

GOVERNMENT NOTICE

MINISTRY OF FINANCE

No.

2021

**REGULATION MADE IN TERMS OF THE FINANCIAL INSTITUTIONS AND MARKETS
ACT, 2021**

The Minister of Finance has, under subsection 465(8) of the Financial Institutions and Markets Act, 2021 (Act No 2 of 2021), made the regulations set out in the Schedule.

MINISTER OF FINANCE

WINDHOEK

2021

SCHEDULE

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

DRAFT REGULATION

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)

MINISTRY OF FINANCE

Regulation No: RF.R.5.3

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

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)

Regulation No. RF.R.5.3

issued by the Minister of Finance under section 465(8)(f) of the Financial Institutions and Markets Act, 2021

Definitions

1. (1) In this Regulation:
 - (a) “Act” means the *Financial Institutions and Markets Act, 2021* [Act No. 2 of 2021], and it includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
 - (b) “date of inception” means the date on which a retirement fund commences to receive contributions;
 - (c) “deferred member” means a member who has not yet retired but has left the service of the employer concerned prior to the retirement date, as defined in the rules of the fund, leaving in the fund the rights of the member to such benefits as may be payable according to those rules;
 - (d) “former member” means a person who has received all the benefits due to him or her from the fund and whose membership was terminated in accordance with the rules of the fund;
 - (e) “net actuarial surplus” means actuarial surplus as calculated in Standard RF.S.5.1;
 - (f) “participant” means a person whom in the opinion of the board is entitled to participate in the distribution of actuarial surplus and may include an employer, sponsor, member, former member, deferred member, dependant and nominee, as applicable, and a person in receipt of an income benefit from a retirement fund; and

- (g) “Plan” means a plan for the distribution of the actuarial surplus of a retirement fund.
- (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 249 of the Act:
 - (i) active member;
 - (ii) board;
 - (iii) defined contribution fund;
 - (iv) dependant;
 - (v) fair value;
 - (vi) fund;
 - (vii) member;
 - (viii) nominee;
 - (ix) retired member; and
 - (x) retirement fund.

Execution of Plan

- 2. The board of a retirement fund may execute a Plan provided that:
 - (a) subject to clause 3, the rules of the fund specifically authorise the board to distribute the actuarial surplus;
 - (b) the fund is in full compliance with the Act;
 - (c) the fund is not a party to a legal action, dispute, arbitration, mediation or complaint, insofar as such legal action, dispute, arbitration, mediation or complaint affect the distribution of surplus;
 - (d) the participants have been notified of the Plan, in a manner acceptable to NAMFISA;
 - (e) the Plan has received the approval of the board;
 - (f) the actuarial surplus proposed to be distributed pursuant to the Plan has been determined on the basis of a report by the valuator of the fund at a date not more than six months prior to the effective date proposed for the distribution;

- (g) the Plan complies with the provisions of clause 5 or 6, as appropriate;
- (h) the application form and information as required by Schedules 1 and 2 to this Regulation have been submitted to NAMFISA; and
- (i) NAMFISA has, in writing, approved the Plan.

Rules must authorise Plan

- 3. (1) The rules of the retirement fund must authorise the board of the fund to distribute surplus as of the date of inception of the fund, unless sub-clause (2) applies.
- (2) In the event that the rules of the fund, dealing with an actuarial surplus and any distribution thereof, were amended subsequent to the date of inception, the board must demonstrate to the satisfaction of NAMFISA that such subsequent amendments were made following a process that included informing participants of the amendments and their implications, providing participants with the opportunity to vote to approve or reject the amendments, and providing for an equitable adjudication of the outcome of the voting.

Approval of Plan

- 4. NAMFISA must approve the Plan for the distribution of the actuarial surplus of a retirement fund if:
 - (a) the application form and information as required by Schedules 1 and 2 to this Regulation have been completed in full and submitted to the satisfaction of NAMFISA;
 - (b) any additional information required by NAMFISA has been provided to the satisfaction of NAMFISA;
 - (c) the requirements of clause 3(2) , if applicable, have been met to the satisfaction of NAMFISA;
 - (d) the requirements of clause 2 and clause 5 or 6, as applicable, have been met; and
 - (e) at least two-thirds of the participants in the aggregate have voted on the Plan, and at least two-thirds of the participants who have voted, have voted to approve the Plan.

Fund terminating in its entirety

5. The amount of the actuarial surplus that may be distributed in the case of a retirement fund that is terminating in its entirety must not exceed:

A minus the sum of B plus C where-

A is the fair value of the assets of the fund;

B is the total of the termination and wind-up liabilities of the fund for benefits to participants, as determined by the valuator of the fund according to the fund rules and actuarial standards appropriate to retirement fund terminations; and

C is the amount required to fully pay all expenses of terminating and winding-up the fund.

Fund not terminating in its entirety

6. The amount of the actuarial surplus that may be distributed in the case of a retirement fund that is not terminating in its entirety, must not exceed the lesser of A, B or C where-

A is an amount equal to 75% of the actuarial surplus in the fund;

B is the amount of the actuarial surplus less two years' contributions required to be paid by members and employers or sponsors; and

C is the amount of surplus estimated to be in the fund should it be terminated and wound-up.

Circumstances where Plan must not be approved

7. A Plan must not be approved by NAMFISA if:
- (a) the Plan does not comply with clauses 2, 3, 4 and clause 5 or 6,
 - (b) the Plan proposes to distribute an amount of the actuarial surplus to a participant that does not reasonably reflect the liabilities of the fund in respect of the accrued benefits of the participant as of the date of the distribution, having regard for the effects of providing for minimum and maximum allocations of actuarial surplus in the distribution methodology;
 - (c) the Plan proposes to distribute the actuarial surplus of the retirement fund to a contributing employer who has not had an entitlement to the actuarial surplus from the date of inception of the fund and the employer has not proven that it has subsequently established a valid claim in that regard.

Distribution by defined contribution fund

8. Where the board of a defined contribution fund distributes or proposes to distribute amounts representing the excess of the fund's assets over its liabilities, this Regulation shall apply.

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SUPPORTING SCHEDULES

The following supporting schedules are attached to and form part of these Regulations:

1. Application for Approval for a Plan of Distribution of Surplus
2. Information Summary

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Schedule 1

APPLICATION FOR APPROVAL FOR A PLAN OF DISTRIBUTION OF SURPLUS

(To be completed and certified by all the members of the board of the Retirement Fund)

1. Name of Retirement Fund _____

1. (a) Name of participating employer (if applicable) _____

2. (a) NAMFISA Registration Number _____

2. (b) Cite the relevant section, paragraph or clause of the fund rules that authorises the board to distribute surplus.

2. (c) Does any contributing employer or sponsor receive a distribution of surplus pursuant to the proposed distribution? Y ___ N___

2. (d) Does the distribution form part of the process of terminating the retirement fund? Y ___ N ___ If Y, is the termination partial or entire? Partial ___ Entire ___

3. Proposed Date of Distribution _____

4. Is the Fund in full compliance with the Act? (If no, please explain).

5. Is the Fund a party to any legal action, dispute, arbitration, mediation or complaint? (If yes, please explain)

6. Are any of the employers or sponsors contributing to the fund in default of any tax obligation to the Government of Namibia? (If yes, please explain)

7. Has the Plan been approved by any trade union or syndicate that represents any participants, where applicable, of the fund in labour negotiations with any employer or sponsor who contributes to the fund;

8. Has any additional information required by NAMFISA been provided to the satisfaction of NAMFISA?

9. (a) Briefly describe the proposed Plan of distribution and attach a detailed description to the application:

9. (b) Does the information provided in Schedule 2 accurately reflect the Plan for the distribution of the actuarial surplus of the retirement fund and is that information based on data that has been audited by the fund's auditor and on determinations made by the fund's valuator? Y____ N____

10. Describe the process that was followed to determine that the distribution is in the best interests of the members of the fund including all consultations that the board held with stakeholders like participants, members, trade unions etc. Append a detailed description to the application.

11. Describe the process that has been followed to notify participants and confirm that all participants have been notified specifying the nature and timing of the notification process.

12. Provide a detailed description of all stakeholders' comments, inquiries and complaints received together with details of replies to complaints disclosing the nature of any unresolved complaints as of the date of this application.

13. If the retirement fund has distributed surplus in the past, provide a brief description of those distributions including the methodology followed, the management of notifications, the handling of complaints or objections, the dates of distribution, the sources of the surplus, whether the distributions involved partial terminations of the retirement fund, and the financial impacts on the retirement fund.

14. Provide the following certification (all members of the Board are required to certify):

Certification

We the undersigned members of the Board of the _____ Retirement Fund hereby apply to NAMFISA for approval of the Plan of distribution of surplus described above and in the appended detailed description thereof, and we certify that the information provided above and in all material appended to this application is, to the best of our knowledge and belief, complete and accurate.

Chair of the Board

Trustee

Trustee

Trustee

Trustee

Schedule 2

INFORMATION SUMMARY RE. THE PLAN FOR THE DISTRIBUTION OF THE ACTUARIAL SURPLUS OF THE _____ RETIREMENT FUND

Date of Proposed Distribution		Date of Most Recent Auditor's Report	
Date of Most Recent Valuator's Report		Date Board Approved Plan of Distribution	
Assets of Fund at Fair Value per Auditor's Report		Liabilities of Fund per Valuator's Report	
Actuarial Surplus as per Valuator's Report		Actuarial Surplus To Be Distributed	
Actuarial Surplus to be Distributed to Active Members		Liabilities of Fund in Respect of Active Members	
Actuarial Surplus to be Distributed to Retired Members		Liabilities of Fund in Respect of Retired Members	
Actuarial Surplus to be Distributed to Deferred Members		Liabilities of Fund in Respect of Deferred Members	
Maximum Amount of Distribution of Actuarial Surplus	To An Active Member	To A Retired Member	To A Deferred Member
Minimum Amount of Distribution of Actuarial Surplus	To An Active Member	To A Retired Member	To A Deferred Member
Amount of Actuarial Surplus to be Distributed to Employer(s)	Employer A	Employer B	Employer C
Votes on the Plan of Distribution Cast By	Active Members	Retired Members	Deferred Members
Votes Cast in Favour of the Plan	Active Members	Retired Members	Deferred Members

Number of	Active Members	Retired Members	Deferred Members
Proportion Distributed in the Form of Cash	Active Members	Retired Members	Deferred Members

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