

PART II
STANDARDS

Fit and proper requirements for any person registered under this Act, and for directors, members of a board, principal officers, other officers, trustees, custodians, auditors and valuers of financial institutions and financial intermediaries, and for any other person subject to this Act

STANDARD GEN 10-2

FIT AND PROPER REQUIREMENTS FOR ANY PERSON REGISTERED UNDER THIS ACT, AND FOR DIRECTORS, MEMBERS OF A BOARD, PRINCIPAL OFFICERS, OTHER OFFICERS, TRUSTEES, CUSTODIANS, AUDITORS AND VALUATORS OF FINANCIAL INSTITUTIONS AND FINANCIAL INTERMEDIARIES, AND FOR ANY OTHER PERSON SUBJECT TO THIS ACT

made by NAMFISA under subsection 410(2)(d) of the Financial Institutions and Markets Act, 2021

1. Citation of standard

This Standard may be cited as Standard GEN 10-2.

2. Interpretation of Standard

This Standard applies to all persons required to be fit and proper under the Act, including, without limitation:

- (a) all financial institutions and financial intermediaries registered or applying to be registered or authorised for registration, under the Act;
- (b) all individuals registered or authorised for registration or applying to be registered or authorised for registration under the Act, including, without limitation:

- (i) members or proposed members of a board, principal officers, other officers, trustees, custodians, auditors and valuers of financial institutions and financial intermediaries referred to in sub-clause (a);
- (ii) members of a board of an entity that controls a financial institution or financial intermediary referred to in sub-clause (a);
- (iii) any other individual or entity exercising oversight function or control over the management or administration of a financial institution or financial intermediary registered under the Act; and
- (iv) any other person who is or may become subject to the Act.

3. Assessment requirements

- (1) In assessing the fitness and propriety of an individual, NAMFISA must satisfy itself on reasonable grounds that the appointment or employment of the individual is not likely to have negative implications for the sound and prudent management of the financial institution or financial intermediary, and such assessment will take into account all relevant matters including, but not limited to:
- (a) education and experience;
 - (b) competence and capability;
 - (c) honesty, integrity, fairness and ethical behaviour; and
 - (d) financial soundness.
- (2) Subject to an evaluation of the particular circumstances, including those referred to in Schedule 1 attached hereto and forming part hereof, NAMFISA must determine whether an individual meets the fit and proper criteria referred to in sub-clause (1) with reference to the following:
- (a) **Education and experience:** An individual meets the education and experience requirement if the individual has met any educational and experience requirements applicable to a specific financial institution or financial intermediary;

- (b) **Competence and capability:** In the discretion of NAMFISA and after consultation with the type of Industry concerned, an individual meets the competence and capability requirement if the individual has an appropriate range of skills to understand, operate and manage the activities and financial affairs of the specific financial institution or financial intermediary, and in the case of -
- (i) an auditor, has the technical knowledge and ability to perform the duties for which the auditor is appointed, and is qualified as an auditor within the meaning of the Act; and
 - (ii) a valuator, has the technical knowledge and ability to perform the duties for which the valuator is appointed, and is qualified as an actuary or other expert within the meaning of the Act;
- (c) **Honesty, integrity, fairness and ethical behaviour:** An individual meets the honesty, integrity, fairness and ethical behaviour requirement if that individual has been candid, truthful and accurate in all his or her dealings with any regulatory body, including NAMFISA, and the individual demonstrates substantial efforts to comply with the requirements of the Act and with any other applicable legal, regulatory and professional requirements, and, within the immediately preceding ten years-
- (i) has not been disqualified from being a director of a company in terms of sections 225 and 226 of the Companies Act;
 - (ii) has not breached a fiduciary duty;
 - (iii) has not perpetrated or participated in grossly negligent, deceitful, or otherwise discreditable business or professional practices;
 - (iv) has not been reprimanded, disqualified or removed by a professional or regulatory body in relation to matters pertaining to the honesty, integrity or business conduct of the individual;
 - (v) has not been involved in the management of a business or entity which has made arrangements with creditors, filed for sequestration or liquidation, been declared bankrupt or had assets repossessed, where any such event has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behaviour in its management; and

- (vi) has not been the subject of civil or criminal proceedings or enforcement action in relation to the management of a business or entity, or in relation to commercial or professional activities, where the proceedings or enforcement action were determined adversely to the individual (including the consent of the individual to an order or direction, or the undertaking of the individual not to engage in unlawful or improper conduct), which reflected adversely on the competence, diligence, judgment, honesty or integrity of the individual;
- (d) **Financial Soundness:** The financial soundness of an individual must be determined by the following factors in addition to the requirements stated in the Schedule that are applicable to a specific financial institution or financial intermediary:
- (i) whether there are any indicators that the individual will not be able to meet his or her personal debt obligations as they fall due;
 - (ii) whether the individual meets the relevant solvency requirements;
 - (iii) whether the individual has seriously or persistently failed to manage personal debts or personal financial affairs satisfactorily in circumstances where such failure caused loss to others;
 - (iv) whether the individual has been subject to any judgment, debt or award that remains outstanding or which has not been satisfied within a reasonable period;
 - (v) whether the individual meets any required minimum insurance or bonding requirements, if any;
 - (vi) whether the individual has made arrangements with creditors, filed for sequestration or liquidation or been declared bankrupt or had assets repossessed, providing that a rehabilitated insolvent is not discriminated against in the application of this Standard and the Schedule; and
 - (vii) whether the individual has been able to provide a satisfactory credit reference.

- (3) An individual must be considered not to meet the fit and proper criteria if the individual has been found guilty of a financial crime in contravention of the Financial Intelligence Act 2012, the Prevention and combating of Terrorist and Proliferation Activities Act, 2014 and the Prevention of Organised Crime Act, 2004 by a court of competent jurisdiction.
- (4) In assessing the fitness and propriety of an individual to hold office in an entity that is, or upon registration will become, a financial institution or financial intermediary, NAMFISA must take into account any involvement by that individual in any contravention of or non-compliance with, the Financial Intelligence Act, 2012 the Prevention and combating of Terrorist and Proliferation Activities Act, 2014 and the Prevention of Organised Crime Act, 2004 by or any regulation, order, notice, circular, determination or directive made under the Financial Intelligence Acts, and any involvement in-
 - (a) money laundering and organised crime activities; or
 - (b) terrorist or proliferation of terrorism activity or any activity related to the financing of terrorism or proliferation of terrorism.
- (5) An individual must demonstrate that he or she meets the criteria set out in sub-clauses (1) to (4) and sub-clause (6) upon registration or authorisation for registration and on an on-going basis as determined from time to time by NAMFISA.
- (6) An individual must comply with any continuing education requirements that may, from time to time, be required by NAMFISA.
- (7) Failure by an individual to meet any one of the criteria set out in sub-clause (2) may not necessarily lead to a refusal of an application for, or revocation of, registration, to revocation of an exemption or to any other regulatory action by NAMFISA, and the

significance and relevance of an individual failing to meet specific criteria will depend on-

- (a) the seriousness of the circumstances resulting in the failure of the individual to meet the specific criteria.
 - (b) the duties that are being or that will be, performed by the individual and the responsibilities that have been or that will be assumed by the individual; and
 - (c) the length of time during which the individual has failed or has repeatedly failed to meet the specific criteria.
- (8) Where an individual is required to apply directly to NAMFISA for registration or authorisation for registration, the following documents must be submitted to facilitate the assessment of fitness and propriety:
- (a) personal questionnaire and declaration form;
 - (b) an up-to-date and signed curriculum vitae;
 - (c) police clearance or, if applicable, a criminal record certificate if available at the time of submitting an application for registration or, in the alternative, proof of application made for police clearance or a criminal record certificate, one of which must be submitted within the six months following registration or authorisation for registration; and
 - (d) any other relevant document that NAMFISA deems necessary.
- (9) Where an individual who is a listed individual is required to apply for authorisation for registration, the list applicant concerned:
- (a) must have in place a check-list including an affidavit made by the listed individual as required from time to time by NAMFISA to ensure that the listed individual meets the criteria set out in sub-clauses (1) and (2) and the policy referred to in sub-clause (14); and
 - (b) may request the listed individual to submit the documents required in sub-clause (8) with such changes as the context may require.

(10) In assessing the fitness and propriety of an entity, NAMFISA must be reasonably satisfied that the entity has sound and prudent management and that it is not likely to have negative or adverse implications for-

(i) the financial soundness and stability of the financial institutions and markets sector;

(ii) the protection of consumers of financial services; and

(iii) the reduction and deterrence of financial crime.

(11) The assessment referred to in sub-clause (10) must take into account all relevant matters including, but not limited to-

(a) the fitness and propriety, in accordance with the criteria set out in sub-clauses (2), (3) (4), (5) and (6) of-

(i) members of the board, principal officer and key persons, and any trustee or custodian, auditor or valuator of the entity; and

(ii) members of the board of any entity that controls the entity;

(b) the honesty, integrity, fairness and ethical behaviour of the entity; and

(c) the financial soundness of the entity.

(12) The assessment referred to in sub-clause (11)(b) must take into account the following provisions

(a) whether the entity has been candid and accurate in the application for registration or, where applicable, for authorisation of registration, and has disclosed all relevant facts and information at the disposal of, or which are accessible to, the entity and which are required by or may be relevant to, NAMFISA, in determining the fitness and propriety of the entity;

(b) whether the entity has considered the fit and proper requirements for individuals referred to in clause 11(a) at the recruitment stage;

(13) In order to meet the requirements of sub-clause (11)(c), the entity must:

(a) not be under judicial management or liquidation;

(b) maintain in Namibian dollars current assets which are at least sufficient to meet current liabilities;

(c) maintain liquid assets equal to at least twenty-five percent of annual expenses or estimated annual expenses, or such greater amount as NAMFISA may, from time to time determine; and

(d) have audited financial statements that are satisfactory to NAMFISA.

(14) Where an entity that is a listed company is required to make an application to a list applicant for authorisation for registration, the list applicant concerned:

(a) must have in place a check-list including an affidavit made by the listed company as required from time to time by NAMFISA to ensure that the listed company meets the criteria set out in clauses 3(1) and 3(2) and the policy referred to in sub-clause (8); and

(b) may request the listed company to submit the documents required in sub-clause (a) with such changes as the context may require.

(15) Every financial institution and financial intermediary that is an entity must have a documented policy relating to fitness and propriety for the individuals referred to in sub-clause (11) (a), which must include compliance with any required criteria for continuing education or professional development issued by NAMFISA, and such policy must be approved by the board or, where applicable, by the board of the entity that controls the financial institution or financial intermediary.

- (16) Every financial institution and financial intermediary that is an entity must take all reasonable steps to ensure that all individuals to whom its fit and proper policy applies are aware of, and understand, the provisions of that policy.
- (17) The fit and proper policy referred to in sub-clauses (15) and (16) must form part of the risk management framework of the financial institution or financial intermediary.
- (18) Where an entity applies to NAMFISA for registration the following documents must be submitted to facilitate the assessment of fitness and propriety:
- (a) corporate questionnaire and declaration form;
 - (b) copy of the Memorandum of Association and Articles of Association or Articles of Incorporation or Continuance, or other instrument of incorporation and copy of certificate of incorporation, or other foundation documents of the entity and;
 - (c) any other relevant documents that NAMFISA deems necessary for the purpose.

SUPPORTING SCHEDULE

The following supporting schedule is attached to, and forms part of this Standard:

Schedule 1: Fit and Proper Requirements

SCHEDULE 1
FIT AND PROPER REQUIREMENTS

PART A

Individuals

An individual is able to demonstrate honesty, fairness, ethical behavior and integrity if that individual:

- i. is not disqualified from being a director of a company in terms of the Companies Act; and
- ii. declares under oath and confirms within the immediately preceding ten years he or she:
 - a) has not been disqualified from being a director of a company in terms of sections 225 and 226 of the Companies Act;
 - b) has not breached a fiduciary duty;
 - c) has not perpetrated or participated in grossly negligent, deceitful, or otherwise discreditable business or professional practices;
 - d) has not been reprimanded, disqualified or removed by a professional or regulatory body in relation to matters relating to the individual's honesty, integrity or business conduct;
 - e) has not been involved in the management of a business or entity which has made arrangements with creditors, filed for sequestration or liquidation, been declared bankrupt or has assets repossessed, where any such event has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behavior in that management;
 - f) has not been the subject of civil or criminal proceedings or enforcement action in relation to the management of a business or entity or in relation to commercial or professional activities, where the proceedings or enforcement action were determined adversely to the individual (including the consent of the individual to an order or direction, or the undertaking of the individual not to engage in unlawful or improper conduct), which reflected adversely on competence, diligence, judgment, honesty or integrity of the individual;
 - g) has not been refused authorisation to carry on business by any regulatory body (whether in Namibia or elsewhere), or has such authorisation suspended or revoked by any such body because of negligence, incompetence or mismanagement;
 - h) did not have or has not had a significant ownership interest in a business or entity referred to in sub-clause(ii)(e) of this Schedule, where any events described in that sub-clause

have been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behavior in that management; or

- i) has not been found liable under the Financial Intelligence Act (2012) or the Prevention of Organized Crime Act, 2004 (Act No. 29 of 2004), the Prevention and Combating of Financing of Terrorist and Proliferation Activities Act, 2004 (Act No 4 of 2014), or any other similar legislation in any country;
- j) is not listed on any credit bureau as a bad creditor;
- k) has never been involved in the management of or employed by a financial institution or financial intermediary which failed to maintain a sound financial position or any required capital or solvency.

PART B

Management	Qualifications:	Experience:	Duties:
	<ul style="list-style-type: none"> i. A business degree (in Finance, Commerce, Accounting, Economics or related business qualification) from an accredited university. ii. Matric or Grade 12 with Commercial or Business related subjects (mathematics, economics, accounting or computer science or any other business subject). 	<ul style="list-style-type: none"> i. At least three (3) years related experience in the financial services and markets sector. ii. At least ten (10) years' related experience in the financial services and markets sector. iii. At least three (3) years 	<ul style="list-style-type: none"> i. Ensuring that the operations are managed prudently and in accordance with best practices and ensuring adherence to all applicable legislation and regulations and other subordinate legislation prescribed or issued thereunder. ii. Informing NAMFISA in

	<ul style="list-style-type: none"> iii. Registered persons' examinations of the South African Institute of Financial Markets. iv. Chartered Financial Analyst. v. Other qualifications to be evaluated by NAMFISA on a case by case basis. 	<ul style="list-style-type: none"> Industry related experience. iv. At least one (1) year related experience in the financial services and markets sector. v. Determined by NAMFISA on a case by case basis. 	writing of any matter which may affect the operations.
Key person	<p>Qualifications:</p> <ul style="list-style-type: none"> i. A business degree (Finance, Commerce, Accounting, Economics or related business qualification) from an accredited university. ii. Grade 12 or BA degree with Commercial or Business related subjects (mathematics, economics, accounting or computer science or any other business subject) and 	<p>Experience:</p> <ul style="list-style-type: none"> i. At least three (3) years' related experience in the financial services and markets sector. ii. At least ten (10) years' related experience in the financial services and markets sector. 	<p>Duties:</p> <ul style="list-style-type: none"> i. demonstrate competency to undertake the relevant financial services, including, where appropriate, detailed knowledge of the structure, purpose and risks of the applicable financial products. ii. demonstrate knowledge and expertise relating to the:

	<p>relevant tertiary qualification.</p> <p>iii. Registered person's examinations of the South African Institute of Financial Markets.</p> <p>iv. Chartered Financial Analyst.</p> <p>v. Other qualifications to be evaluated by NAMFISA on a case by case basis.</p>	<p>iii. At least five (5) years' related experience in the financial services and markets sector.</p> <p>iv. At least one (1) year related experience in the financial services and markets sector.</p> <p>v. Determined by NAMFISA on a case by case basis</p>	<p>a. professional management of the financial institution or financial intermediary concerned;</p> <p>b. applicable laws, products and markets;</p> <p>c. financial or actuarial aspects</p> <p>d. administration, ,internal control, information technology and risk management;</p> <p>e. financial accounting and reporting</p>
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PART C

Financial soundness: Entity

An entity is able to demonstrate financial soundness if:

- i. in existence and operating for more than one year, and able to provide a copy of its audited financial statements as at its most recent financial year end;
- ii. able to provide a copy of its budgeted income and expenditure statement (income statement), balance sheet and cash flow statements for a three year period immediately preceding the date of its most recent financial year end, except in the case of an entity that has been in existence and

- operating for less than three years, in which case the period during which it has been in existence and operating supersedes that three year requirement;
- iii. able to provide a schedule illustrating its funding provisions for anticipated supervisory responsibilities over the budgetary period;
 - iv. able to provide a written statement by the key person specifying the critical assumptions made in the preparation of the budgets as well as specifying the sources of funding;
 - v. able to provide, where arrangements have been made for funding any temporary shortfall in available cash resources by the entity concerned setting out the extent and terms of its commitment;
 - vi. able to provide a projection on the capital and current expenditure of management and staff required for the period covered by the budgets;
 - vii. able to provide a Business Plan that has been approved by its key person as part of the oversight functions;
 - viii. able to provide details of its compensation plans (professional indemnity and fidelity insurance cover) sufficient to cover the risk of losses due to fraud, dishonesty, negligence or any other dishonest acts or breaches of professional duty of the directors, employees or representatives;
 - ix. able to provide proof of at least one million Namibia dollars as capital employed or the availability of that amount to be employed as capital in the business of the entity;
 - x. there are no indicators that the entity will not be able to meet its obligations as they become due;
 - xi. the key person has not seriously or persistently failed to manage personal debts or personal financial affairs satisfactorily in circumstances where such failure caused loss to others;
 - xii. the key person has not been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
 - xiii. the key person meets required minimum financial and insurance or bonding requirements;

- xiv. the key person has not made arrangements with creditors, filed for sequestration or liquidation or been adjudged bankrupt or had assets sequestered; and
- xv. the key person has been able to provide a satisfactory credit reference.

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