

GOVERNMENT NOTICE

FRIENDLY SOCIETIES

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. X

2021

**STANDARDS MADE UNDER THE FINANCIAL INSTITUTIONS AND MARKETS
ACT, 2021**

The Namibia Financial Institutions Supervisory Authority has under section 410 of the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021), made the standards set out in the Schedule.

**Gersom Katjimune
Chairperson**

Windhoek,

2021

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021 [Act No. 2 of
2021]

DRAFT STANDARD

REQUIREMENTS FOR THE VOLUNTARY TERMINATION OR DISSOLUTION
OF A FRIENDLY SOCIETY PURSUANT TO SECTION 316 AND IN
CIRCUMSTANCES SPECIFIED IN ITS RULES

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: FS.S.6.9

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021 [Act No. 2 of 2021]**Requirements for the voluntary termination or dissolution of a friendly society pursuant to section 316 and in circumstances specified in its rules****Standard No. FS.S.6.9**

issued by NAMFISA under section 410(7)(r) of the Financial Institutions and Markets Act, 2021

Definitions

1. (1) In this Standard-
 - (a) “Act” means the *Financial Institutions and Markets Act, 2021* [Act No. 2 of 2021], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
 - (b) “Companies Act” means the *Companies Act, 2004* (Act No. 28 of 2004);
 - (c) “final accounts” means the final revenues and expenses account and the final balance sheet; and
 - (d) “preliminary accounts” means the preliminary revenues and expenses account and the preliminary balance sheet.
- (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) friendly society;
 - (ii) NAMFISA;
 - (iii) principal officer; and
 - (iv) valuator;
 - (b) as defined in section 284 of the Act-
 - (i) assets;
 - (ii) board;
 - (iii) liabilities;

- (iv) member;
- (v) rules; and
- (vi) society.

Applicability

2. This Standard applies to every friendly society registered under the Act and to the board and principal officer of such friendly society, and to a liquidator appointed under clause 11.

Requirements for voluntary dissolution

3. The rules of a friendly society must provide procedures for the voluntary dissolution of the friendly society.
4. Where the rules of a friendly society provide for the dissolution of the society upon:
 - (a) the expiry of a certain period;
 - (b) upon the occurrence of a certain event; or
 - (c) a resolution by the members to that effect,the society must be dissolved and the assets of the society distributed in the manner provided by its rules, subject to the provisions of this Standard.
5. Subject to an evaluation of the particular circumstances and to the rules of the friendly society, NAMFISA must determine whether a friendly society meets the requirements for voluntary dissolution.
6. Following a decision by members pursuant to clause 4(c), the principal officer must, in consultation with NAMFISA, furnish every member with a memorandum containing the reason(s) for the proposed dissolution and with a resolution to that effect as contemplated in clause 4(c), and a ballot paper.
7. The memorandum and ballot paper referred to in clause 6 must be submitted to NAMFISA for approval before being sent to the members.
8. Every member must be requested to return the ballot paper, duly completed, before a specified date, which date must not be later than 90 calendar days after the memorandum as contemplated in clause 6 is furnished to members.

9. If at least 75 % of the members return their ballot papers duly completed and the majority is in favour of the dissolution of the friendly society, the board must ensure that the society is dissolved.
10. If two successive attempts to obtain a 75 % return of ballot papers fail, the board must refer the matter to NAMFISA for guidance.
11. A liquidator from the list maintained by NAMFISA pursuant to clause 13 must be appointed for the society in the manner directed by its rules, or, if the rules do not contain directions as to such appointment, by the board or principal officer of the society, but such appointment is subject to the approval of NAMFISA, and the period of dissolution shall be deemed to commence as from the date of such approval.
12. A copy of the resolution by the members of the society approving the dissolution of the society and the remuneration of the liquidator shall be submitted to NAMFISA and kept with the records of the society.
13. NAMFISA may maintain a list of persons approved by NAMFISA to act as liquidators of friendly societies, the purpose of the list being to expedite the appointment of a liquidator by a society and the approval of such appointment by NAMFISA.
14. During the period of dissolution of the society, the provisions of the Act shall continue to apply to the society as if the liquidator is the board or principal officer of the society.
15. The liquidator must, as soon as possible but within ninety (90) calendar days from the date of the approval of his or her appointment, deposit with NAMFISA the preliminary accounts, signed and certified as correct by the liquidator and showing the assets and liabilities of the society as at the date of commencement of the dissolution and the manner in which it is proposed to realise the assets and to discharge the liabilities of the society, including any liabilities and contingent liabilities to or in respect of members.
16. The liquidator shall discharge from the assets of the friendly society all of the debts, liabilities and obligations of the society (including all expenses incurred in liquidating the society) or otherwise make adequate provision for payment and discharge thereof, including, if the liquidator considers it necessary, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine.

17. NAMFISA may, at its discretion and at its own cost, direct the liquidator to submit a report on the preliminary accounts referred to in clause 15, drawn up by an independent valuator or other competent person nominated by NAMFISA.
18. The preliminary accounts and report (if any) referred to in clauses 15 and 17 must be open for inspection by members of the society and other interested persons for a period of thirty days at the office of NAMFISA and at the principal office of the society.
19. NAMFISA must direct the liquidator to publish a notice, at the cost of the society, in the Government Gazette and in a national and/or regional/local newspaper in the English language or, if NAMFISA deems it necessary in the circumstances, in any other language, circulating in the district in which the principal office of the society is situated stating the period during which and the places at which the preliminary accounts and report (if any) shall be open for inspection by members of the society and other interested persons, which period shall be thirty days as contemplated in clause 18.
20. The notice referred to in clause 19 must state that any member or other interested person who has any objection to the preliminary accounts and report (if any) may lodge their objections in writing with NAMFISA within a period stated in the notice, which period shall be thirty days calculated from the last day on which those documents are open for inspection.
21. The text of the notice referred to in clause 19 must be approved by NAMFISA prior to its publication.
22. If no objections are lodged with NAMFISA pursuant to clause 20, NAMFISA must direct the liquidator to complete the dissolution.
23. If objections are lodged with NAMFISA pursuant to clause 20, NAMFISA may, after considering the objections, direct the liquidator to amend the preliminary accounts or give such other directions relating to the dissolution as NAMFISA thinks fit, provided such directions are not inconsistent with the rules of the society or this Standard, and any such direction shall be binding upon the liquidator.
24. The liquidator must forthwith upon the receipt of any direction of NAMFISA pursuant to clause 23, send a copy of the direction to every member, shareholder (where applicable) and creditor of the society, and the liquidator or any person aggrieved by any such direction may apply by motion to the court within twenty eight days after receipt of the direction by the liquidator, for an order to set aside the direction, and the court may confirm, vary or set aside the direction or make such other order as the court thinks fit.

25. If NAMFISA is satisfied that its directions, in so far as they have not been varied or set aside by the court, have been given effect by the liquidator, NAMFISA must direct the liquidator to complete the dissolution
26. Not later than 30 days after completion of the dissolution, the liquidator must lodge with NAMFISA the final accounts signed and certified as correct by the liquidator and showing the assets and liabilities of the society at the commencement of the dissolution and the manner in which the assets have been realized and the liabilities (including any liabilities and contingent liabilities to or in respect members), have been discharged.
27. The provisions of the Companies Act relating to a voluntary winding-up, in so far as they are applicable to a society and are not inconsistent with the provisions of the Act and this Standard, shall apply *mutatis mutandis* to the dissolution of a society in accordance with this Standard.
28. All claims against the society must be proved to the satisfaction of the liquidator, subject to a right to appeal to the court, and the liquidator may require any claim to be made on affidavit.
29. If satisfied that the accounts prepared by the liquidator in respect of the society are correct and that the dissolution has been completed, NAMFISA must cancel the registration of the society and thereupon the society must be deemed to be dissolved.
30. If a society has a share capital, the liability of a shareholder of the society in the event of dissolution of the society, must be:
 - (a) limited to the amount (if any) unpaid on any share held by that shareholder; or
 - (b) unlimited if so provided by the rules of the society.
31. The provisions of this Standard shall not apply to a society if the dissolution of the society is a result of an amalgamation or transfer approved by NAMFISA pursuant to Part 8 of Chapter 10 of the Act.
32. In exercising its powers and functions under this Standard, NAMFISA may request any additional information not provided for in this Standard that NAMFISA considers necessary or desirable.