

**GOVERNMENT NOTICE**

**RETIREMENT FUNDS**

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(6) 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**

DRAFT STANDARD

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THE TRANSFER OF ANY BUSINESS FROM A FUND TO ANOTHER FUND OR THE  
TRANSFER OF ANY BUSINESS FROM ANY OTHER PERSON TO A FUND

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NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

**Standard No. RF.S.5.22**

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

**The transfer of any business from a fund to another fund or the transfer of any business from any other person to a fund**

**Standard No. RF.S.5.22**

*issued by NAMFISA under section 410(6)(y) 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) “transferor fund” means the retirement fund from which accrued benefits and corresponding assets and liabilities are transferred to another retirement fund pursuant to the rules of the transferor fund;
  - (c) “transferee fund” means the retirement fund to which accrued benefits and corresponding assets and liabilities are transferred from another retirement fund pursuant to the rules of the transferee fund;
  - (d) “transfer agreement” means an agreement between two retirement funds whereby one fund transfers accrued benefits, assets and liabilities in respect of certain of its members to another fund;
  - (e) “transferring employer” means the employer of members of the transferor fund whose accrued benefits are being transferred to the transferee fund and whose future benefits will be provided by the transferee fund or another fund, as applicable; and
  - (f) “transferring members” means the members of the transferor fund whose accrued benefits are being transferred to the transferee fund and whose future benefits will be provided by the transferee fund or another fund, as applicable.
- (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) NAMFISA, as defined in section 1 of the Act;
- (b) as defined in section 249 of the Act—
  - (i) board;
  - (ii) defined benefit fund;
  - (iii) employer;
  - (iv) fund;
  - (v) retirement fund; and
  - (vi) rules.

### **Prohibited transfers**

- 2. No transfer of benefits and corresponding assets and liabilities from a fund to another fund may be made if—
  - (a) either of the transferor fund or the transferee fund is—
    - (i) not in compliance with the Act, and such non-compliance may prejudice or negatively impact the rights of the transferring members or the amount to be transferred;
    - (ii) a party to a legal action in the course of adjudication, if such legal action may prejudice or negatively impact the rights of the transferring members or the amount to be transferred;
    - (iii) technically insolvent;
    - (iv) not expressly authorised by its rules to transfer accrued benefits and corresponding assets and liabilities to another fund or to accept transfers of benefits and corresponding assets and liabilities from another fund, as applicable;
  - (b) the transferor fund and the transferee fund have not made an agreement that sets out the terms and conditions that will govern the transfer;
  - (c) NAMFISA has not approved the terms and conditions of the transfer agreement that will govern the transfer; or
  - (d) any transferring employer is in default of any obligation to the transferor fund or the transferee fund or to NAMFISA.

3. Notwithstanding clause 2, NAMFISA may, if the transferor fund and the transferee fund has complied with the requirements in clause 4 and NAMFISA is satisfied that the proposed transfer is in the interest of the members of both the transferor fund and the transferee fund, consider and approve the proposed transfer.

#### **Requirements for approval by NAMFISA**

4. NAMFISA will not approve a transfer of accrued benefits and corresponding assets and liabilities from a transferor fund to a transferee fund, unless satisfied that—
  - (a) a transfer agreement has been submitted to NAMFISA jointly by the transferor fund and the transferee funds for review;
  - (b) the transfer agreement adequately and appropriately addresses the reasonable and legitimate concerns of members of either fund and that the members have been given at least three months' notice prior to the effective day of the transfer, of the pending transfer agreement and of their right to make their concerns known to the boards of the funds;
  - (c) the transfer agreement complies with the Act, and in particular with Part 8 of Chapter 10 of the Act;
  - (d) the transfer agreement:
    - (i) protects the accrued benefits of transferring members including making provision for their reasonable benefit expectations;
    - (ii) includes an analysis showing that members of the transferor fund who are not transferring members and the members of the transferee fund are treated equitably and provides an analysis of the impacts of the transfer on the financial position of both funds;
    - (iii) stipulates that the accrued benefits transferred are and will remain fully and irrevocably vested in the transferring members during their membership in the transferee fund;
    - (iv) stipulates that the transferring members' periods of service recognized in the transferor fund will be recognized as credited service by the rules of the transferee fund for all purposes used to determine rights to their transferred accrued benefits and their future accruals of benefits in the transferee fund;

- (v) in the case where, subject to the prior approval of NAMFISA, investments of the transferor fund are being transferred to the transferee fund rather than cash, specifies the methodology applied to determine the selection of those investments and an analysis of that methodology that supports its appropriateness to the circumstances of the transfer, which analysis must be based on a report by an independent retirement fund advisor;
- (vi) in the case of a transferor fund that is a defined benefit fund and that has an actuarial surplus at the date of transfer, describes the rights of members to allocations of such surplus upon termination or partial termination of the fund according to its rules, the provision made for the allocation of surplus to transferring members including a statement of opinion by the valuator of the transferor fund that the allocation is equitable to both the transferring members and to members who are not transferring members;
- (vii) in the case of a transferee fund that is a defined benefit fund, describes the effects on the rights to surplus of members of the transferee fund that may reasonably be expected to result from the transfer of assets and liabilities in respect of the accrued benefits to be transferred to the transferee fund in respect of transferring members including a statement of opinion by the valuator of the transferee fund that those rights are not expected to be adversely affected by the transfer;
- (viii) includes a certification by the board of each of the transferor fund and the transferee fund that the transfer agreement is authorised by the rules of the fund and is in compliance with those rules, together with a disclosure of the proportions of the members of each fund that have formally objected to the transfer, and
- (ix) includes a statement of costs associated with the transfer.

#### **Reports to be appended to transfer agreement**

5. The following reports, if applicable, must be appended to the transfer agreement upon the agreement being submitted to NAMFISA:
  - (a) any statements by or opinions of an independent retirement fund advisor or a valuator of a transferor fund or a transferee fund; and
  - (b) the reports on which those statements or opinions are based.