

**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

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THE PROTECTION OF UNPAID CONTRIBUTIONS OF AN EMPLOYER

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MINISTRY OF FINANCE

**Regulation No: RF.R.5.8**

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

**The protection of unpaid contributions of an employer**

**Regulation No. RF.R.5.8**

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

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**Definitions**

1. In this Regulation—

- (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) “Contribution Payee” means, as applicable—
  - (i) the account of a fund with a banking institution referred to in section 270(3)(a);
  - (ii) a retirement fund referred to in section 270(3)(b); or
  - (iii) a registered insurer referred to in section 270(3)(c);
- (c) “Prescribed Period” means the period of time commencing on the eighth day after the end of the month for which any Required Contribution should have been deposited with the Contribution Payee in question, and ending on the day on which the Required Contribution and interest at the Prescribed Rate has been so deposited;
- (d) “Prescribed Rate” means the rate of interest determined in accordance with this Regulation;
- (e) “Required Contribution” means, pursuant to the rules of the fund or pursuant to the Act, any contribution—

- (i) which must be deducted from the member's remuneration by any employer contributing to the retirement fund; and
  - (ii) for which any such employer is liable;
- (f) "Responsible Party" means—
- (i) any employer contributing to the retirement fund whose Required Contributions have not been deposited with the Contribution Payee in question within the seven days following the month in which the Required Contributions became due and payable; and
  - (ii) the directors and officers of an employer referred to in sub-paragraph (i).
- (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 1 of the Act—
    - (i) NAMFISA;
    - (ii) principal officer;
  - (b) registered insurer, as defined in section 4 of the Act; and
  - (c) as defined in section 249 of the Act—
    - (i) board;
    - (ii) employer
    - (iii) fund;
    - (iv) member; and
    - (v) retirement fund.

## **Application**

2. This Regulation applies to:
- (a) the boards of retirement funds;
  - (b) the principal officers of retirement funds;
  - (c) employers contributing to retirement funds; and
  - (d) the directors and officers of employers referred to in paragraph (c).

### **Unpaid contributions**

3. Where a Required Contribution has become due and payable and has not been deposited with the Contribution Payee prior to the commencement of the Prescribed Period, it shall bear interest at the Prescribed Rate throughout the Prescribed Period and the amount of such interest shall be deposited with the Contribution Payee together with the Required Contribution.

### **Joint and several liability**

4. Responsible Parties shall remain jointly and severally liable for a Required Contribution and Prescribed Interest throughout the Prescribed Period.

### **Rate of interest**

5. The Prescribed Rate is the greater of—
  - (a) the average of the rates of interest, expressed as effective annual rates, paid on securities of the Government of Namibia that mature in no less than 5 years from their issue, that are available for purchase on or after the commencement of the Prescribed Period and prior to the date of termination of the Prescribed Period;
  - (b) the average of the rates of interest, expressed as effective annual rates, paid on deposit certificates issued by the four largest banks in Namibia, measured by total assets as reported to the Bank of Namibia that mature in no less than 5 years from their issue, that are available for purchase on or after the commencement of the Prescribed Period and prior to the date of termination of the Prescribed Period;
  - (c) the rate of interest, expressed as an effective annual rate, equal to the greater of:
    - (i) the rate of return on the retirement fund over the fund's last 3 financial years; or
    - (ii) the rate of return on the retirement fund over the fund's most recent financial year; and
  - (d) the greater of the rate of inflation, plus 4%, expressed as an effective annual rate:
    - (i) over the 12 months preceding the commencement of the Prescribed Period, or

- (ii) over the 12 months of the immediately preceding calendar year.

**Payment of interest**

- 6. Interest shall be credited at the Prescribed Rate for the precise number of days between the expiration of the Prescribed Period and the date the Required Contribution has been deposited with the Contribution Payee according to the customary method of compound interest for applying effective annual rates to such determinations and a year shall be taken as consisting of 365.25 days.
- 7. Interest shall be credited to the affected members' records.

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