quorum, i.e., minimum number of members that need to respond? Due to these practical complications, is it possible to add umbrella funds to this regulation to be exempted from this requirement?	The manner for election of trustees (modalities, quorum, proxy etc) should be contained in the rules of the fund. Enhanced disclosure and communication obligations under FIMA will require funds to have more contact and communication with members, both active and retired. Hence, the election communication may be done in the same way that an umbrella fund would communicate to deferred pensioners, survivor members and retired and active members about their benefit statements and change of material provisions of the rules or such other matter that must be communicated by the fund.
Section 249 of FIMA	a. Some defined contribution funds currently offer a guaranteed pension underwritten by the employer under the Pension Funds Act. These are vested benefits. Does FIMA allow these vested benefits (accrued pre-FIMA effective date) to stay in the retirement fund while the retirement fund remains a defined contribution fund? b. Some defined contribution funds currently offer life annuities under a fund-owned policy underwritten by the insurer to its members. May they continue to do so under FIMA? c. Can a retirement fund provide benefits to survivors, dependants or nominees of deceased members from another retirement fund? If not, which section of FIMA prohibits this?	a. Defined contributions offering guaranteed benefits are captured by section 268(1)(a) of FIM. Accordingly, such funds will not be eligible for exemption in terms of section 268(7). b. Defined contribution funds which currently offer fund-owned policy underwritten by the insurer to its members will continue as envisaged in the definition of defined contribution fund in section 249. c. In regard to providing benefits to survivors, dependants or nominees of deceased members from another retirement fund – this is not permitted for retirement fund as evident from the objective of a retirement fund under definition of a ‘retirement fund’ in section 249. A retirement fund exists to provide benefits to its members funded by contributions received by fund. FIMA provides for beneficiary funds accordingly, the said practice is accommodated thereunder.

Section 249 of FIMA	Clarification of the impact of the definition of "defined contribution fund" in section 249 on death and disability benefits: Subsection (a) of the definition of "defined contribution fund" reads "each member receives a benefit the amount of which is determined by the balance in that member's individual account on the date of the member's retirement, death, disability, withdrawal or termination of employment of that member;" The definition of 'member's individual account' in section 249 reads "member's individual account" means the account operated for the member as defined in the rules of the fund…" Firstly, does the above imply that any insured death or disability benefit, must first be allocated to the member's individual account upon receipt from the insurance company so that the balance in the member's individual account, including the insured amount allocated, can be paid out? By implication, this would mean that no fund will be able to offer disability income benefits, as pension funds were able to do in the past, as the benefit in such event will not be determined by the balance in the member's individual account. Secondly, does the phrase "…a benefit the amount of which is determined by the balance in that member's individual account…" require a single benefit, in other words, either an annuity or a lump sum but not both? Therefore, a provident fund can only pay a lump sum and not an annuity while a pension fund member must use the full capital to purchase a pension or an annuity?	In cases where the fund has insured its liability it has in effect, outsourced that function. So, the members individual account in that event will be the members "account" (balance of benefit with the insurer). In essence insured death or disability benefit entails the (re)insurance of the fund's liability to its members – unless the rules provide otherwise, the fund is liable to its members even where the insurer has repudiated the claim. The premiums servicing insured benefits would generally have been credited to the member's individual account had there been no insured benefits. Consequently, the proceeds thereof should equally be allocated to the member's individual account Lastly, the complete phrase is "a benefit the amount of which is determined…" There is no reference to the payment of such benefit. The provision only speaks to the determination of a benefit which is due. So, on the happening of a trigger event a benefit is determined. This benefit can comprise on retirement savings account due from insurers where benefits are underwritten, etc.
	FIMA that deals with the preservation of subordinate measures (regulations, directives) made under a repealed law which remains in force unless in conflict with the FIMA and until superseded by subordinate FIMA legislation (Schedule 3 to the FIMA, section 2(1)).	All subordinate legislation, not only investment regulations, made under the Pension Funds Act will remain in force, unless specifically replaced or repealed by FIMA or any subordinate legislation made under FIMA.

	Part of the Regulations to the Pension Funds Act would fall under this and would therefore remain applicable under the FIMA. The Regulations that were specifically mentioned are those related to the investment limits of listed investments as well as unlisted investments (Regulations 12 – 40). Is there any other subordinate legislation similar to this that will remain applicable under the FIMA?	
	a. Hybrid funds under FIMA We understand that hybrid funds are allowed under FIMA. What exactly is meant by a hybrid fund? Where in FIMA legislation is provision made for a hybrid fund? Where in FIMA legislation can we read up about how hybrid funds should be treated under FIMA? The clarification of these aspects is crucial for all defined contribution funds which currently offer guaranteed benefits (e.g., pooled pensioners). b. Reserves that a defined contribution fund may hold and the distribution of those reserves: We understand that a DC fund should not be able to build up reserves and that the expense reserve should be distributed every year as provided for in FIMA standard RF.S.5.10 *Exemption from actuarial investigation*. Is this only applicable where a DC fund applies for exemption from actuarial valuation? Therefore, as long as a DC fund does not apply for exemption from actuarial valuation, there is no need for a DC fund to distribute its expense reserve each year?	a. The FIMA does not make mention of "hybrid" funds, but for the purpose of regulation/supervision, these are defined contribution funds that have a defined benefit component (like pooled pensioners paid from the fund), which means such defined contribution funds are required to keep reserves for such pensioners, and will thus be subject to regular actuarial scrutiny. b. The annual distribution of expense reserves in a defined contribution fund only applies to defined contribution funds that wish to obtain (and maintain) exemption from actuarial valuations pursuant to Standard RF.S.5.10.
	Does it mean that a DC fund that has pooled pensioners currently can stay a DC fund under FIMA while retaining the pooled pensioners (both existing pooled pensioners with vested benefits pre-FIMA as well as new pooled pensioners post-FIMA), provided that the pooled pensioner portion complies with the DB requirements of FIMA?	Indeed, DC funds with pooled pensioners may continue as is, but will be subject to triennial actuarial valuations as per section 268(1)(a). With regards to reporting requirements (second question), the DB component should be reported separately from that of the DC

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	What would this mean in practice? More specifically: • Actuarial valuation (s268): Would the actuary of the fund have to prepare a valuation report on the pooled pensioner portion every year and for the entire fund every 3 years? Or would the entire fund be subject to a statutory valuation every year? • Reporting requirements: Some standards distinguish between reporting requirements for DB funds and DC funds, e.g., RF.S.5.15 *Annual report to NAMFISA*, RF.S.5.18 *Matters to be included in an investment policy statement*, RF.S.5.19 *Matters in respect of communication with members*. Would these reporting requirements then have to be separately applied to the DB component members and to the DC component members? • Are there any other requirements applicable to hybrid funds as opposed to a 100% DC fund?	members, as provided for in the various standards. Lastly, there are no other requirements applicable to hybrid funds, although this may change should the need arise.
	Some defined contribution funds have investment reserves, which are reserves that serve as a buffer against volatility in the market value of the assets. A portion of investment returns earned by the Fund during periods of high market returns are held in the reserve and not allocated to members in order to be allocated to members during periods of low market returns and thereby decrease the volatility of market returns allocated to the member's share. These reserves do not guarantee specific investment returns. The investment reserve is therefore not a defined benefit component. How would these funds be treated under FIMA? Say that such a fund is a 100% DC fund (not a hybrid fund since no DB component) but subject to actuarial valuation every 3 years. Would you agree?	Such a fund would not be eligible for exemption from actuarial valuations.

	a. How will the formal consultation process on subordinate legislation once FIMA is promulgated take place? b. Section 409 of FIMA sets out the process for the issuing of Standards. In terms of section 409(3) NAMFISA will issue a draft standard in the Gazette whereafter Industry will have at least 30 days to submit written comments thereon to NAMFISA whereafter NAMFISA will issue the final standard. Will NAMFISA provide written feedback on all comments? How will we know whether or not our comments were taken into consideration? c. Section 465 of FIMA states that the Minister may make Regulations. No process is set out in FIMA for the making of Regulations. What is the process? Will the draft Regulations be formally issued via Gazette and a similar process followed as for the Standards? If not, how can Industry submit comments thereon and know that the comments were taken into consideration?	a. The formal consultation will be by way of written consultations / representation. Where need be, it could be verbal (meeting) consultation. b. NAMFISA will consider providing feedback to representation. The law requires us to consult and thus all comments from all industry players will be considered. c. The Minister is under no obligation to consult on the regulations; therefore, such process does not exist. The Minister may decide to consult or not. Should the Minister choose to consult, we will have the industry make comments via appropriate communique.