

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 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

MINIMUM BENEFITS THAT A FUND MUST PROVIDE TO ITS MEMBERS

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: RF.S.5.7

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

Minimum benefits that a fund must provide to its members

Standard No. RF.S.5.7

issued by NAMFISA under section 410(6)(q) 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) “commencement date” means the date of coming into force of the Act;
 - (c) “deferred member” means an active 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) “discretionary benefits” mean any additional benefits in excess of retirement or other benefits awarded to members, spouses or beneficiaries at the discretion of the board;
 - (e) “Income Tax Act” means the *Income Tax Act, 1981* (Act No. 24 of 1981);
 - (f) “Magistrates’ Courts Act” means the *Magistrates’ Courts Act, 1944* (Act No.32 of 1944);
 - (g) “Maintenance Act” means the *Maintenance Act, 2003* (Act No. 9 of 2003); and
 - (h) “minimum individual reserve” means the reserve determined in accordance with clauses 12 and 13 or clause 14, 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) “policy benefits”, as defined in section 4 of the Act;

(c) as defined in section 249 of the Act-

- (i) board;
- (ii) defined benefit fund;
- (iii) defined contribution fund;
- (iv) employer;
- (v) fund;
- (vi) member;
- (vii) member’s individual account;
- (viii) retired member;
- (ix) retirement;
- (x) retirement fund; and
- (xi) rules.

Minimum benefits

2. Every retirement fund shall provide to members the minimum benefits set out in clauses 4 to 10.

3. The benefit paid to a member who ceases to be member of the fund prior to retirement in circumstances other than termination or dissolution of the fund, shall not be less than the minimum individual reserve.

4. (a) Subject to sub-clause 4(b), in the event that a fund is terminated or dissolved pursuant to section 278 of the Act, the benefit paid to a member must not be less than the minimum individual reserve, and except where permitted by Chapter 5 of the Act, the Income Tax Act or the Maintenance Act, benefits provided for in the rules of the fund, including policy benefits secured or to be secured from another registered fund by the fund for a member, or a right to such benefit, or a right in respect of contributions made by or on behalf of a member shall not be reduced, transferred or otherwise ceded, and such benefits must not be pledged or hypothecated, or be liable to be attached or subject to any form of execution under a judgment or order of the court.

(b) Where the fair value of the assets of the fund, after recovery of any debt owed by the employer, is lower than the sum of the minimum individual reserves for all members after adjustment for any benefits paid previously and the cost of policy benefits which will provide equivalent retirement benefits to all existing members and deferred members, the minimum individual reserve may be proportionally reduced in the ratio which the fair value of the assets bears to the

total of all the minimum individual reserves adjusted for any benefits paid previously plus the cost of such policy benefits.

5. In the event that a defined benefit fund is converted to a defined contribution fund, the amount to be credited to the member's individual account shall not be less than the minimum individual reserve, provided that, where the fair value of the assets of the fund, after recovery of any debt owed by the employer, is lower than the sum of the minimum individual reserves for all members after adjustment for any benefits paid previously and the cost of policy benefits which will provide equivalent retirement benefits to all existing members and deferred members, the minimum individual reserve may be proportionally reduced in the ratio which the fair value of the assets bears to the total of all the minimum individual reserves adjusted for any benefits paid previously plus the cost of such policy benefits.
6. The minimum individual reserve referred to in clauses 4 and 5 must not be taken into account in determining a debtor's financial position under section 65 of the Magistrates' Courts Act, nor be deemed to form part of the assets in the insolvent estate of that person.
7. At least once every three years, the board of a retirement fund that is a defined benefit fund, commencing with the first valuation following the commencement date, must cause to be determined and must grant to retired members and deferred members a retirement benefits increase that must not be less than the minimum retirement benefits increase based on the policy referred to in clause 14, with effect from the valuation date in question.
8. The minimum individual reserve for a member or a deferred member in a defined benefit fund must be based on the present value of the retirement benefits or the deferred retirement benefits payable to that member inclusive of all retirement benefits increases made pursuant to clause 7.
9. Clauses 2 to 8 shall apply:
 - (a) on and after the date of registration in respect of a fund which is registered on or after the commencement date; and

- (b) on and after the commencement date in respect of a fund which is registered prior to the commencement date.
10. If the employer or the board exercises any right that the employer or the board has in terms of the rules of the fund, as such right had been defined in the rules on the commencement date, to terminate, dissolve or liquidate the fund, or to terminate participation of a particular employer in the fund, or to change the basis upon which future benefits accrue prior to the date from which clause 4 applies to the fund, the members may not seek redress against the employer or the board in respect of any increase in value of the benefits that would occur as a result of the application of minimum individual reserves to the fund.
11. (a) The member's individual reserve, in the case of a member of a defined contribution fund, shall be determined by the board in accordance with the following formula or on a methodology that NAMFISA approves as substantially equivalent:

Fixed Rate Contributions + Discretionary Benefits + Additional Contributions
+ Investment Income and Capital Gains – Expenses and Capital Losses

or

$FC+DB+AC+IC-X$

where:

- (i) **FC** represents fixed-rate contributions paid (both member and employer contributions), or amounts transferred into the fund, by or on behalf of the member, where the fixed-rate contributions are defined in the rules;
- (ii) **DB** represents amounts allocated by the board, at their discretion, for the benefit of the member and actuarial surplus apportionment;
- (iii) **AC** represents additional contributions paid voluntarily by the member or by the employer on the member's behalf;
- (iv) **IC** represents investment income and capital gains, as determined by the board; and
- (v) **X** represents expenses and capital losses, as determined by the board, thus including other amounts, if any, permitted to be credited to or debited from the member's individual account.

- (b) The expenses referred to in sub-clause 11(a)(v) include direct costs of establishing and operating the fund and any administrative, insurance, risk benefit insurance/reinsurance premiums and taxation costs relating to the establishment and operation of the fund.
12. In determining the minimum individual reserve of a member of a defined contribution fund, the board shall in consultation with the valuator, determine the value of the member's individual reserve in accordance with clause 11, and add thereto a share of the investment reserve account, the member surplus account and such contingency reserve accounts as the board may decide should be included in the proportion that the value of the member's individual reserve as at the effective date of the calculation bears to the total value of all members' individual reserves as at that date, or such other method of apportionment as the board deems reasonable and NAMFISA has approved.
13. In determining the minimum individual reserve of a member of a defined benefit fund, the board shall determine the greater of:
- (a) the fair value equivalent of the present value of the member's accrued retirement benefits provided that:
 - (i) where there is no uniform rate of accrual over the full period of membership in the fund, the accrued deferred retirement benefits shall be calculated assuming a uniform rate of accrual as if the member had remained in service until the normal retirement date as defined in the rules of the fund, but such uniform rate of accrual shall not be less than the uniform rate of accrual that is calculated based on the period of service completed up to the date of calculation;
 - (ii) the determination of the present value of accrued retirement benefits must be based on assumed rates of increase consistent with the minimum benefit increase requirement of this Standard and on assumptions in regard to rates of discount, mortality, disability and retirement as prescribed by Standard No. RF.S.5.5 for such purpose; and
 - (iii) the term 'accrued retirement benefits' in this clause shall include the portion of any lump sum benefit payable at the normal retirement date which corresponds to prior service; and
 - (b) an amount equal to the amount of the member's contributions, augmented as from the date of payment of a contribution by the net rate of return on the fund plus any amount payable in terms of the rules of the fund in excess of the member's contributions.

14. The board shall establish and implement a policy with regard to increases to be granted to retired members and deferred members in accordance with clause 7 above, which policy must:
 - (a) aim to award a percentage equal to at least the consumer price index, or some other measure of price inflation which is deemed suitable by the board, that will enable members to preserve purchasing power in an inflationary environment; and
 - (b) set the frequency with which increases will be considered in line with the policy, provided that increases must be considered each year, with comparison to a compulsory increase at least once every three years.
15. The policy referred to in clause 14 must be communicated to retired members and deferred members at the time that it is established and at any time that it is changed.
16. The policy referred to in clause 14 will not be required where:
 - (a) members on or after retirement under the rules of a fund, secure policy benefits from an insurer registered under Chapter 2 of the Act;
 - (b) members on whose behalf a fund, on or after the retirement date as defined in the rules of the fund, secures policy benefits from an insurer registered under Chapter 2 of the Act; or
 - (c) members elect to receive a fixed retirement benefit or a retirement benefit with fixed increases, or a retirement benefit amount which is elected by the member from time to time, paid from the fund under the rules of the fund.
17. Notwithstanding that this Standard identifies the minimum benefits that a fund must provide to its members, the board is required to identify, maintain and pay all fund benefits as provided for in the rules of the fund to the members of the fund, and not just those identified as minimum benefits.
18. The Act and this Standard does not shield the benefits of a defined contribution fund from the effects of any adverse investment decisions made by the board or by investment advisors appointed by the board.