Breakdown – Industry Comments 28 February 2022

Chapter – 5 Retirement Funds

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
STANDARD RF.S.5.1 Definition of "actuarial surplus"				
Standard No. RF.S.5.1	"unaccrued surplus" or "unaccrued deficit" means the result calculated in accordance with clause 5; What is the purpose of determining unaccrued surplus? Typically, the future contributions (or at least contributions over the period until the next investigation) is determined using the value that will accrue over the same period. This implies that future contributions will be the same as future benefits, which means that unaccrued surplus will be zero. Is the idea here that a fund should create a possible liability for the difference between future contributions (if not equal to the required rate) and future benefits? This might create large liabilities. (g) "unaccrued surplus" or "unaccrued deficit" means the result calculated in accordance with clause 5;" *What is the purpose of determining unaccrued surplus? Typically the future contributions (or at least contributions over the period until the next investigation) is determined using the value that will accrue over the same period. This implies that future contributions will be the same as future benefits, which means that unaccrued surplus will be zero. Is the idea here that a fund should create a possible liability for the difference between future contributions (if not equal to the required rate) and future benefits? This might create large liabilities.*	Clarity sought.	Agreed to deleted clause 2 (e) and (f). Also, to delete clause 5. Further, to delete reference to clause 5 which is in clause 6(a) and (b).	This is not expected to appear on all funds. But in instances where the scheme has been under-contributing and is expected to continue under-contributing, this may be calculated. The valuator will assess if there is need for this.
Section 2	(b) "accrued liabilities" means the value of future benefits accrued by members for service prior to the valuation date together with the value of any contingency reserve accounts established by the board of the fund;" *The inclusion of reserve accounts under liabilities is possibly not correct.*	NAMFISA to revisit the inclusion of the contingency reserve accounts under the accrued liabilities to align with international standards and best practices.	To remove contingency reserve	

	Inclusion of reserve accounts under liabilities possibly not correct. Suggest NAMFISA revisit the inclusion of the contingency reserve accounts under the accrued liabilities to align with international standards and best practices Inclusion of reserve accounts under liabilities possibly not correct, NAMFISA to revisit the inclusion of the contingency reserve accounts under the accrued liabilities to align with international standards and best practices			
RF.S.5.2. Sec1(f)	Which report of the valuator does this refer to? (f) "report by a valuator" means a written report, prepared and signed by a valuator, valuing the assets of the retirement fund and determining the technical provisions of the fund, and on the financial soundness requirement of the retirement fund since the last actuarial valuation;" *Which report of the valuator does this refer to? In terms of sec 268(1)(b) of FIMA there are 2 types of reports to be submitted. Will the time standard remain annual for Defined Benefit and triennial for Defined Contribution funds?*	Distinguish in definition between the statutory triennial report and the special report requested by NAMFISA for purposes of clarity and provide a name for the special valuation report to be requested by NAMFISA.	To insert headings in bold above relevant clauses for easier identification of various reports.	
Schedule 2 sec1	NAMFISA to verify cross referencing of sections in the Standards and Regulations with the final version of FIMA to be gazette	NAMFISA to ensure correct cross referencing is conducted throughout	Schedule 2, clause 1 correctly refers to clauses 5 and 6 of RF.S.5.5. hence no changes required.	
RF.S 5.1 (Page 247 Section 5) Definition of" Actuarial Surplus"	**Section 5:**Unaccrued surplus or deficit: What is the background behind introducing future unaccrued surpluses, liabilities and assets to be reported on and analyzed?	Our view is that the reporting on the Standard Required Contribution over the future control period (usually the triennial valuation period) is sufficient	Agreed to deleted clause 2 (e) and (f). Also, to delete clause 5. Further, to delete reference to clause 5 which is in clause 6(a) and (b).	
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.2 Requirements for investigation by and report of a valuator on the financial position of a fund and form of a summary of such report				
Standard No. RF.S.5.2	4(q) recommendations for financing any actuarial deficit or the utilization of actuarial surplus, if applicable; The terminology used here is different to the terminology in other standards	It would be great if a consistent terminology is used.		It is not clear how different the language in the other standard is. Both actuarial surplus and deficit are explained in Standard RF.S.5.1
Clause 2(a)(ii) [Page 249 of GN 737]	Definition of "retirement fund" referred to and as found in section 249 of the Act states that the objects of a retirement fund are "receiving,	Reword definition to say: "contributions of individuals and, where applicable, their employers" This amendment will clarify that "employer		The definition of "retirement fund" is already in the principal Act (FIMA), which is already promulgated. Please note the words "in accordance with the rules of the fund''

	holding and investing contributions of individuals ***and their employers*** for the purpose of providing retirement benefits" – this definition wrongly assumes that all retirement funds are either pension funds or provident funds (as these are the only funds where there are employer contributions). Retirement annuity funds and preservation funds do not have "employer contributions" – in fact, a retirement annuity fund exists exactly for the purpose of providing a private retirement vehicle to people who do not have employers or whose employers do not have a pension-/provident fund and membership to RA funds are independent off and irrespective of employment status. Likewise, preservation funds only take contributions by way of transfers in of the member's share form a pension-/provident fund. ***As it stands, once the Act goes live, there will be no legal dispensation under which retirement annuity funds and preservation funds can exist – we are certain that this cannot be the intention.***	contributions" are not a prerequisite for the existence of a retirement fund. This recommendation to apply wherever the term "retirement fund" is used in this Standard or any other Standard or the Act. Definition of "retirement fund" referred to and as found in section 249 of the Act states that the objects of a retirement fund are "receiving, holding and investing contributions of individuals and their employers for the purpose of providing retirement benefits" – this definition wrongly assumes that all retirement funds are either pension funds or provident funds (as these are the only funds where there are employer contributions). Retirement annuity funds and preservation funds do not have "employer contributions" – in fact, a retirement annuity fund exists exactly for the purpose of providing a private retirement vehicle to people who do not have employers or whose employers do not have a pension-/provident fund and membership to RA funds are independent of and irrespective of employment status. Likewise, preservation funds only take contributions by way of transfers in of the member's share from a pension-/provident fund. As it stands, once the Act becomes effective, there will be no legal dispensation under which retirement annuity funds and preservation funds can exist – we are certain that this cannot be the intention. Reword definition to say: "contributions of individuals and, *where applicable*, their employers" This amendment will clarify that "employer contributions" are not a *sine qua non* for the existence of a retirement fund. This recommendation to apply wherever the term "retirement fund" is used in this Standard or any other Standard or the Act.		in the same definition. If the fund rules do not provide for employer contributions, then such are not applicable. Please have regard to the full definition. It concludes "and includes such other funds as the Minister may prescribe". Regulation RF.R.5.1 recognizes retirement annuity funds and preservation funds as retirement funds for the purposes of Chapter 5 of FIMA.
Clause 5(f) [Page 251 of GN 737]	Clause requires for inclusion in the valuators report a "comment on appropriateness of reinsurance or self- insurance of risk benefits". Since a retirement fund is not an insurer, it cannot "reinsure" anything, given that reinsurance is insurance taken out by an *insurer* not by a fund. Clause requires for inclusion in the valuators report a "comment on appropriateness of	Replace word "reinsurance" with "insurance"	The wording to be amended.	

	reinsurance or self- insurance of risk benefits". Since a retirement fund is not an insurer, it cannot "reinsure" anything, given that reinsurance is insurance taken out by an insurer not by a fund.			
Standard No. RF.S 5.2 Paragraphs 4(q)&®	2.1 The paragraph seems to indicate that the actuary can recommend how the surplus should be utilized and the future contribution rates. 2.2 It is uncertain whether this means that contribution holidays for the employer and members may still be allowed. 2.3 Standard No. RF.S.5.19, in paragraph 8(d), provides for a notice of the suspension of employer contributions where the results are the utilization of a Fund's surplus or otherwise. This would seem to indicate that employer contribution holidays may be permitted by the utilization of the Fund's actuarial surplus.	2.1 NAMFISA needs to clarify the meaning and importance of these paragraphs.		Clause 4(q) and (r) as well as clause 8(d) of RF.S.5.19 must be given the ordinary meaning. Part of the valuator's function is to make recommendations to the board. Moreover, a recommendation is not equivalent to a decision. Decision-making remains with the Board. The board may decide when and how to make use of the surplus in the fund.
Section 1	(e)"insured benefit" means a death, disability or funeral benefit or any other contingent benefit which does not form part of the retirement benefit, for which the retirement fund holds an insurance policy;" *The definition of 'insured benefits' should be aligned to what the Income Tax Act provides for in the case of pension and provident funds and also aligned to the Practice notes.* The definition of insured benefits should be aligned to what the income tax act provides for in the case of pension and provident funds and also aligned to the Practice notes.	Kindly align/amend accordingly Align definition to Income Tax Act and the practice notes on the Income Tax Act.		Being cognizant of the definition of retirement fund and retirement benefit in section 249 of FIMA, the definition is correct. The Income Tax Act does not define "insured benefit".
Section 2	"This Standard applies to every retirement fund registered under the Act that is required to cause the financial position of the fund to be investigated by the valuator of the fund pursuant to section 268 of the Act, the valuator of such a fund and any independent valuator appointed by NAMFISA pursuant to section 272(5) of the Act." *This appears to be a referencing error and should refer instead to section 267(4).*	Kindly amend the reference		Sec 267(4) deal with change of valuator whereas sec 272(5) deals with appointment of an independent valuator in respect of the financial soundness of the proposed rules amendment. In addition, sec 268 deals with statutory actuarial valuation reports, while 272(3) deals with rule amendments that may impact the financial soundness of funds. Therefore, the cross-refer is correct.
Sec1(e)	The definition of insured benefits should be aligned to what the income tax act provides for in the case of pension and provident funds and also aligned to the Practice notes.	Align definition to Income Tax Act and the practice notes on the Income Tax Act.		There is no reason advanced for the comment or proposed solution. This clause defines "insured benefits" for purpose of this Standard made under FIMA.

Sec1(f)	Which report of the valuator does this refer to? in terms of sec 268(1)(b) there are 2 types of reports to be submitted, will the time standard remain annual for DB and triennial for DC funds?	Distinguish in definition between the statutory triennial report and the special report requested by NAMFISA for purposes of clarity and provide a name for the special valuation report to be requested by NAMFISA.	Amend to insert headings above the clauses to indicate which reports are referred to.	
Schedule 2 sec1:	NAMFISA to verify cross referencing of sections in the Standards and Regulations with the final version of FIMA to be gazetted.	NAMFISA to ensure correct cross referencing is conducted throughout.		Cross-referencing correct.
RF.S 5.2 Page 248 Definitions Section 1 Requirements for an investigation by and the report of a valuator	1© on insured benefit- please provide clarity on whether Funds should be able to hold an insured funeral benefit. Further please provide similar clarity on other contingent benefits (g) technical provisions (ii) Technical provisions does not seem to be comprehensive in that there is no explicit reference to reserves. (a) total liabilities – does this cover all fund liabilities?		The definition of "technical provision" to be amended so as to include accrued liabilities and any reserves. Also, the definition of "total liabilities" to be amended to remove "current liabilities" and substitute same with "any other liabilities".	Funds are not prohibited from insuring their liability to provide benefits
RF.S 5.2 (Page 250(p) Requirements for an investigation by and report of a valuator	"An analysis of the change in actuarial surplus or deficit as defined in standard RF.S 5.1 –	This should be limited to Accrued actuarial surplus	To be limited to accrued actuarial only. Also, note the deletion of "unaccrued surplus" and "unaccrued deficit" from Standard RF.S.5.1	
RF.S. 5.2 (Page 252 - Schedule1) Requirements for an investigation by and report of a valuator	Valuator's Certificate "Determination of technical provision for funding ratio" – there seems to be inconsistency in definitions. Further the definition of current assets and liabilities seems limited and out of place. Current Assets and liabilities are usually accounting definitions in the balance sheet of financial statements. Why is it applied to an unclear liability provision?		Amended to read as follows: Technical Provisions [N$ amount Reserves [N$ amount Other liabilities [N$ amount [Actuarial] value of assets [N$ amount Surplus/(Deficit) Funding ratio %	
RF.S 5.2 (Page 253 Section 2 Table on Member/ Employer contribution rate (category 1 & 2) Requirement for and investigation	Does category 1,2 etc. refer to different categories of membership?			Yes, it refers to different categories.

and report by valuator				
RF.S 5.2 (Page 253 Section 2 Valuator's signature requires address to be provided. Requirement for investigation and report by valuator	Why is there a requirement for the valuator's address?			Please note not all these reports will be by the statutory valuator. And contact details can change.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.3 **Minimum information that must be furnished to a fund by an employer with respect to the payment of contributions**				
Standard RF.S.5.3 Paragraph 3(g)	Please provide clarity on which *supporting documentation*?	Please provide clarity.		Evidence of termination of membership, for example termination notice.
Section 3	"Where applicable, a retirement fund shall, and an employer has an obligation to ensure that, the contribution schedules and additional documentation provided by employers include the following information regarding each member: (a) surname, initials and identity number;" *Kindly note that we can only obtain tax directives for unclaimed benefits if we have full names.*	Suggest the initials be replaced with full names.	Noted - the wording "initials" must be replaced with "full names" to enhance identification.	
Sec3(k)	Provision for NAMFISA to request additional information is too wide.	It has to be clearer in terms of what they require and how they will communicate the additional information from Funds or employers required from time to time.		Standard applies to information to be provided by employer with fund in relation to payment of contributions. NAMFISA will communicate via its normal ways of communicating needs to industry.
RF.S 5.3 (Page 253 (Section 3) Minimum information that must be	Does this satisfy or override privacy laws?	Should stipulate how the standards take precedent over privacy laws.		These are members details not sure what the concern with privacy is. The information is necessary for the proper administration and management of business of a fund.

furnished by an employer				
	The Standard is applicable to all retirement funds registered under the Act and deals with the relationship around employers and payment of contributions. Are funds like retirement annuity funds and preservation funds expected to comply or will they be excluded, and when will the Minister prescribe them as funds?	Clarity sought		Retirement annuity and preservation funds are retirement funds as per definition of "retirement fund" in section 249 of FIMA and regulation RF.R.5.1 thus this Standard will apply them. Where no employer relationship exists, then the concerned clause is not applicable.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.4 Requirements for rules of a fund and any amendment of such rules				
Clause 3 [Page 255 of GN 37]	Refers to "clause 0" which does not exist.	Correct reference.	The correct cross-refererence to be inserted	
Clause 3(f)(iii) [Page 256 of GN 737]	Refers to "deferred members" but no definition included in the standard. "(f) a detailed description of the eligibility conditions for joining the retirement fund and the circumstances under which membership shall cease, with specific reference to the following: (iii) the conditions of membership relating to deferred members, if any;" *Kindly note that 'deferred members' not defined in this standard and only appears in the definitions clauses of later standards.*	Include the same definition for "deferred member" as is found in RF.S.5.7 Define 'deferred members' in this standard or have a separate definition standard that applies to all Retirement Fund Standards, and then remove the definition clauses from each separate standard		The word deferred member does not bear any special connotation thus should be given its ordinary meaning. Deferred member is a member who no longer contributes to the fund, but has voluntarily left an interest/benefit in the fund.
Clauses 3(y)(a) to (ae)	Numbering seems incorrect, as what is listed as 3(y)(a) for example does not belong under the heading of "amalgamations" and should be a separate clause. The same goes for existing 3(y)(b) – (ae).	Correct numbering of clauses – 3(y)(a) to become (z) and so further down.	The sub-clauses (a) and (b) of (y) and also clauses (ac), (ad) and (ae) to be renumbered clauses (z), (aa), (ab), (ac) and (d) respectively	
Clause 4(1)(b) [Page 258 of GN 737]	Members, beneficiaries etc. are given the right to inspect the fund rules at the head office of the fund and to make extracts therefrom. Since clauses 4(1)(a)(i) and 4(1)(c) gives all these parties the right to get free electronic copies or hard copies at a reasonable charge, there is no need for this stipulation.	Delete clause 4(1)(b)		There is no reference to the manner in which these copies must be provided (i.e., soft copy, hard copy, etc.). it therefore possible that a consumer might have received a free copy but no longer have access to the copy. Access to information is critical to fair treatment of the consumer and must be guaranteed at all times. .
Clause 5 [Page 259 of GN 737]	Clause also refers to "beneficiary funds" but the entire standard is only applicable to retirement funds.	Delete the words "and a beneficiary fund referred to in section 256 of the Act" or make the standard applicable to beneficiary funds as well.	A beneficiary fund is also required to have rules. The word "retirement" to be removed from clauses 2 and 5.	

			Also, to amend clause 5 to require amendments within 12 months, not 6 months as currently indicated.	
Clause 7 [Page 259 of GN 737]	Refers to a “clause 0” which does not exist.	Correct the reference.	To be corrected.	
Clause 9(a) [Page 259 of GN 737]	Resolution to be accompanied by a certificate confirming the resolution was adopted in accordance with the rules of the fund. This requirement for a certificate really adds nothing and just unnecessarily increase the admin burden on the fund – as a matter of law, all resolutions must be adopted in accordance with the fund rules for such resolution to be valid.	Delete requirement for the “certificate”		It cannot be assumed that every board resolution adopted is intra vires. Confirmation by way of certificate is needed that the resolution is intra vires. Should a resolution turn to be ultra vires the rules, consequence follow based on the certificate alone.
Clause 9(b) [Page 259 of GN 737]	For a DC fund, requires a valuators certificate confirming that the intended change to the rules will not influence the current and prospective financial position of the fund. In a DC fund it is difficult to imagine a rule amendment that will cause the fund to be in an unsound financial position in any event, but on the chance that there is such a scenario which is not currently foreseen, what must the valuator do if the amendment will affect the fund’s financial position?	Please add what valuator must do if the amendment does impact the fund’s soundness or clarify that no rule amendment that will “negatively” affect the funds financial position will be allowed.		If the valuator cannot issue such confirmation, then the application will be incomplete and therefore invalid. It is up to the fund to resolve any issues that placed the valuator in a position where they are unable to give the required confirmation.
RF.S.5.4 Section 3(r)	This defines the valuator with reference to Gen 10-2. However, Gen 10- 2 seems to indicate that a valuator no longer needs to be an actuary (see earlier comment made earlier).	Actuarial valuations should be limited to people qualified as actuaries.		It’s the choice of a fund whether or not to appointed a qualified actuary. However, every appointment of a valuator is subject to assessment envisaged in clause 5 of the Standard No: PRE.S.1.1. Some entities’ might be very small and their business model less complex, hence would not necessarily require an actuary to perform a valuation, especially considering the cost of actuarial services vs the benefit of an actuary being the valuator. This provision should be read with clause 7 of the standard PRE.S.1.1..
Section 3	“The rules of a retirement fund must not be inconsistent with the Act and this Standard, it must be in the official language of the Republic of Namibia and, subject to clause 0, it must provide for the following matters-“ *Kindly note that the clause number is missing.*	Include the correct reference.	Standard published in the Gazette indicates reference to clause 6, which is correct. Therefore, no change required.	
Section 3	“(c) the address of the principal office of the retirement fund;” *What if the address of the Principal office changes? Will it be required that the Rules be amended?*	Kindly advise		Yes – if principal office changes, NAMFISA must be notified through rules amendment.

Section 3	"k) the appointment or election of a board of trustees to manage the business of the fund consisting of persons who are fit and proper to hold such office in accordance with the requirements of Standard No. GEN.S.10.2;" *Note that the Board of Trustees election will also need to align with the Board composition Requirements, as set out in FIMA.*	Would suggest a reference be included to the Board Composition Requirements in FIMA.		It is not necessary to repeat in this Standard that the board must be properly constituted as per FIMA. The rules in anyway must comply with FIMA. Refer to section 261 of FIMA for board composition.
Section 4	"(1) The rules of a retirement fund must state the right of- (a) members, upon request, to be provided, free of charge, with a copy of: (i) the rules/consolidated rules of the fund upon becoming a member; and (ii) any amendment to, rescission of, or addition to the rules of the fund at the time of its implementation and/or upon becoming a member;" *Kindly note that Rules are usually very large documents and it is not cost or environmentally friendly to print this for every member. Kindly advise whether soft copies will suffice?*	Kindly advise		Clause 4 does not prescribe the format or way in which copies of the rules must be furnished to the member. The clause is concerned with a right to obtain a copy of the rules without a charge. Disclosure is paramount to any binding document a member should have the document that sets out their rights and obligations.
Section 7	" The rules of a retirement fund must be certified as follows on the first page or on the cover if the rules are in the form of a booklet: Certified that these are the rules of the XYZ Retirement Fund (substitute " XYZ Retirement Fund with the full name of the fund) which will become effective on the date of registration of the fund"or "on the specified date" in the case of a fund referred to in clause 0. *The clause number is missing.*	Kindly include the correct reference.	Standard published in the Gazette makes reference to clause 5, which is correct. Hence no change required.	
3	General	Refers to "clause 0" which does not exist. Please fix.	Agreed – the correct cross-refer to be inserted.	
3(f)(iii)	The conditions of membership relating to deferred members, if any;	Refers to "deferred members" but no definition included in the standard. Include the same definition for "deferred member" as is found in RF.S.5.7		In the absence of definition of term or concept, the term must be given its ordinary meaning.
3(y)(a) to (ae)	General	Numbering seems incorrect, as what is listed as 3(y)(a) for example does not belong under the heading of "amalgamations" and should be a separate clause. The same goes for existing 3(y)(b) – (ae). Correct numbering of clauses – 3(y)(a) to become (z) and so further down.	Agreed – clauses sub-clauses (a) and (b) of (y) and also clauses (ac), (ad) and (ae) should be renumbered clauses (z), (aa), (ab), (ac) and (d) respectively	

4(1)(b)	Members, beneficiaries, nominees or persons authorized by a member, beneficiary or nominee, to inspect, free of charge, any of the documents referred to in sub-clauses 4(1)(a)(i) and 4(1)(a)(ii), at the principal office of the fund and to make extracts therefrom, and	Members, beneficiaries etc. are given the right to inspect the fund rules at the head office of the fund and to make extracts therefrom. Since clauses 4(1)(a)(i) and 4(1)(c) gives all these parties the right to get free electronic copies or hard copies at a reasonable charge, there really is no need for this stipulation. Delete clause 4(1)(b)		Clause 4(1) provides for 3 different rights namely, (i) the right to be provided a copy of the rules at no charge, (ii) the right to inspect rules at no charge and (ii) a right to be provided additional copy of the rules and latest AFS & AVR (the Standard is silent in respect of cost for this one). 4(1)(b) refers to beneficiaries, nominees and persons authorized by a member, beneficiary or nominee 4(1)(a) refers only to members.
5	A retirement fund referred to in section 255 of the Act and a beneficiary fund referred to in section 256 of the Act must amend its rules to comply with this Standard within six months of the date on which this Standard comes into effect.	Clause also refers to "beneficiary funds" but the entire standard is only applicable to retirement funds. Delete the words "and a beneficiary fund referred to in section 256 of the Act" or make the standard applicable to beneficiary funds as well.	Amended accordingly, reference is now made to "funds" as defined.	
7	Refers to a "clause 0" which does not exist.	Correct the reference.	The correct cross-refer to be inserted (namely clause 5)	
9(a)	Within thirty days from the date of the passing of a resolution for the amendment or rescission of any rule or for the adoption of any additional rule, but not later than thirty days prior to the implementation of any such amended, rescinded or additional rule, the board of the fund shall submit to NAMFISA, together with the text of the amended, rescinded or additional rule, and in the manner prescribed by NAMFISA- (a) a copy of the resolution adopted by the board of trustees together with a certificate signed to the effect that the resolution has been adopted in accordance with the provisions of the rules of the fund;	Resolution to be accompanied by a certificate confirming the resolution was adopted in accordance with the rules of the fund. This requirement for a certificate really adds nothing and just unnecessarily increase the admin burden on the fund – as a matter of law, all resolutions must be adopted in accordance with the fund rules for such resolution to be valid. Delete requirement for the "certificate"		No, it cannot be assumed that every board resolution is adopted intra vires. Confirmation by way of certificate is needed that the resolution is intra vires. Should a resolution turn to be ultra vires the rules, consequence follow based on the certificate alone
9(b)	(b) if the fund is a defined contribution fund or a beneficiary fund, a certificate from the valuator confirming that the amended, rescinded or additional rule has no effect on the current or prospective financial position of the fund;	For a DC fund, it requires a valuator's certificate confirming that the intended change to the rules will not have an effect on the current and prospective financial position of the fund. In a DC fund, it is difficult to imagine a rule amendment that will cause the fund to be in an unsound financial position in any event, but on the chance that there is such a scenario which is not currently foreseen, what must the valuator do if the amendment will affect the fund's financial position?		The certificate is required for the validity of the submission. Without it the submission is incomplete. It is for the fund to ensure that the valuator is able to give such certificate using their professional judgement.

		Please add what valuator must do if the amendment does impact the fund's soundness or clarify that no rule amendment that will "negatively" affect the funds financial position will be allowed.		
Sec3	NAMFISA to verify cross referencing of sections in the Standards and Regulations with the final version of FIMA to be gazetted.	NAMFISA to ensure correct cross referencing is conducted throughout.	Noted. A correct cross-refer will be inserted.	
Sec3(y)(iv):	Time periods to be noted uniformly throughout, in some sections, days are referred to where other sections refer to weeks and months.	Consistent application of time periods and appropriate clear definitions to be applied.	The proposal is duly noted.	
Sec4(b)	NAMFISA to verify cross referencing of sections in the Standards and Regulations with the final version of FIMA to be gazetted.	NAMFISA to ensure correct cross referencing is conducted throughout.	Noted. Cross-references to be corrected.	
Sec5	To be aligned to the FIMA allowing for 12 months to amend rules which are inconsistent with FIMA as provided for in sec 271(4) of FIMA.	Time period of 6 months to be changed to align with the FIMA of 12 months for rules submissions.	To be aligned to FIMA i.e., change to 12 months.	
RF. S 5.4 (Page 255 Section 1 Definitions (b) as defined in section 249 of the Act. Requirements for the Rules of a Fund	(v) Definition of dependants to be revisited to ensure that it is in line with the Act.			The definition of a dependant in section 249 of FIMA is simply adopted herein.
RF. S 5.4 Page 256 Requirements for the Rules of a Fund	(i) The nature and extent of the retirement benefits granted by the retirement fund, and the payment of those benefits to any member, dependant or other person … provision need not be made for retirement benefits in respect of subparagraphs (v) , (vi), (vii) or (viii) Definitions here do not cover funeral benefits, i.e. benefits to BENEFICIARIES. This list is also not exhaustive e.g. TRANSFERS		Also, to amend this clause to require the rules to provide for "conditions" under which a member may become payable.	Refer to the definition of "retirement benefits" in section 249 of FIMA. The reference to transfers is unclear?
RF.S 5.4 (Page 257)	"the appointment of a valuator of the fund who is fit and proper within the meaning of Standard No. GEN.S 10.2 and independent within the meaning of Standard No. GEN. S 10.8, and …			GEN.S.10.18 and 10.2 defines fitness and propriety and independence of a valuator – which every valuator must demonstrate

Requirements for the Rules of a Fund	subject to the provisions of sections 267 and 268 of the Act" What exactly does it mean as defined in GEN.S 10.8 and 10.2?			
RF.S 5.4 (page 258) Requirements for the Rules of a Fund	(y) "the amalgamation of the retirement fund with any other financial institution or financial intermediary" Clarify how would it amalgamate with another financial institution, what if the financial institution is not a retirement fund? How does that work? Is it allowed under Namibian Company, Tax or Labour legislation?			This is the currently the position, nothing changes. FIMA is the primary legislation of retirement funds, thus amalgamation with other financial institutions other than a retirement fund is allowed in terms of section 446. The rules must specify how amalgamation with another financial institution other a retirement fund will be carried on.
RF.S 5.4 (Page 258) Requirements for the Rules of a fund	(y) (b) "the manner in which unclaimed benefits must be dealt upon…. (i), (iii) and (iv) seems to be self- referential rin the context of benefits already deemed unclaimed>			Fund rules must stipulate how benefits that have remained unclaimed will be dealt with in the circumstances stipulated in these clauses.
RF.S . 5.4 (Page 259) Requirements for the Rules of a fund	Section 6 (a) "the rules must be printed in at least 1.0 lines spacing on A4 paper of at least 80 grams" Please clarify 80grams? Is it 80grams per square metre? What about electronic copies? Are only Hard Copies acceptable? Shouldn't there be a provision for paperless options? The costs and environmental impact of a hardcopy only clause should be considered.			This clause refers to the size of printed rules, and it does not prescribe that only printed rules are acceptable. The 80grams refers to paper weight which is related to thickness
RF.S 5.4 (Page 259) Requirements for the Rules of a Fund	Section 9 (Within 30 days from the date of passing a resolution…. Rescinded or additional rule, in a manner prescribed by NAMFISA. This precludes retrospective changes. Please clarify.			Rules amendment or rescission cannot be implemented with submitting the proposed rules to NAMFISA and allowing 30 days prior to implementation. Yes, retrospective changes are excluded.
Clause 3 under Standard No. RF.S.5.4 refers to "*clause 0*". The same applies to the reference to "*clause 0*" under clause 7.	It is not clear which provision is being referred to.	The concerned provisions should be amended for greater clarity. For instance, if the reference should be to clause (o) then the provision should read as such.	Noted – correct cross-refer to be incorporated.	
Clause 3(l) under **Standard No. RF.S.5.4 r**eads as follows	Its an issue of semantics. The manner in which the provision is constructed could give rise to an interpretation that the reference to "who is fit and proper" is to the board of trustees.	Consider replacing the concerned text with the following: [. . .] *the appointment, by the board of trustees, of a principal officer who is fit and proper to hold such*	Agreed – to revise the clause.	

"the appointment of a principal officer by the board of trustees who is fit and proper to hold such office in accordance with the requirements of Standard No. GEN.S.10.2".		*office in accordance with the requirements of Standard No. GEN.S.10.2*.		
Clause 4(1)(b) under Standard No. RF.S.5.4 reads as follows "*members, beneficiaries, nominees or persons authorized by a member, beneficiary or nominee, to inspect, free of charge, any of the documents referred to in sub-clauses 4(1)(a)(i) and 4(1)(a)(ii), at the principal office of the fund and to make extracts therefrom".*	The provision limits the place for the inspection of the documents referred to the principal office of a fund. The events of recent years since COVID19 came about has increased the need to leverage off the opportunities presented by technology. Thus, the inspection of the concerned documents should not necessarily have to take place at the principal office. What is important is that members can inspect the documents concerned, even if its merely the copies thereof, and not that this necessarily be done at a specific place.	Consider removing the reference to the principal office.		While concern is noted, but every fund must have a principal place of business as per its registration certificate hence it is at such premises that an inspection of fund documents may be made.
RF.S.5.4 clause 5 *(RF.S.5.4 - Requirements for rules of a fund and any amendment of such rules)*	The period for registration of FIMA- compliant Rules in the Act and in this Standard differs: • In terms of section 271(4) of the FIM Act, the board of a fund has a period of 12 months within which to amend any rules of the fund which are inconsistent with FIMA, which period commences, as applicable, on the date of commencement of FIMA or on the	The period in clause 5 of RF.S.5.4 should be amended to be the same as in the Act, i.e., 12 months after date of commencement of Act/ standard/ regulation.	Clause amended to reflect 12 month period to align it to FIMA.	

	date on which a regulation or standard relating to the rules comes into effect. In terms of clause 5 of RF.S.5.4, a retirement fund referred to in section 255 of the Act must amend its rules to comply with this Standard within 6 months of the date on which this Standard comes into effect.			
RF.S.5.4 clause 6	Clause 6 contains prescriptive requirements for the format of the rules, e.g. the rules must be printed on A4 paper of at least 80 grams, may be printed on one side only etc. It is not clear what the purpose of these restrictive formatting requirements are. Funds should be free to choose the format in which to distribute the rules (printed or electronic version) and the format thereof. For example, funds may choose to print the rules on both sides of the paper due to environmental considerations. The Plain Language requirements as per GEN.S.10.17 apply to the Rules of the Fund. It is therefore not necessary to specify additional formatting requirements.	Clause 6 to be deleted.		The prescriptive are necessary to ensure that the document is reader friendly. The clause does not prescribe whether the rules should be hard copies or electronic format. If on paper they must comply.
RF.S.5.4 clause 4(1) read with sections 271(5) & 272(9) of FIMA	The FIM Act requires retirement funds to provide members with copies of the rules and rule amendments as per the following sections in the Act: • Section 271(5): "A registered fund must provide any person who becomes a member or beneficiary of the fund with a copy of the rules of the fund, free of charge, at the time that the person becomes a member." • Section 272(9): "The registered fund must send or cause to be send a copy of any amendment to, rescission of, or addition to, the rules of a fund to every member of the fund free of charge." If the retirement fund fails to do so, there are significant penalties, as set out in sections 271(6) and 272(10). However, RF.S.5.4 clause 4(1) states that (words underlined for emphasis): "4. (1) The rules of a retirement fund must state the right of- (a) members, upon request, to be provided, free of charge, with a copy of :	The Act and the Standard thus seem to contradict each other. **<u>Question:</u>** What is the intention of FIMA with regard to providing the member with copies of the rules and rule amendments? Are retirement funds obliged to provide members with copies of the rules and rule amendments as set out in the Act even if the member does not request a copy? Or are retirement funds only obliged to provide copies of the rules and rule amendments upon request of the member as set out in the Standard RF.S.5.4?		Section 271(5) refers to obligation on the fund upon admitting a member, whileSection 272 (9) refers to obligation on a fund after an amendment. Clause 4(1)(a) in addition confers right on a member to request the above documents.

	(i) the rules/consolidated rules of the fund upon becoming a member; and (ii) any amendment to, rescission of, or addition to the rules of the fund at the time of its implementation and/or upon becoming a member;"			
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.5 Determination of the soundness of the financial position of a fund for the purposes of subsection 264(3)				
Standard No. RF.S.5.5	14. In determining the assumptions to be used, the board and the valuator must have regard to the following principles: (a) the assumptions must be chosen prudently, taking into account, appropriate margins for adverse deviation; The guidelines are very vague and could result in big variations between different funds.	It could be better to refer to actuarial standards, possibly those standards endorsed by SAN, or by the primary regulator of each actuary.		The basis can either be "best estimate" or "prudent". This clause is basically suggest the "use prudent" i.e., make explicit margins over the best estimate. And of course, there is going to be deviation depending on the circumstances of the fund. The level of margin will be at discretion of the valuator.
General comment	The numbering of clauses throughout the Standard seems incorrect.	Correct numbering, starting with numbering the "Applicability" paragraph as "2" and then correct downwards.	Numbering to be corrected	
Clause 13 (as currently numbered) [Page 263 of GN 737]	Clause does not stipulate that it only refers to DB funds.	Add qualification that it applies to DB funds only.		There are hybrid funds which offer guaranteed benefits, for example minimum guaranteed benefits, and DC type benefits. Therefore, does not only apply to BD funds.
Clause 17 (as currently numbered) [Page 264 of GN 737]	"21(b)" is duplicated at the end of the clause. In addition, there is currently no clause 21(b).	Delete the duplication and correct the reference to the correct clause.	The duplication to be deleted. Also, the cross-refer to be corrected.	
Standard R.F.S.5.5 Paragraph 13 (e)	1.1 Paragraph 13(e) is one of the provisions dealing with the requirements for the soundness of the financial position of a Fund. 1.2 This seems to be the only paragraph throughout the FIM Act and the draft Regulation where the Board of Trustees is required to consider the willingness of the sponsoring employer to make provision for future adverse events.	1.1 For Defined Benefit Funds, the legislation needs to cater for the financial position which the employer finds itself in, as the sponsoring employer.		The Board has a duty to consider all relevant factors when taking decision as to the financial soundness of the fund. This Standard deals with financial soundness, and not actuarial surplus.
Section 3	"To determine whether the retirement fund meets the financial soundness requirement, the board must: (a) in the case of a defined benefit fund, obtain a report by a valuator at intervals of not more than three years;	Kindly reconcile with the provisions of the FIMA	Noted - DB funds are subject to annual valuation sub clause b will be aligned.	

	(b) in the case of a defined contribution fund, obtain a report by a valuator at intervals of not more than three years, unless such defined contribution fund has been exempted from requiring regular investigations by a valuator." *Kindly note that the FIMA refers to valuations for Defined Benefit Funds being due annually.*			
Section 4	"The report by a valuator must be submitted to NAMFISA within 180 days of the financial year end of the retirement fund." *Days should be defined and be consistent throughout the Act and the standards and regulations. (for purposes of clarity and to avoid confusion, should include the end of day time too).*	Kindly define 'days'.	Amended all standards to indicate timeframes in months, unless the context requires otherwise.	In the absence of a definition, the wording "days" must be given its ordinary meaning.
Section 13	"In adopting the projected unit credit method or the projected accrued benefits funding method, the board of the retirement fund should consider: "(e) the ability and willingness of the sponsoring employer to make advance provision for future adverse events in the technical provisions;" *How will such confirmation be provided and will a formal report be necessary for NAMFISA to be satisfied? What format would NAMFISA require this confirmation to be in and would the Fund also need to confirm the ability to fund future contingencies, should a third party concur?* *Or this should be specific to only DB funds as the scenario refers to the DB arrangements only for employers to grant that certification*.	Kindly advise		The clause does not require confirmation. It only requires the board to "consider". Hence, the fund is advised to consider these factors. There is no confirmation required.
Section 14	"In determining the assumptions to be used, the board and the valuator must have regard to the following principles: (a) the assumptions must be chosen prudently, taking into account, appropriate margins for adverse deviation;" *The guidelines are very vague and could result in big variations between different funds. It could be better to refer to actuarial standards, possibly those standards endorsed by SAN, or by the primary regulator of each actuary.*	Propose using standards endorsed by SAN		Noted, but this clause gives latitude to the valuator to use their professional expertise and do not want to restrict to a particular method?
Section 15/ 2?	*This section is referenced as 2. – appears just under section 15 and before section 16.*	Kindly amend the numbering.	The numbering will be corrected.	It applies both to DC and DB funds. A DC fund can also become underfunded i.e., due to non-payment of

	"Where the funding ratio of a fund is less than 100%, the board, with the approval of the valuator, must notify NAMFISA and the sponsoring employer(s) of such funding ratio, and must further either: (a) instruct the sponsoring employer(s) to make a payment into the fund within a period not in excess of three (3) months that will suffice to ensure that the funding ratio is at least 100%;" *Should this only refer to Defined Benefit funds? NAMFISA needs to be specific as to the application of this provision to the type of fund they are referring to.*	Kindly specify what type of fund this refers to.	Consider funds without participating employers.	employer contributions etc. This clause should only be applied in circumstances in which it is relevant.
Schedule 1	Sets out the Rehabilitation Plan. "I, undersigned, certify that, in my opinion, the rehabilitation plan dated [dd/mm/yyyy] is expected to restore the funding ratio of the fund to 100% by [dd/mm/yyyy]."	What if this obligation is not met, what would be the implications thereof? Suggest adding the following wording: "based on the assumptions made in the valuation report dated "		The declaration should be made only where the valuator is of a professional opinion that the rehabilitation plan will restore the funding ratio to 100%. Signing the declaration whereas the valuator does not believe the rehabilitation plan will restore the funding ratio to 100% is a serious misconduct. Valuation report and the rehabilitation report are both prepared by the same valuator Section 439 of FIMA deals with possible implications for non-compliance with any subordinate measure.
RF.S.5.5 Sec7(a)	Reconcile valuation report intervals to sec 268(1)(b) referring to DB funds and the annual valuations being due by the valuator of the Fund Reconcile valuation report intervals to sec 268(1)(b) referring to DB funds and the annual valuations being due by the valuator of the Fund.	Reconcile valuation reports with the FIMA Reconcile valuation reports with the FIMA.	To be reviewed – DB funds are required to conduct valuation annually whereas DC valuation is triennial..	
Sce21(a)	When does the 3 month period commence? What specific action will trigger the start of the 3 month period to NAMFISA to instruct the fund to comply	Reference to time periods to be kept constant throughout the Act, Regulations and Standards. Clear events to be mentioned to trigger the instruction of NAMFISA for the fund to comply.		Three months from date of instructing the employer.
Schedule 1	The undertaking should be based on the assumptions made in the valuation report	Add to the statement that the undertaking is made subject to the assumption as made in the valuator's report		The undertaking is given after valuation or assessment of the rehabilitation plan.
	General comment	The numbering of clauses throughout the Standard seems incorrect.	Noted – numbering to be corrected.	

		Correct numbering, starting with numbering the "Applicability" paragraph as "2" and then correct downwards.		
13	In adopting the projected unit credit method or the projected accrued benefits funding method, the board of the retirement fund should consider: (a) taking into account expected future salary increases of members; (b) how the application of the method may affect the incidence of the required future contributions to the retirement fund; (c) the total liabilities in respect of all members of the retirement fund; (d) the current and future demographics of the retirement fund; (e) the ability and willingness of the sponsoring employer to make advance provision for future adverse events in the technical provisions; and (f) the allowance for expenses.	Clause does not stipulate that it only refers to DB funds. Add qualification that it applies to DB funds only.		The provision has been kept broad to accommodate other funds such as hybrid funds in the market. A DC fund can also become underfunded i.e., due to non-payment of employer contributions etc. This clause should only be applied in circumstances in which it is relevant.
17	General comment	"21(b)" is duplicated at the end of the clause. In addition there is currently no clause 21(b). Delete the duplication and correct the reference to the correct clause.	Noted – repetition to be removed.	
Sec8	The reference to time periods should be uniformly applied and defined.	Define and uniformly use the same measure of time throughout the Act, Regulations and Standards.	Noted	
Sec18	How will confirmation of compliance be provided? If a report is to be submitted to NAMFISA, how will this report have to look and what sections would have to be signed by which party of the Fund?	NAMFISA to provide clarity on how this will be administered and implemented and what the report would look like if it was to be submitted to NAMFISA.		The standard deals with the determination of financial soundness. Clause 18 deals with matters to be considered by a board with approval of the valuator in preparation of a rehabilitation plan. It does not require a report.
Sec21	The funding level may be less than 100% and the Board may still be satisfied. Can provision be made for the satisfaction of the Board of the Fund?	Make provision for the satisfaction of the Board to be included instead of making the funding mandatory at 100%.		As a general rule a fund must be fully funded at all times. Should the fund be underfunded, the provisions of the plan referred to in clause 21 kicks in.
Sec21(a)	When does the 3-month period commence? What specific action will trigger the start of the 3-month period to NAMFISA to instruct the fund to comply?	Reference to time periods to be kept constant throughout the Act. Regulations and Standards. Clear events to be mentioned to trigger the instruction of NAMFISA for the fund to comply.		The 3 months period to commence upon instruction by the fund. It goes without saying that an obligation commences when a person is aware or notified of it.
Sec21(b)	Is this only in relation to DB funds?	Clarity is to be provided to ensure the DC funds understand their obligations here if it is applicable to all funds.		This clause applies to all funds DC can also become underfunded.
Schedule 1:	What would be the implication of failing to submit this report be?	Add clear guidelines and penalties for non-compliance with this section.		Sections 279 and 439 of FIMA is very clear on the consequences of failure to comply with the Standard.
Schedule 1:	The undertaking should be based on the assumptions made in the valuation report.	Add to the statement that the undertaking is made subject to the assumption as made in the valuator's report.		The undertaking is made by the valuator who also authors the report and the assumptions are theirs.

RF.S. 5.5 (Page 260) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	Definitions , Section 1 Are these definitions consistent with the Act, and if so, do they need to be reiterated in every RF standard?			These definitions are not in the Act.
RF.S 5.5(Page 260) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	1 (d)Reference to clauses seems to contain a typo		Noted – to be corrected	
RF.S. 5.5 (Page 260) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	1€This definition is incorrect in the context of this standard. What about current assets? Refer to earlier bullet point for similar context.		Total liabilities is equal to technical provisions plus reserves plus any other liabilities.	
RF.S 5.5 (Page 260) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	1 (g) We highlight the continuing issue of consistency of definitions and whether reserves are included in these definitions?		Reserves must be included in the Total Liabilities – to be amended	
RF.S 5.5 (Page 262) Determination of the Soundness of	Section 4 "The report by a valuator must be submitted to NAMFISA within 180 days of the financial year end of the retirement fund" - Very thight deadline, since other financial documents need to be submitted as well			6 month is sufficient time allowed to prepare the report by valuator and furnish same to the regulator. Deadlines for financial statements are covered elsewhere and its 3 months after year end. There is no requirement for more returns.

the Financial Position of a Fund for the purposes of section 272(3)	- For, example, in South Africa, valuator's reports are submitted within 12 months standard term - Deadlines for financial statement submissions are not covered in these standards. The valuator reports for instance depend on these earlier submissions as well, and so enough time must be allowed for should those earlier submissions also be delayed With the requirement to provide more sets statutory returns, the burden of providing onerous disclosures under tight deadlines needs to be considered globally so that they all "fit together" and do not create conflicts with each other.			
RF.S 5.5 (Page 262) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	Section 11 " In case of a defined contribution fund, the technical provision for any individual member is equal to the member's individual account. The technical provisions for the retirement fund are the aggregate of the technical provisions of all the individual members of the retirement fund" Contradictory to refer to technical provisions (including reserves) of individual members. There are some contingency liabilities and provisions that arise which are not linked (and should not be) to individual member accounts.			If we have Technical Provisions + Reserves + Other Liabilities as our definition. This statement will stand and will be valid. The definition of "technical provision" in Standard RF.S.5.2 will be amended as indicated elsewhere.
RF. S 5.5 (Page 263) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	Section 1: - numberings of paragraphs and sections is inconsistent - Should the method of determination of technical provisions be limited to GA actuarial valuation methods as stipulated? Shouldn't the actuary's objective judgement also be allowed for? Why only prudent assumptions? What about best estimate and Market consistent bases?		Numbering will be corrected.	Prudent assumption has been chosen to allow for any future deviations that may happen to the best estimate. For demonstrating solvency, the assumptions must be prudent.
RF. S 5.5 (Page 263) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	Section 12: - For defined contribution funds, should there be a reference to GA actuarial valuation method. Please clarify "costs" in this context		To remove reference to costs.	

RF.S. 5.5 (Page 263) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	Section 13; - The list should not be exhaustive			The clause does not purport to be exhaustive
RF.S 5.5 (Page 263) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	Section 14 – Prudent assumptions very restrictive BUT contradictory to (b) which implies market consistent approach.			There is no conflict these are principles which must be regarded.
RF.S 5.5 (Page 263) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	Section 2 "Where the funding ratio of a fund is less than 100%, the board, with the approval of the valuator, must notify NAMFISA and the sponsoring employer(s) of such funding ration…" - Should this be done separately from the valuator's report? Numbering of paragraphs and sections is inconsistent		Numbering to be corrected.	Yes, Fund should not wait until next valuation report is due to notify. The clause requires the board to notify NAMFISA.
RF.S 5.5 (Page 263) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	Section 2(a) " instruct the sponsoring employer(s) to make a payment into the fund… to ensure that the funding ratio is at least 100%" Is clause (a) necessary or even correctly reflected as the Board's powers vs sponsor covenant? Clause)b) seems to be sufficient.			The said sub-clause is correct – that the board will instruct the sponsor to make payment. That's expected in a DB.
RF.S 5.5 (Page 263) Determination of the Soundness of the Financial	Section 2(b) – 10 years maybe more reasonable, 5 years maybe too punitive and a short time to affect a reasonable plan.			5 years is reasonable time to rehabilitate a fund.

Position of a Fund for the purposes of section 272(3)				
RF.S 5.5 (Page 264) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	Section 18: - Are these relevant to the rehabilitation plan in this context? How does the Board demonstrate compliance with clause 18?			The factors listed therein are non-exhaustive but must be considered in preparing or revising rehabilitation plan.
Standard No. RF.S.5.5, Page 263.	There appears to be a numbering issue. The text goes from number 11 on the previous page to number 1 on page 263, followed by number 12. The same concerns apply to number 2 after number 15 at the bottom of the page.	Correct the numbering.	Numbering to be corrected.	
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.6 **Requirements For The Voluntary Termination Or Dissolution Of A Fund Pursuant To Section 278 And In The Circumstances Specified In Its Rules**				
RF.S.5.6 Schedule 2 (Form A) (Q13)	If the person has not been found guilty of the transgression, one cannot take this into consideration, it would therefore make the first part of the question null and void.	Consider rephrasing to: *Have you been subject to disciplinary proceedings by an employer or regulatory body where you have been found guilty?*		Question 13 seek to gather whether the person has been subjected to disciplinary or regulatory action; and it is not concerned whether the person was found guilty or not. A guilty or not-guilty return is not the concern here. What is required is disclosure of such occurrences.
Standard No. RF.S.5.6 clauses 10 and 29	There is a reference to reasonable benefit expectations of members and other beneficiaries. How will this be determined? For the members, the rules determine the benefit expectations. But benefits paid to former members. Anything remaining after six months, is to be paid the Guardian's Fund.	6.1 There needs to be more clarity on how this will be determined. Or even how reasonable expectations of other beneficiaries, other than members would be determined. 6.2 The six month period is not reasonable. In the case of a Fund that is in a massive surplus situation where it is unable to distribute the surplus due to all the impracticalities, the excess will inevitably end up in the Guardian's Fund and not in the hands of the pensioners who it is ultimately intended for.	.	Reasonable expectation depends on past experiences of the fund, any communication that has been sent out before, what other funds are doing and have done etc. In respect of the unclaimed benefits, unfortunately, if a fund is dissolving no benefit can remain in such a fund. The undistributed actuarial surplus must be distributed by the liquidator. The distributed surplus in respect of unclaimed benefits will then be transferred to the Guardian's Fund in the name of the rightful beneficiaries.
Sec7	The list of approved liquidators according to the NAMFISA's list has to be shared with the industry from time to time.	NAMFISA to share the list within 5 working days form it being updated or keep a living document on their website which is guaranteed to be accurate at any given point in time.	Where a list is maintained by NAMFISA, such list will be publicly available.	
Sec9	Time period consistency to be monitored throughout the document and ensure that the	Reference to time periods to be kept constant throughout the Act. Regulations and Standards.	Noted.	The second part of the proposed amendment is not relevant.

	time period used is defined in the definitions section of the Standard.	Clear events to be mentioned to trigger the instruction of NAMFISA for the fund to comply.		
Sec10	Referencing error to be removed.	Remove referencing error in the Standard.	All referencing to be corrected	
Sec29	Time period consistency to be monitored throughout the document and ensure that the time period used is defined in the definitions section of the Standard.	Reference to time periods to be kept constant throughout the Act. Regulations and Standards. Clear events to be mentioned to trigger the instruction of NAMFISA for the fund to comply.	Noted	The second part of the proposed amendment is not relevant.
Sec30:	Time period consistency to be monitored throughout the document and ensure that the time period used is defined in the definitions section of the Standard.	Reference to time periods to be kept constant throughout the Act. Regulations and Standards. Clear events to be mentioned to trigger the instruction of NAMFISA for the fund to comply.	Noted	The second part of the proposed amendment is not relevant.
Sec34:	Time period consistency to be monitored throughout the document and ensure that the time period used is defined in the definitions section of the Standard.	Reference to time periods to be kept constant throughout the Act. Regulations and Standards. Clear events to be mentioned to trigger the instruction of NAMFISA for the fund to comply.	Noted	The second part of the proposed amendment is not relevant.
Sec35:	Time period consistency to be monitored throughout the document and ensure that the time period used is defined in the definitions section of the Standard.	Reference to time periods to be kept constant throughout the Act. Regulations and Standards. Clear events to be mentioned to trigger the instruction of NAMFISA for the fund to comply.	Noted	The second part of the proposed amendment is not relevant.
RF.S 5.6 (Page 269) Requirements for voluntary termination or dissolution of the Fund	Section 29 "All benefits must be paid to members and beneficiaries within 6 months… and any unclaimed benefits must be paid either into the Guardians Fund…" -The Guardian's Fund instead of a vehicle specifically designed for unclaimed benefits, it is unclear whether the Guardian's Fund's fund rules cater for unclaimed benefits appropriately.			The vehicle designed for unclaimed benefits is the Guardian's Fund.
RF.S 5.6 (Page 265) Determination of the Soundness of the Financial Position of a Fund for the purposes of section 272(3)	"Requirements for the voluntary termination or dissolution of a fund pursuant to section 278 and in the circumstances specified in its rules: Deregistration of a fund without the need of going through a liquidation process is not addressed		A standard detailing cancellation of registration without a liquidation process will be issued.	
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
Standard RF.S.5.7 Minimum benefits that a fund must provide to its members				
Standard No. RF.S.5.7	*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*	Clarity sought		This is the set formula of determining member's individual reserve in a DC fund which fund rules ought to comply with. Currently not all rules define this value, we have rules with vesting scales we also have rules that provide for

	methodology that NAMFISA approves as substantially equivalent: This section can probably be described as the member's share in the fund - all rules define this value, and the intention should be that there is no "penalty" at exit. This will make this section simpler and easier to interpret.			additional voluntary contributions which are treated differently.
Standard No. RF.S.5.7	*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.* It is important that the Board should have the right to decide on the inclusion or otherwise of the reserve accounts. If Boards are forced to include these, then these must be quantified every time a person exits, or in effect, a fund will not be able to hold any reserves as this will effectively form part of the individual reserves of members.	Clarity sought		The Board has a right to make a decision in respect of distribution of contingency reserve. The clause refers to members individual reserves which are member funds.
	13 (a)(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. The calculation of the minimum share should take account of the assumptions used by the valuator of each fund. Often assumptions are set for each fund individually (based on its own unique circumstances), and a standard set of assumptions might not be appropriate. This will also require valuations on more than one basis, if the prescribed assumptions are not appropriate.	Clarity sought		RF.S.5.5 does not prescribe the assumption it just prescribes the basis around which the assumptions must be made i.e., they must be prudent. The valuator still has wide discretion is setting the assumptions based on the scheme dynamics.
	14(a) aim to award a percentage equal to at least the consumer price index, or some other measure of price inflation which is deemed	Reference should be made to the fund's own policy, or the difference between the valuation rate and expected returns.	Noted, will do away with compulsory increase. Also, to differentiate between pre-	

	suitable by the board, that will enable members to preserve purchasing power in an inflationary environment; This could have a major impact on funds with existing retirees, where the current valuation or conversion basis does not support inflationary increases. The value of the liabilities could increase significantly in some cases.	More clarity required	FIMA retirees and post-FIMA retirees.	
Clause 19 [Page 288 of GN 737]	Determines that the benefits of a DC fund shall not be shielded by the Act/Standard from bad investment decisions made by board or board-appointed investment advisors. It is not clear exactly what is intended by the clause. Is the intention that the board shall be liable for any investment decisions that turn out to not have been beneficial to the fund? It also leaves uncertain the position of the board in funds where the fund allows its members full member-level investment choice – a good example being an RA, where the member is free to choose from a combination or one of a range of investment options, usually in consult with his/her own financial advisers.	Please clarify.		Clause 19 provides that neither this Standard nor FIMA protects or immunizes the benefits of a DC fund from bad (poor quality, low standard, etc.) investment decision of the board. The board of a fund is ultimately responsible for running the affairs of a fund. Giving members a choice does not absolve the board from its duties. The clause clarifies that the trustees and any investment advisor whom they may use are not indemnified from the consequences of their own adverse decisions.
Section 8	"At least once every three years, the board of a retirement fund that is a defined benefit fund, 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 15, with effect from the valuation date in question." *This does not distinguish between Defined Benefit and Defined Contribution Funds.* *The clause seems to imply that everyone who is a deferred pensioner or deferred member will have an accrued pension that must be increased by pension increases. However, pensioners do not always increase with pension increases but inflationary increases, therefore the clause needs to allow for this type of increases as well.*	Kindly distinguish between DB and DC fund arrangements and how each will be treated A clear distinction is needed in this section on whether DB and DC pensions will increase with inflation or with fund returns		Clause 8 clearly mentions "a retirement fund that is a *defined benefit fund"* thus it's clear this applies to DB fund only. The rate of increase of retirement benefit is stipulated is clause 15 of this Standard i.e., its CPI.
Section 12	"(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:	Kindly consider		Not all rules define members share not all rules refer to a members share. Some rules have vesting scales, some rules have discretionary amounts awarded by trustees. Thus, the need for this.

	Fixed Rate Contributions + Discretionary Benefits + Additional Contributions + Investment Income and Capital Gains – Expenses and Capital Losses” *This section can probably be described as the member's share in the fund - all rules define this value, and the intention should be that there is no "penalty" at exit. This will make this section simpler and easier to interpret.*			
Section 12(a)	“(iv) IC represents investment income and capital gains, as determined by the board” *IC should reflect investment income net of investment expenses and fees deducted from investment, such as Namfisa levies based on assets and investment returns.* *Challenges:* *Too cumbersome for one to calculate the capital gains at the member level.*	Proposal: Make this net investment and capital gains. Alternatively state net of investment related expenses determined the board.		IC = investment income and capital gains as determined by board.
Section 12(a)	“(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.” Remove the reference of capital gains from the definition.	Remove the reference of capital loss from X Reference to capital gains tax to be removed from the definition of these provisions.		X = expenses and capital losses, as determined by the board. In light of the above comment, and the fact that the provision states that the expenses are determined by board, the board may choose to offset capital gains and losses in IC above.
Section 13	“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 12, 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.” *It is important that the Board should have the right to decide on the inclusion or otherwise of the reserve accounts. If Boards are forced to include these, then these must be quantified every time a person exits, or in effect, a fund will*	Kindly consider		Members should not be deprived from benefiting from the investment reserve account which they have contributed to. The clause also says “or such other method of apportionment as the board deems reasonable”. This can be done by doing the apportionment once a year to all members, without having to quantify it every time a person exits/withdraws.

	not be able to hold any reserves as this will effectively form part of the individual reserves of members.			
Section 14(a)	"(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;" *The calculation of the minimum share should take account of the assumptions used by the valuator of each fund. Often assumptions are set for each fund individually (based on its own unique circumstances), and a standard set of assumptions might not be appropriate. This will also require valuations on more than one basis, if the prescribed assumptions are not appropriate.*	Kindly consider		Noted, the valuator can use other assumption in addition to the prescribed assumptions - which apply across all funds.
Section 15	"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 8 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;" *This could have a major impact on funds with existing retirees, where the current valuation or conversion basis does not support inflationary increases. The value of the liabilities could increase significantly in some cases. Reference should be made to the fund's own policy, or the difference between the valuation rate and expected returns.* *Onerous requirement on funds which is not always attainable, how would we deal with situations of funds aiming for 50% or 75% of inflation. If Namfisa requires the fund to aim for inflation, it will hold them accountable for the attainment of that target. If the fund aims for 50%, then attains the 50% where it get the money from to double those attained results and who is going to fund for that?*	Propose that the board's discretion on what the targeted increase would be as a percentage of inflation. For existing pensioners this might not be possible because the initial product was priced on the premise of the targeted returns related to inflation, but this might be possible for future pensioners. The proposal to target 1--% of inflation can be applicable to future retirees so that the funds can have time to set their funding in order to achieve that.	To remove compulsory increase. Also, to differentiate between pre-FIMA and post-FIMA retirees.	The board has a discretion to target other acceptable index for measuring inflation. And the policy must **aim** to deliver an increase.

	If a person converts a DB into DC pension then the conditions upon which that is done will remain and cannot be changed, so there would be no way to change the 50% target to full inflationary increases.			
RF.S.5.7 Sec7	Clear distinction to be drawn between the DB and DC fund arrangements and how these will each be treated. The clause seems to imply that everyone who is a deferred pensioner or deferred member will have an accrued pension that must be increased by pension increases. However, in some funds, the deferred member receives a DC benefit that grows with returns and does not increase pension increases, therefore the clause needs to allow for this type of increases as well.	A clear distinction is needed in this section on whether DB versus DC accruals on deferred benefits, as the former will increase with inflation but the latter with fund returns.	Removed reference to deferred members, clause now only applies to retired members.	This clause only applies to DB.
Sec11(a)(iv)	IC should reflect investment income net of investment expenses and fees deducted from investment such as NAMFISA levies based on assets and investment returns	Change to refer to investment related expenses and make this net of investment and capital gains. Alternatively state net of investment related expenses determined by the board. Is an asset levy therefore than an investment related expense?		Earlier comment on this clause applies here.
19	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.	Determines that the benefits of a DC fund shall not be shielded by the Act/Standard from bad investment decisions made by board or board-appointed investment advisors. It is not clear exactly what is intended by the clause. Is the intention that the board shall be liable for any investment decisions that turn out to not have been beneficial to the fund? It also leaves uncertain the position of the board in funds where the fund allows it's members full member-level investment choice – a good example being an RA, where the member is free to choose from a combination or one of a range of investment options, usually in consultation with his/her own financial adviser(s). Please clarify.		Clause 19 provides that neither this Standard nor FIMA protects or immunizes the benefits of a DC fund from investment risk. The board of a fund is ultimately responsible for running the affairs of a fund. Giving members a choice does not absolve the board from its duties. The clause clarifies that trustee and any investment advisors whom they may use are not indemnified from the consequences of their own adverse investment decisions.
Sec7	Clear distinction to be drawn between the DB and DC fund arrangements and how these will each be treated. The clause seems to imply that everyone who is a deferred pensioner or deferred member will have an accrued pension that must be increased by pension increases. but pensioners do not always increase with pension increases but inflationary increases, therefore the clause needs to allow for this type of increases as well. Living annuitants will	A clear distinction is needed in this section on whether DB and DC pensions will increase with inflation or with fund returns.		The clause provides that the board of a retirement that is a DB must grant retired members and deferred members. Therefore, the clause applies to DB funds.

	have to be a class that obtain investment returns.			
Sec11(a)(iv):	IC should reflect investment income net of investment expenses and fees deducted from investment such as NAMFISA levies based on assets and investment returns.	Change to refer to investment related expenses an make this net of investment and capital gains. Alternatively state net of investment related expenses determined by the board. Is an asset levy therefore then an investment related expense?		This is IC as determined by board. It even allows for more flexibility.
Sec11(a)(v):	Remove the reference of capital gains from the definition.	Reference to capital gains tax to be removed from the definition of these provisions.		There is no reference to capital gain tax in this clause, the clause says "as determined by the board".
Sec14(a):	Requirement too onerous for funds to attain, many funds aim to ensure that 50 – 75% of CPI is met when checking on a regular basis. If a person converts a DB into DC pension, then the conditions upon which that is done will remain and cannot be changed, so there would be no way to change the 50% target to full inflationary increases.	Propose that the board discretion on what the targeted increase would be as a percentage of inflation. For existing pensioners this might not be possible because the initial product was priced on the premise of the targeted returns related to inflation, but this might be possible for future pensioners. The proposal to target 1--% of inflation can be applicable to future retirees so that the funds can have time to set their funding in order to achieve that.		The requirement is that the policy should aim or seek to achieve. Thus, whichever percentage to inflation is applied vests in the determination of the Board?
RF.S 5.7 (Page 286) Minimum benefits a fund must provide	Section 8:- How are minimum increases calculated for deferred members where there are no actual payments?		To remove "deferred member". To make discretionary in respect of retired members.	
RF.S 5.7 (Page 287) Minimum benefits a fund must provide	Section 13: - These reserves are introduced into these standards but not in other RF's not consistent vs technical provisions No consistency/ gaps in wording and definitions			This is addressed by the amendment to the definition of "technical provision"
RF.S 5.7 (Page 287) Minimum benefits a fund must provide	Section 14(a) (iii) " accrued retirement benefits" "accrued retirement benefit" has not been defined in the standards.	"accrued retirement benefit" must be defined in the standards.		Clause 14(a)(iii) stipulates the scope of the word 'accrued retirement benefit'. Legislation cannot define each and every word used were such words bear no special connotation other than its ordinary meaning.
RF.S 5.7 (Page 287) Minimum benefits a fund must provide	Section 14(b) : - Why the DC underpin clause especially for DB funds? Skews the employer risk reward profile on investment income Any amount in excess of member contributions is unclear- could imply employer contributions? Clarity required.			Employer's contribution is not included unless the rules provide so.

RF.S.5.7 (Page 287) Minimum benefits a fund must provide	Section 15 – There is reference to deferred members again, but not elsewhere.		We can define the term: **A deferred member is someone who is still entitled to benefits from the fund but is no longer paying contributions into that fund**.	Deferred member is referred to in clause 8. In the absence of a definition, deferred member must be assigned it ordinary meaning
RF.S. 5.7 (Page 287) Minimum benefits a fund must provide	Section 16:- No affordability clause? Adverse impact on fund and benefit security.			Clause 16 speaks to member communication of fund increase policy – the members ought to be informed of the existence of such a policy.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.9 Compulsory beneficiary nomination forms				
Standard No. RF.S.5.9	4. The beneficiary nomination form referred to in clause 3 must be returned to the fund by members on or before the 30th of January each year, irrespective of whether or not any changes has been effected thereto. How will Funds enforce this requirement upon members and practically for an umbrella fund, does it mean that all member forms should be collected? What would the impact be on members and/or the Fund should these forms not be collected annually?	Clarity is sought	Added a “no changes Form”. Additionally, clause 3 amended to provide for “no change form”.	
Clause 3 [Page 289 of Gn 737]	Requires of funds to send out beneficiary nomination form to all members at least once per annum. Whilst we agree that the regular review of beneficiaries are important, as a matter of practicality sending out and administering a beneficiary nomination form to every member every year will create a huge burden on the fund’s resources and will ultimately increase costs to the detriment of members.	Remove the requirement that beneficiary forms must be sent out at least annually and instead require that beneficiary nomination forms be made available easily and free of charge to any members who may require it.	Added a no change Form. Additionally, clause 3 amended to provide for “no change form”.	It is essential for a fund to have accurate and updated member records. This will ultimately assist in ensuring that fund benefits are distributed to the rightful owner upon the occurrence of an exit event and minimize the buildup of unclaimed benefits. The legislation does not say how this sending must be done so the costs will depend on the mode chosen by the fund
Clause 4 [Page 289 of GN 737]	Stipulates that the annual beneficiary nomination form must be returned by the member to the fund by no later than 30 January each year. The standard however does not indicate what must happen if members do not comply (as they invariably will) and return beneficiary nomination forms by 30 January. This will be a particular issue with RA funds, where the members are not congregated at a particular workplace – they will be approached	Suggest rewording the clause to: The beneficiary form referred to in clause 3 must instruct members to return it fully completed to the fund by latest 30 January each year and that if no beneficiary nomination form is received by the fund, the last indicated beneficiaries will remain valid.	Provide a no change form. Additionally, clause 3 amended to provide for “no **change** form”.	It is essential for a fund to have accurate and updated member records. This will ultimately assist in ensuring that fund benefits are distributed to the rightful owner upon the occurrence of an exit event and minimize the buildup of unclaimed benefits.

	by letter or email and a significant portion simply will not respond.			
Schedule 1 [Page 289 of GN 737]	Wording used in the opening paragraph indicates that the beneficiary nomination only deals with the lump sum benefit from the fund. Beneficiary nominations should deal with the entire fund benefit of the member, not just the lump sum portion. For example, what happens with the annuity to be purchased with the portion that remains after the lump sum was paid if the beneficiary nomination only deals with the lump sum?	Delete the words "lump sum" in the opening paragraph of Schedule 1.	Removed the words "lump sum"	
** in Schedule 1 [Page 290 of GN 737]	Footnote refers to children "under the age of 21" as being dependent – the definition of dependent in section 249 of the Act, in line with Namibian law, stipulates dependent children to be under the age of 18 years. Standard must not contradict the Act.	Replace "21" with "18"	Aligned to definition of dependant in section 249.	
Signature block for Schedule 1 [Page 291 of GN 737]	Requires a witness to sign the beneficiary nomination form. A beneficiary nomination is in law a "stipulatio alteri" and is a one-sided act by the member where he/she negotiates a benefit on behalf of a third party. The legal basis for requiring a witness signature is not understood – additionally, this witness will have to be non-conflicted and may be difficult to get, making the administrative burden of appointing beneficiaries unnecessarily hard.	Delete requirement for a witness signature.		The beneficiary nomination form must be witnessed to confirm that the form was completed by the member in the presence of the witness. The authentication of the signature is the key. This should not be confused with Succession law requirement which provides that potential heirs are not competent to witness a will.
Standard No. RF.S.5.5.9 Beneficiary nomination forms (on pages 290 and 291)	There is a column included with the heading "Church Congregation membership/Town/Village". It is unclear as to the purpose of this column's inclusion in the forms.	Clarity should be sought from NAMFISA.		The said information is to enhance the chances of tracing the beneficiaries / nominees.
Section 1	Below the Beneficiary form it states that the children's minor age is 21 *Kindly note that the age of majority has been changed in Namibia to 18 – see the Child Care Protection Act*	Kindly align to the National Age of Majority	To be amended to 18 years in line with sec 249 of FIMA.	
3	For the purposes of section 276 of the Act, every retirement fund must, for completion by members, send to all its members, at least once every year, a beneficiary nomination form, in the form of or in a similar form as Schedule 1, attached hereto and forming part hereof, indicating as applicable, a designated dependent or dependents, and a nominee or	Requires of funds to send out beneficiary nomination form to all members at least once per annum. Whilst we agree that the regular review of beneficiaries are important, as a matter of practicality, sending out and administering a beneficiary nomination form to every member every year will create a huge burden on the fund's	To add a no change of nomination form.	The annual completion of beneficiary nomination form will ensure that funds have the accurate and updated records of the members and their beneficiaries. This will ultimately assist in ensuring that fund benefits are dispose to the rightful owner upon the occurrence of a trigger event. The proposed solution is what we currently have which has led to a buildup of unclaimed benefits.

	nominees to receive benefits from the fund upon the death of the member.	resources and will ultimately increase costs to the detriment of members. Generally, beneficiary nominations only change after big life events, such as marriage, divorce, birth of a child, death of a close relative etc – it is unlikey to change every year and can be dealt with effectively as and when a change in beneficiaries is needed. Section 276 of the Act already addresses some of the current issue by way of the new deeming provisions in section 276(e). Remove the requirement that beneficiary forms must be sent out at least annually and instead require that beneficiary nomination forms be made available easily and free of charge to any members who may require it.		
4	The beneficiary nomination form referred to in clause 3 must be returned to the fund by members on or before the 30th of January each year, irrespective of whether or not any changes has been effected thereto.	Stipulates that the annual beneficiary nomination form must be returned by the member to the fund by no later than 30 January each year. The standard however does not indicate what must happen if members do not comply (as they invariably will) and return beneficiary nomination forms by 30 January. This will be a particular issue with RA funds, where the members are not congregated at a particular workplace – they will be approached by letter or email and a significant portion simply will not respond. Suggest rewording the clause to: The beneficiary form referred to in clause 3 must instruct members to return it fully completed to the fund by latest 30 January each year and that if no beneficiary nomination form is received by the fund, the last indicated beneficiaries will remain valid.		It is the duty of the fund to ensure that completed beneficiary nomination forms are received. Funds will need to improve on the member communication.
Schedule 1	General comment	Wording used in the opening paragraph indicates that the beneficiary nomination only deals with the lump sum benefit from the fund. Beneficiary nominations should deal with the entire fund benefit of the member, not just the lump sum portion. For example, what happens with the annuity to be purchased with the portion that remains after the lump sum was paid if the beneficiary nomination only deals with the lump sum?	To remove words “lump sum”	

		Delete the words “lump sum” in the opening paragraph of Schedule 1.		
**in Schedule 1	General comment	Footnote refers to children “under the age of 21” as being dependent – the definition of dependent in section 249 of the Act, in line with Namibian law, stipulates dependent children to be under the age of 18 years. Standard must not contradict the Act. Replace “21” with “18”	The age of majority is 18 years as per the definition of dependant in section 249. To be changed.	
Signature block for Sched ule	General comment	Requires a witness to sign the beneficiary nomination form. A beneficiary nomination is in law a “stipulatio alteri” and is a one-sided act by the member where he/she negotiates a benefit on behalf of a third party. The legal basis for requiring a witness signature is not understood – additionally, this witness will have to be non- conflicted and may be difficult to get, making the administrative burden of appointing beneficiaries unnecessarily hard. Delete requirement for a witness signature.		The beneficiary nomination form must be witnessed to confirm that the form was completed by the member in the presence of the witness. authentication of the signature is the key. This should not be confused with Succession law which provides that potential heirs are not competent to witness a will.
Sec 3 & Schedule 1	It seems as if the Standard currently does not make provision for the beneficiary nomination form to be in electronic form. As an example, Schedule 1 requires a Witness signature which is difficult to apply on electronic forms. Due to the increase in volume of transactions as a result of clause 4 (member to complete beneficiary nomination form annually) and clause 6 (member may change beneficiary nomination form at any time), more efficiencies, cost savings and increase in accuracy can be achieved if these forms are completed electronically. Also, FIMA should be forward-looking and embrace the change towards a more technological environment.	The Standard should make provision for the beneficiary nomination forms to be in electronic form. The Standard should set requirements for the electronic completion of the beneficiary nomination form, including requirements for electronic signatures and authentication of documents (to replace witnessing). Further, NAMFISA should ensure that section 20 of the Electronic Transactions Act, dealing with electronic signatures, is implemented.		This Standard does not prescribe the format of completion of beneficiary nomination form. Provided, however that the format adopted by fund does allow for witnessing by a witness.
Schedule 1 **	Should refer to the age of majority in the country which is 18 and also as defined in sec249(1)(b)(iii) of FIMA.	Change the age of the minor children to be under the age of 18 and not 21.	Agreed – age of majority is 18 years as per the definition of dependant in section 249.	
Schedule 1	Allow for members to make any further comments om the nomination forms.	Add additional space on the form for any additional comments or remarks.		Schedule 1 is not mandatory similar forms would also suffice.
RF.S.5.9 clause 4 *(RF.S.5.9 - Compulsory beneficiary*	As per clause 4, members need to return the beneficiary nomination form sent to them annually by the fund, on or before 30th of January each year.	Amend clause 4 to require members to return the completed beneficiary nomination form once in a calendar year, instead of specifying a date by which the forms need to be returned.		There is no prescription on when returned nominations should be processed.

nomination forms)	No fixed date by which the beneficiary nomination forms should be returned should be prescribed as: • Fund administrators need to process all the forms that are received back. If all forms from all funds are received back by the same date, this might result in unnecessary capacity constraints. Retirement funds should be free to choose themselves when in the year it suits them best to send out and when to receive the beneficiary nomination forms.			
RF.S.5.9 clauses 4 and 6	As per clause 4, members need to return the beneficiary nomination form sent to them annually by the fund, on or before 30th of January each year. Further, as per clause 6, members are entitled to amend their beneficiary nomination forms at any time by completing a new beneficiary nomination form. This will result in a high volume of documents, especially for funds with many members. Updating these beneficiary nomination forms manually on the administration system will take a lot of time. For the fund to be able to process beneficiary nomination forms more efficiently and accurately, and to ensure that the latest information is immediately available, members should be enabled to complete the forms electronically. The standard currently does not make provision for electronic forms as the standard requires a witness signature on the form (Schedule 1 to Standard).	The Standard should make provision for the beneficiary nomination forms to be in electronic form. The Standard should set requirements for the electronic completion of the beneficiary nomination form, including requirements for electronic signatures and authentication of documents (to replace witnessing). The requirement for witness signature in Schedule 1 should be removed. NAMFISA should ensure that section 20 of the Electronic Transactions Act, dealing with electronic signatures, is adopted for FIMA purposes.		The standard does not prescribe a format in which the form must be returned to fund. if witnessing, which is linked to authentication and use as evidence can be resolved the fund can have nomination forms in whatever format. The Electronic Transactions Act is not in the regulatory realms of NAMFISA.
Clause 4	Beneficiary nomination forms must be returned to the fund by members on or before the 30th of January each year. How can the funds force members to submit nomination forms and what are the consequences of non-compliance to members?	Rationale behind this clause needs to be explained, alternatively this clause can be removed, and funds be allowed to deal with this matter in their rules.		Funds must have current updated member records – which the board will rely on to distribute fund benefits. This will help reduce in benefits remaining unclaimed for extended period.
Clause 4	The Beneficiary Nomination Form regards individuals under the age of 21 as dependents of the member, which is not aligned to the age of majority in Namibia (i.e. 18 years). Was this the intention or oversight? The explanation of a dependent child refers to children that were substantially dependent on the member. This is unnecessary as such	Clarity sought. Remove reference to a dependent child being substantially dependent on the member.	The age of 21 years to be corrected to 18 years pursuit to definition of “dependant” in section 249 of FIMA.	This is an explanation based on factual dependency which (b) refers to, children are used here to refer to the terms its ordinary meaning as opposed to a child under 18. Thus, it should remain.

	children would be either legally or factually dependent on the member and the trustees should thus take them into account.			
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.10 The Conditions On Which A Defined Contribution Fund May Be Exempted From The Requirement Of Regular Investigations By A Valuator				
Section 1	"A retirement fund which is a defined contribution fund may, pursuant to section 268(7) of the Act, apply for an exemption from the requirement to have regular investigations by a valuator if: (a) for a period of at least three (3) consecutive years, the total assets of the retirement fund are equal to or exceed the total of the members' individual accounts, the expense reserve, and any undistributed investment returns; (b) any benefit on retirement is fully secured through the purchase of an annuity policy from a registered insurer; © any benefit payable to a member in addition to, in lieu of, or in excess of the value of the member's individual account is fully insured by one or more registered insurers; and (d) no reserves other than an expense reserve required by the terms of the retirement fund and of which any excess assets are required to be fully distributed among the members at least annually, and undistributed investment returns which is required to be fully distributed among members at least annually, are held or are required to be held, either by NAMFISA or by generally acceptable actuarial practice." *Kindly note that, (b)* ***only*** *refers to the purchase of an annuity from a registered insurer upon retirement. It does not state the other options upon retirement. Furthermore, how does this condition apply to umbrella funds? Umbrella fund typically does not have in-Fund pensioners and it is the member's choice to purchase an annuity or not. Is the intention then that umbrella funds, who do not meet condition (b), will not be able to apply for exemption? Must all these conditions be met to qualify for exemption*	Kindly advise whether umbrella funds will qualify for exemption and whether provision can be made for the waiver of condition (b) in these circumstances?		The Standard apply to all retirement funds registered under FIMA which meet the description; thus, it applies to umbrella fund. The applicant for exemption must satisfy all the 4 requirements of clause 1. This is a special dispensation thus if a fund does not meet the requirements, there is no breach of the Standard, except that such fund may not then obtain an exemption from actuarial valuation.

Section 1	"(c) any benefit payable to a member in addition to, in lieu of, or in excess of the value of the member's individual account is fully insured by one or more registered insurers;" *Is it correct that for classification as "fully insured", 100% of the assets must be invested in insured policies by a registered insurer?*	Kindly define what is meant by 'fully insured'	Consider to substitute fully insured with fully secured or guaranteed by registered insurer.	Clause 1(c) must be given its ordinary meaning. This clause does not refer to investment of fund assets but that any additional benefit payable or in excess of the value of member's individual account must be fully insured
RF.S 5.10 (Page 293) The conditions upon which a DC fund may be exempted from investigation by valuator	Section 1(d) – more formal definition needed than undistributed returns, and here linked to our questions raised around definitions of reserves, and technical provisions.		Numbering of clauses corrected	The concept undistributed investment return bear no special connotation thus should be given its ordinary meaning.
RF.S 5.10 (Page 293) The requirements upon which a DC fund may be exempted from investigation by valuator	Section 3: - Too lenient to have indefinite exemption, there should be application for renewal in future, at regular intervals, as fund circumstances can change a lot in future.			Though the comment is duly noted, suffice to note that NAMFISA may revoke such an exemption.
Clause 1(1)(d)(i) [Page 294 of GN 737]	Definition of "early withdrawal" in sub (i) thereof determines that it happens at "the termination of the member's participation in the retirement fund" and then at the end qualifies it to mean "prior to becoming eligible for early retirement". As it stands, it thus includes a scenario where the member dies before reaching early retirement age – a death claim from a retirement fund should not be treated as an "early withdrawal" as it is also subject to very different tax treatment.	Expand and clarify sub (i) of the definition by replacing it with the following: "the termination of the member's participation in the retirement fund for a reason other than the death of the member;"		Noted that early withdrawal excludes death of member. However, at death of a member, a death benefit becomes payable rather than a withdrawal benefit. Please refer to Clause2 this Standard does not apply to death benefit; it applies to retirement benefit. Death benefit is dealt with in terms of section 276 of the Act.
Clause 1(1)© [Page 294 of GN 737]	The definition of "former member" states "and has transferred the value of the retirement benefits to:" and then lists "(i) another retirement fund", "(ii) a registered financial institution" or "(iii) a registered retirement income provider". "Transfers" can only ever take place between approved retirement funds if it is to be done on a tax-exempt basis as determined in the Income Tax Act. As such it is	Delete subparagraphs (ii) and (iii) from the definition of "former member"		The Income Tax Act does not say only approved retired funds. The comment is based on the current practice; and intend to fit FIMA into the existing model which was never build to accommodate it.

	not possible to transfer an early withdrawal (as defined) benefit to for example an insurer – it can only be transferred to another fund, even if that other fund is maybe administered by an insurer. Although not the scenario that this definition is trying to address, the confusion might be because of the often-misunderstood difference between "transferring" between approved funds and "purchasing" of retirement income form a registered retirement income provider, such as an insurer. The latter takes place following retirement, whilst the former takes place before retirement is possible.			
Clause 1(1)(g) [Page 295 of GN 737]	Definition of "registered retirement income provider" clashes with the definition contained in clause 5 of this standard – definition includes "other registered financial institution" whilst clause 5 restricts it to registered insurers and registered retirement funds.	Change wording of definition as follows: "means a registered insurer or registered retirement fund as referred to in clause 5;"		A retirement fund is a registered financial institution.
Clause 2(b) [Page 295 of GN 737]	Refers to the conversion into retirement income of the retirement fund account of a member or former member. However, if regard is had to the definition of "retirement fund account" it is by definition limited to "former member" and does not include a "member."	Replace the wording with the following: "the conversion into retirement income of the retirement fund account of a former member at retirement from a defined contribution fund;"		In the definition of retirement fund account, the words *"…by a defined contribution*" and *"…a registered retirement income provider*" are joined by the wording "**or**" which indicate an alternatively i.e., either the first or the second. Thus, retirement income account may be held by DC fund which could be in respect of a transfer into the DC from another DC.
Clause 2(c) [Page 295 of GN 737]	Refers to the conversion into retirement income of a member's individual account maintained by a dc fund "in respect of benefits for former members" The definitions of both "member" and "members individual account" in section 249 of the Act makes it clear that it only includes active members and retired members, but not former members. The clause is thus in direct contradiction of the enabling Act. Also, as a "former member's" benefits have by definition been transferred away when he makes an "early withdrawal" the dc fund will not have any member's individual account remaining at retirement in respect of former members.	Delete, as this eventuality is already addressed under clause 2(a).		2(c) deals with conversion of benefits for former members of the DC fund **following early withdrawal,** or in other words preserved benefits.
Clause 3 [Page 295 of GN 737]	Only allows a "member" to convert –must also include "former members."	Insert word "or former member" between "member" and "may elect..."	To be amended accordingly. inserted	
Clause 3 [Page 295 of GN 737]	Indicates a term annuity for minimum 20 years must be offered. Traditionally "compulsory annuities" are always for life and never for a term. Conceptually such a compulsory term annuity may have a place, but the current definitions for RA funds in the Income Tax Act	Add a qualification to the beginning of the clause that reads: "unless prohibited by the Act or the Income Tax Act"		The comment is based on products available in the market currently. Please note those products are included under a). However, should the market develop products matching other descriptions such products will also qualify.

	requires such annuities to be "life annuities" so from an RA fund a term annuity may not be possible.			
Clause 5(a) [Page 296 of GN 737]	Uses the undefined term "life insurer" and must be clarified to use terms defined in the Act and/or standards.	Delete word "life" and add at the back of the sentence the following wording: "registered to carry on long-term insurance;"		. Life insurance business is defined in FIMA section 8
Clause 9 [Page 297 of GN 737]	Default option is prescribed. We agree with the principle that a default option must be prescribed, but rather than a programmed withdrawal scheme the safer option for a default option is the type of annuity referred to in clause 3(c) of this standard.	Change wording to indicate that the type of retirement income to in clause 3(c) would be the default option.	The default forms of payment of retirement benefit is provided in the definition of "defined contribution fund" in section 249 of FIMA. The wording "default" to be removed	Clause 3(c) includes spouse of a member thus would be unfair to members without a spouse.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.11 Alternative forms of payment of pensions for DC funds				
1(1)(d)(i)	Definition of "early withdrawal" in sub (i) thereof determines that it happens at "the termination of the member's participation in the retirement fund" and then at the end qualifies it to mean "prior to becoming eligible for early retirement". As it stands, it thus includes a scenario where the member dies before reaching early retirement age – a death claim from a retirement fund should not be treated as an "early withdrawal" as it is also subject to very different tax treatment.	Expand and clarify sub (i) of the definition by replacing it with the following: "the termination of the member's participation in the retirement fund for a reason other than the death of the member;"		The conclusion would be correct if death benefits were not specifically dealt with elsewhere. The disposition of benefits upon death is dealt with under section 276 of FIMA.
1(1)(e)	The definition of "former member" states "and has transferred the value of the retirement benefits to:" and then lists "(i) another retirement fund", "(ii) a registered financial institution" or "(iii) a registered retirement income provider". "Transfers" can only ever take place between approved retirement funds if it is to be done on a tax-exempt basis as determined in the Income Tax Act. As such it is not possible to transfer an early withdrawal (as defined) benefit to for example an insurer – it can only be transferred to another fund, even if that other fund is maybe administered by an insurer. Although not the scenario that this definition is trying to address, the confusion might be because of the often- misunderstood difference between "transferring" between approved funds and "purchasing" of retirement income form a registered retirement income provider, such as	Delete subparagraphs (ii) and (iii) from the definition of "former member"		The concern is well noted; however, the definition of registered retirement income provider includes insurer and other registered financial institutions (clause 1(1)(g) read with clause 5 of this Standard.

	an insurer. The latter takes place following retirement, whilst the former by definition takes place before retirement is possible.			
1(1)(f)	Definition of "programmed withdrawal scheme" can be more clearly and precisely defined.	Replace wording of definition with the following: "means a form of retirement income where the rules of the fund allow the member to purchase in the name of the member from a registered retirement income provider a retirement income where the member may determine where the retirement capital may be invested as well as the amount of retirement income to be withdrawn, expressed as a function of the retirement capital in the retirement income product as on date of this choice and further subject to any limits imposed by this standard on the frequency of this choice and the minimum and maximum income levels allowable;"		The proposed definition is overly prescriptive.
1(1)(g)	Definition of "registered retirement income provider" clashes with the definition contained in clause 5 of this standard – definition includes "other registered financial institution" whilst clause 5 restricts it to registered insurers and registered retirement funds.	Change wording of definition as follows: "means a registered insurer or registered retirement fund as referred to in clause 5;"		A retirement fund is a registered financial institution. There is no conflict.
2(b)	The conversion into retirement income of the retirement fund account of a member or former member upon retirement where the retirement fund account has arisen out of a transfer of benefits from a defined contribution fund to a financial institution or to another retirement fund upon the early withdrawal of the member from the defined contribution fund;	Refers to the conversion into retirement income of the retirement fund account of a member or former member. However, if regard is had to the definition of "retirement fund account" it is by definition limited to "former member" and does not include a "member." Since both "retirement fund account" and "former member" has been specifically defined, the wording of the clause can be uncluttered and simplified a lot in the interests of clarity – the entire bit after "where the..." is superfluous end may lead to confusion. Replace the wording with the following: "the conversion into retirement income of the retirement fund account of a former member at retirement from a defined contribution fund;"		In the definition of retirement fund account, the words "...by a defined contribution" and "…a registered retirement income provider" are joined by the wording "or" which indicate an alternatively i.e., either the first or the second. Thus, retirement income account may be held by DC fund which could be in respect of a transfer into the DC from another DC.
2(c)	The conversion into retirement income of a member's individual account maintained by a defined contribution fund in respect of benefits for former members of the defined	Refers to the conversion into retirement income of a member's individual account maintained by a DC fund "in respect of benefits for former members" The definitions of both "member" and "members individual account" in section 249 of the Act makes it crystal clear that it only includes active members and retired members, but not former members. The		This clause deals with situations where the fund allows preservation of former members benefits. Or in fund preservation. Where the members' individual account is converted into a retirement income as per the preservation agreement.

	contribution fund following early withdrawal from such fund;	clause is thus in direct contradiction of the enabling Act. Also, as a "former member's" benefits have by definition been transferred away when the member makes an "early withdrawal" the DC fund will not have any member's individual account remaining at retirement in respect of former members. Delete, as this eventuality is already addressed under clause 2(a).		
2(h)	"retirement fund account" means an account held by a defined contribution fund or a registered retirement income provider for a former member of a defined contribution fund and which account holds any amount in respect of retirement; and	Definition of retirement fund account refers to account held by a DC fund in respect a former member of a DC fund – can be clearer. Given that a DC fund can never have its own "former members" as the former members' retirement benefits have been transferred away, the second use of the word DC fund must refer to a different DC fund – lets say fund B. Replace wording with: "means an account held by a defined contribution fund for a former member of another defined contribution fund from which it received transfer of the former member's retirement benefits and which account holds any amount in respect of retirement;"		Yes, it can. We have DC who allow for deferred membership. These are former members by definition but who still have claims against the fund. Under the FIMA it will be in fund preservations.
3	Provided that the conditions set out in this Standard are satisfied, **a member may** elect that his or her member's individual account or retirement fund account be converted into one or a combination of the following forms of retirement income.	Only allows a "member" to convert – must also include "former members." Insert word "or former member" between "member" and "may elect..."	To be added	
3(e)	an annuity payable for a fixed period of years regardless of the survivorship of the member, such period being not less than 20 years, which annuity may or may not be subject to cost-of-living or comparable indexation or to guaranteed yearly increases at some specified rate; or	Indicates a term annuity for minimum 20 years must be offered. Traditionally "compulsory annuities" are always for life and never for a term. Conceptually such a compulsory term annuity may have a place, but the current definitions for RA funds in the Income Tax Act requires such annuities to be "life annuities" so from an RA fund a term annuity may not be possible. Add a qualification to the beginning of the clause that reads: "unless prohibited by the Act or the Income Tax Act"		While the concern is noted, this is the change to be ushered by FIMA. Opening new scope.
4	Conversion of a member's individual account or retirement fund account into a form of retirement income must be by contractual	Setting out what conversion entails. The wording can be slightly expanded to make it clearer what and how conversion must be done. It must also apply to		There are two accounts being converted here a **members individual account** or a **retirement fund account** both these accounts are defined in the subordinate legislation

	arrangement made with a registered retirement income provider.	both members and former members, not just members. Replace with: “Conversion of a member of former member’s individual account or retirement fund account, as the case may be, into a form of retirement income must be by contractual arrangement made by such member of former member with a registered retirement income provider.		dealing with them. The latter account is a former members account. .
5(a)	The following are registered retirement income providers: (a) in respect of the forms of retirement income referred to in clauses 3(a) to (d), a registered life insurer; and	Uses the undefined term “life insurer” and must be clarified to use terms defined in the Act and/or standards. Delete word “life” and add at the back of the sentence the following wording: “registered to carry on long-term insurance;”		Life insurance business is defined a life insurer which conducts life insurance business.
6	Should the amount of funds available be less than the amount prescribed by section 1(b)(iv)(bb) of the Income Tax Act (Act No. 24 of 1981) under the definition of “pension of “preservation fund” or section 1(b)(ii) of the Income Tax Act (Act No. 24 of 1981) under the definition of “retirement annuity fund”, the registered retirement income provider must provide the member with the option to take the remaining funds in a lump sum or in fixed yearly instalments, with interest at the current bank demand deposit rate, over a period not to exceed 3 years.	Typos to be corrected. Also, the logic for forcing an option to take an amount that is already small enough to warrant paying it out as a single lump sum on annual payments over a maximum period of 3 years with a predetermined interest rate is not followed. If it is small enough, it is in everybody’s interest that it rather be paid in a single lump sum. 1. Replace with ““pension” or “preservation fund” of” 2. Delete everything to the end of the sentence starting with “or in fixed yearly instalments...”		The payment of the remaining amount by way of fixed yearly instalment over 3 years is an alternative to lump sum payment of the remaining balance.
9	In the event that a member or former member, having given notice of intention to retire, does not elect a form of retirement income prior to his or her date of retirement, the defined contribution fund may deem the member or former member to have elected a programmed withdrawal scheme form of retirement income at a drawdown rate of at least 5% per annum, and arrange for the issue of a contract with a registered retirement income provider on behalf of the member or former member, exercising due diligence in doing so. The member must also be notified that such decision has been taken by the fund on his behalf.	Default option is prescribed. We agree with the principle that a default option must be prescribed, but rather than a programmed withdrawal scheme the safer option for a default option is the type of annuity referred to in clause 3(c) of this standard. Change wording to indicate that the type of retirement income to in clause 3(c) would be the default option.		Clause 3(c) is relevant for member with spouse but inappropriate for members without spouse. The default option to be clause 3(b).

10	The maximum annual withdrawals applicable to programmed withdrawal schemes vary by the member's attained age and are determined as percentages of the funds standing to the credit of the member with the registered retirement income provider, but may not exceed 20% per annum.	Whilst it is true that age is one determinants of what % a member can and should withdraw, it is not the only factor that determines this. The other factors that will influence this are many and varied and can essentially be unique for every member, but obvious factors that come to mind in addition to age are: (a) health of the member; (b) amount standing to the member's credit with the retirement income provider (c) whether the member has dependents and the particularity of the dependents (d) the risk-return profile of the investment(s) in which the member's retirement credit is invested (e) whether the member has any other sources of income, (f) what the member requires as retirement income based on his/her budgeted needs, etc. To just peg it to age is a very blunt approach and effectively negates all the financial planning and advice that should inform this very important decision – also mandated by INS.S.2.7 in clause 4(a) thereof, so not necessary to spell it out again. It also fails to state how regularly the member may change his/her annual withdrawals and does not state a minimum. Given that there are Income Tax directives that currently regulate these aspects (IT1/96 and IT1/98), what will the effect of this standard be on the Income Tax directives, especially insofar as they may differ? 1.Replace with the following: "The maximum annual withdrawals applicable to programmed withdrawal schemes are determined by the member once per annum and are determined as a percentage of the funds standing to the credit of the member with the registered retirement income provider as at the date of such annual choice, but may not exceed 20% per annum." 2. Clarify impact in IT1/96nd IT1/98 issued by Receiver of Revenue; 3. Clarify whether a minimum amount is to be prescribed – if so, we suggest it be 2.5%		This clause in essence provides for the maximum annual withdrawal in respect of programmed withdrawal schemes. The definition of programmed withdrawal schemes in clause 1(1)(f) already allows members to annually determine the amount of income of retirement income. There is a need to aligned IT1/96 and IT1/98 to this Standard. Lastly, this clause prescribes the maximum only thus the minimum is left in the discretion of the members. Of course, such to the fund prescribing a minimum applicable to all members.
Sec5	Section 5 should be amended to allow retirement funds to be a registered retirement income provider for the forms of retirement income in clauses 3(a) to (d) (life annuities) as well. This is because of the following: 1) Defined contribution funds currently offer life annuities in the form of pooled pensions.	Replace section 5 with: 5. The following are registered retirement income providers in respect of the forms of retirement income referred to in clauses 3(a) to (f): a registered life insurer or retirement fund.	Agreed – retirement fund should be permitted to provide retirement income in clause 3(a) to (d). The determination on what the provider can sustainably provide should then be based	

	These types of funds are hybrid funds (defined contribution fund with defined benefit component) and will be allowed under FIMA as per NAMFISA. 2) Clause 5 is not aligned to the Income Tax Act in that it does not allow retirement annuity funds to provide life annuities whereas the Income Tax Act requires retirement annuity funds to only provide life annuities. Retirement annuity funds are included in the definition of 'retirement fund' (FIM Act section 249 read with RF.R.5.1(d)). Currently clause 5 allows retirement funds to only offer the forms of retirement income in clauses 3€ and (f) which do not include life annuities. In terms of section 1 of the Income Tax Act, a retirement annuity fund "is a permanent fund bona fide established solely for the purpose of providing life annuities for the members of the fund or annuities for the spouses, children, dependents or nominees of deceased members".		on the assessment of the specific provider's model.	
Sec5	Is it the intention of FIMA for a DC fund not to provide a defined benefit pension? The provision of defined benefit pensions is practice in a number of funds and, as per previous communication from NAMFISA, will not change under FIMA.	This should be built into this standard under section 5.	Noted a DB fund should be able to provide life annuities, etc. The moment a fund specifies/ sets out upfront a benefit that will be paid at retirement it becomes a DB	.
Sec7	The reference to 60 days of intention to retire should be removed, there is no way for a fund or an administrator to know when a member intends to retire.	Link the 60 days' notice to the normal retirement date of the member. This can be determined beforehand and is a certainty.		What if the member wishes to retire early? or late? The provision says the member should give 60 days' notice to retire also indicating the form of retirement. Every fund has a retirement age/s the member cannot change these dates by this notice.
Sec9	Remove the reference to the minimum and maximum draw down rates and make reference to the income tax Act provisions.	This will avoid having to change the standard every time the provisions of the Income Tax Act changes regarding minimum and maximum draw down rates.		The Income Tax Act governs taxation of benefits not the benefit themselves.
Sec10:	Remove the reference to the minimum and maximum draw down rates and make reference to the income tax Act provisions	This will avoid having to change the standard every time the provisions of the Income Tax Act changes regarding minimum and maximum draw down rates.		The Income Tax Act governs taxation of benefits not the benefit themselves.
RF.S 5.11 (Page 294)	Section 1(d) Definition of early withdrawal: - Why use terminology of "early withdrawal" is this consistent with standard definitions of modes of exit?	"Early withdrawal" to be defined		It is defined. The definition must be understood in the context of this specific standard.

Alternative forms of payment of pensions for DC funds				
RF.S 5.11 (Page 296) Alternative forms of payment of pensions for DC funds	Section e : - Is this correct that the annuity would be paid for a minimum of 20 years? This would be a guaranteed pension over 20 years? This isn't sensible and Feasible? It would mean guaranteeing a pension often longer than the upper bounds of life expectancy of pensioners.			This is one of the forms of retirement income payment.
RF.S 5.11 (Page 296) Alternative forms of payment of pensions for DC funds	Section 4 – Does this imply that a DC fund itself cannot pay out drawdowns? Do DC funds fall under definition of registered income provider in terms of the Act and the Income Tax Act?			A DC fund is a registered retirement fund and therefore can be a retirement income provider as per the definition read with clause 5.
RF.S 5.11 (Page 297) Alternative forms of payment of pensions for DC funds	Section 9 "Default Option" The standard seems to exclude DC funds from providing these benefits directly. Please clarify.			A programmed withdrawal scheme can be provided by a DC fund thus if the fund is able to provide the member with a programmed withdrawal scheme, then the fund can do so. Clause 9 does not prohibit a DC fund to do so.
RF.S.5.11 clause 3 *(RF.S.5.11 - Alternative forms of payment of pensions for the purposes of defined contribution funds)*	In terms of clause 3(d), life annuities underwritten by an insurer may not provide for 'with profit' annuities but only for annuities adjusted by a cost- of-living index. One should not impose a 'one size fits all' approach and should offer retirees either alternative.	Clause 3(d) to be amended to make provision for 'with profit' annuities as well, annuities based on an assumed future return at commencement and passing on any future 'excess returns' to the pensioner.	To amend clause 3(d) by adding profit annuities.	There are four other options to choose from.
RF.S.5.11 clause 5	Clause 5 should be amended to allow retirement funds to be a registered retirement income provider for the forms of retirement income in clauses 3(a) to (d) (life annuities) as well. This is because of the following: 1) Defined contribution funds currently offer life annuities in the form of pooled pensions. These types of funds are hybrid funds (defined contribution fund with defined benefit	Replace clause 5 with the following: "5. The following are registered retirement income providers in respect of the forms of retirement income referred to in clauses 3(a) to (f): a registered life insurer or retirement fund."	Agreed – amend clause 5.	

	component) and will be allowed under FIMA as per NAMFISA. 2) Clause 5 is not aligned to the Income Tax Act in that it does not allow retirement annuity funds to provide life annuities whereas the Income Tax Act requires retirement annuity funds to only provide life annuities. Retirement annuity funds are included in the definition of 'retirement fund' (FIM Act section 249 read with RF.R.5.1(d)). Currently clause 5 allows retirement funds to only offer the forms of retirement income in clauses 3(e) and (f) which do not include life annuities. In terms of section 1 of the Income Tax Act, a retirement annuity fund "is a permanent fund bona fide established solely for the purpose of providing life annuities for the members of the fund or annuities for the spouses, children, dependants or nominees of deceased members".			
RF.S.5.11 clause 2(d)	"Retirement income account" is not defined and thus it is not clear what is meant. "Retirement fund account" is defined in the Standard.	Clause 2(d) should be reworded as follows (delete struck-through word and add underlined word): the balance of a member's individual account or retirement ~~income~~ fund account …	Agreed – to replace "income" with "fund" in line 1 of this subclause.	
RF.S.5.11 clause 9, 10	The clauses state the minimum and maximum drawdown rates (%). These drawdown rates are determined from NAMRA from time to time and might therefore change.	Instead of stating the percentages, these clauses in the standard should make reference to the minimum and maximum drawdown rates as determined by NAMRA. This will prevent the Standard having to change every time the % determined by NAMRA changes.		FIMA is the primary retirement fund legislation thus the Income Tax Act must be aligned to the FIMA and its subordinate instruments.
RF.S.5.11 clauses 3 & 5	In terms of clause 5(b), retirement funds may be a registered income provider for the forms of retirement income referred to in clauses 3(e) (*fixed annuity for at least 20 years*) and 3(f) (*programmed withdrawal schemes/ living annuities*). The definition of 'retirement fund' includes retirement annuity funds (section 249 read with RF.R.5.1(d)). This is in contradiction with the Income Tax Act which provides that a retirement annuity fund may only provide life annuities to members (section 1 (a)).	Clause 5 to be amended to reflect the forms of retirement income that a retirement annuity fund may provide in terms of the Income Tax Act. These should be the forms of retirement income reflected in clauses 3(a) to (d) instead of 3(e) to (f).	.	Only members can get retirement income from a fund. A retirement income provider can choose which retirement income to provide.
RF.S.5.11 clauses 7 & 8	In terms of clauses 7 & 8, registered retirement income providers must provide members with certain information prior to making an election of a form of retirement income, which includes details about the forms of retirement income as	Amend clause 8 to include that the fund should also advise members to make use of a qualified financial advisor when electing a form of retirement income.		Clauses 7 and 8 does not require funds to provide expert advise rather basic information about the products which is expected from every fund. The basic information is well within the competence and capability realm of a fund; and

	well as the longevity, investment, expense or insolvency risks which the member would be required to manage or to which the member may be exposed. This information will be difficult to understand for the member without qualified financial advice, especially also since each member's financial situation and other circumstances would differ and needs to be taken into account when assisting the member to take a decision. Funds should therefore also advise members to make use of a qualified financial advisor who would assist the members in the election of a form of retirement income.			funds can't provide services they are unable to explain the basics thereof. Should a member desire expert advise, they may seek such advise.
Clause 5	Reference to life insurers should be changed to long-term insurers. Long-term insurers are excluded from providing the types of annuities in clause 3(e) and (f). What is the rationale for this? The definition of a life policy in section 8 of the Act allows insurers to provide an annuity for a period. Insurers currently provide products that equate to "programmed withdrawal schemes", commonly referred to as underwritten living/flexible annuities. These are purchased by the funds from insurers to terminate liability towards its members.	Change reference from 'life insurers' to 'long-term insurers'. Amend to allow insurers to provide all types of annuities listed in clause 3.		Reference to registered life insurer is sound. FIMA defines life insurance business. There is no such exclusion see clause 5(b)
Clause 6	It is not clear which types of funds are deemed to be included 'under the definition of "pension or "preservation fund"'. The clause would only be applicable to programmed withdrawal schemes, as this is the only form of annuity that has a value. The other types (guaranteed annuities) do not have values: the member purchased an income for life. The clause requires that registered income providers must allow retired members to commute their benefits if below a certain amount, as referred to in the Income Tax Act. The Income Tax Act and related practice notes, however, require that benefits must be payable for life to the member.	Clarity sought. Amend to refer specifically to programmed withdrawal schemes. Income Tax Act and related practice notes to be amended so that income providers can allow retirees to commute their benefits if		Clause 6 deals with the amount of funds available being less than an amount prescribed under the definitions. The definitions are included merely as reference not as substantive provisions.
Clause 9	Allowing a fund to automatically select a registered retirement income provider on behalf of a member who has not selected same	What is the due diligence process that is referred to? It is suggested that this clause be removed for its possible anti-competitive effect.		Clause 9 is default position thus to avoid its effect, funds must proactively engage and encourage members select a form of retirement income.

	prior to retirement may lead to possible anti-competitive behaviour in the market. It is recommended that this clause be removed to leave the decision on when to purchase an annuity and the type of annuity that should be purchased with the trustees of the fund as it may not always be appropriate to provide a programmed withdrawal scheme annuity.			
Clause 10	The intention of this clause and how the maximum is determined is not clear. Reference is made to 5% drawdown in clause 9. What are the parameters between which members will be allowed to withdraw? This is currently regulated at between 5 and 20%. It is recommended that express protection be afforded to pension benefits upon insolvency and similarly be extended to programmed withdrawal schemes purchased from retirement income providers in the name of the retired member.	Clarity sought. Amend to include the rules relating to programmed withdrawal scheme drawdown parameters. Amend to make express provision of protection.		The clause allows fund to consider any relevant factors but the fund must consider the age of the member. Clauses 9 and 10 apply in different circumstances and do not apply simultaneously. Section 275 of FIMA protects all retirement benefits from insolvency, irrespective of the form of such benefits.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.13 **The requirements of a communication strategy to be adopted by the board of a fund to ensure that adequate and appropriate information is communicated to members, employers and sponsors**				
Clause 1(1)(e) [Page 298 of GN 737]	Defines a “qualified financial institution” but why not just refer to “registered financial institution” which is defined in the Act	Reword to “registered financial institution” and change throughout rest of the standard where the term is used		The term only refers to those registered financial institutions that comply with Regulation RF. R. 5.10 not all registered financial institutions comply with said regulation
Clause 1(1)(f) [Page 298 of GN 737]	Defines “qualified financial institution” but then proceeds to define the same thing as is already defined in RF.S.5.11 as a “registered financial institution”. The use of different terms in subsequent standards to explain the same thing is confusing and creates opportunity for misinterpretation. It makes the Act and its subordinate measures, seen in combination, less clear and usable.	Replace with “registered financial institution” and do so throughout rest of the standard where the term is used	We will standardize to ensure consistency.	Clause 1(1)(f) refers to qualified retirement income provider. Unlike the definition of FIMA, it is important to note that the definitions in each Standard are limited in application to the that Standard alone; and do not apply to other Standard except where directly adopted.
Clause 1(1)(g) [Page 298 of GN 773]	Defines “retirement fund account” but then gives it a different definition as is given for the exact same term in RF.S.5.11. – same terms should have the same definitions throughout to foster certainty and clarity and ease and consistency of use.	Use same definition as in RF.S.5.11.	Let us try to standardize consistency will save us a lot of resources in the long run.	Unlike the definitions in the FIMA, it is important to note that the definitions in each Standard are limited in application to the that Standard alone; and do not apply to other Standard except where directly adopted.

Clause 4(a) [Page 300 of GN 737]	States communication strategy must, amongst others, be directed at contributing employer(s). Not all funds have contributing employers, e.g., RA funds so it is impossible to comply with what the clause states ***must*** be done.	Insert after "contributing employer or employers" the wording; "(if applicable)"	Words "if applicable" is inserted accordingly.	
Clause 5 [Page 301 of GN 737]	Seems to be a word missing after "retirement" in the heading	Add in missing word(s)	The word "Fund" to be inserted.	
Clause 6(c) and (d) [Page 301 of GN 737]	Refers to "rights of transfer" and "rights to transfer". Currently there is no transferability between RA's and post- retirement income providing vehicles. Given the wording of this clause it intimates that this must now change, but we are unsure as to where in the enabling legislation this transferability is mandated or at least allowed. As it stands, it seems to conflict with section 274 of the Act.	Please clarify if transfers between RA's and compulsory annuities may be allowed, **must** be allowed and where the authority to do this originates from.		Preservation makes provision for portability of preserved benefits. Clause 7(e) of RF.R.5.10 states that: " A preserved retirement benefit contract must: (e) provide that the member has the right to transfer the value of the contract to another financial institution registered under the Act……"
Clause 6€ [Page 301 of GN 737]	Requires that the "risk of loss" because of the insolvency of the financial institution or retirement income provider be disclosed to prospective contract holders. This seems to be a superfluous requirement that will add no practical value – the risks attaching to contractual benefits to be provided by any financial institution or retirement income provider is endemic in the transaction. This is so for all business they are registered to do. It is for this reason that the solvency and capital adequacy of these types of institutions are tightly regulated.	Delete the clause.		Disclosure is a key component of the fair treatment of consumers. It is essential for informed decision making. Clause 6(e) requires nothing but disclosure to the member. The member needs to be made aware; of the risk they are taking on even if it's the obvious.
1(1)(e)	Defines a "qualified financial institution" but why not just refer to "registered financial institution" which is defined in the Act	Reword to "registered financial institution" and change throughout rest of the standard where the term is used		Not all registered financial institutions meet the requirements of regulation RF.R.5.10.
1(1)(f)	Defines "qualified financial institution" but then proceeds to define the same thing as is already defined in RF.S.5.11 as a "registered financial institution". The use of different terms in subsequent standards to explain the same thing is confusing and creates opportunity for misinterpretation. It makes the Act and its subordinate measures, seen in combination, a lot less clear and usable.	Replace with "registered financial institution" and do so throughout rest of the standard where the term is used	To be amended and substituted with retirement income provider.	
1(1)(g)	Defines "retirement fund account" but then gives it a different definition as is given for the exact same term in RF.S.5.11. This is very confusing and unnecessary – same terms should have the same definitions throughout	Use same definition as in RF.S.5.11.	The definition to be standardized.	

	to foster certainty and clarity and ease and consistency of use.			
4(a)	Provide for periodic circulation of information to members, inactive members, deferred members and retired members, the currently contributing employer or employers, and, if applicable, the sponsor or sponsors of the retirement fund, concerning: (i) fund performance in general; (ii) activities of interest materially affecting the abovementioned members; and (iii) notification of legislative regulatory or supervisory practices to the extent they may affect defined contribution funds;	States communication strategy must, amongst others, be directed at contributing employer(s). Not all funds have contributing employers, eg RA funds so it is impossible to comply with what the clause states must be done. Insert after "contributing employer or employers" the wording; "(if applicable)"	Amended appropriately.	
5	A communications strategy for a retirement must: (a) comply with the requirements of clause 4 of this Standard; (b) ensure that active members, inactive members, deferred members and retired members have access to the fund's latest auditor's report and valuator's report, if applicable.	Seems to be a word missing after "retirement" in the heading. Add in missing word(s)	Agreed – the word "Fund" to be incorporated.	
6(c) and (d)	(c)in respect of contracts that are offered to inactive members prior to their retirement by qualified financial institutions to administer accounts held for such inactive members, or to manage funds invested on behalf of such inactive members, ensure that their rights of transfer of account balances or invested funds to other qualified financial institutions or qualified retirement income providers and the charges, penalties or discounts that may apply to such transfers, either prior to or upon conversion of such funds into retirement income, are factually, comprehensively and clearly disclosed to such inactive members prior to their acceptance of such contracts; (d) in respect of contracts that are offered to retired members in respect of the conversion of accumulated funds into retirement income by	Refers to "rights of transfer" and "rights to transfer". Currently there is no transferability between RA's and post-retirement income providing vehicles. Given the wording of this clause, it intimates that this must now change, but we are unsure as to where in the enabling legislation this transferability is mandated or at least allowed. As it stands, it seems to be in conflict with section 274 of the Act. Please clarify if transfers between RA's and compulsory annuities may be allowed **must** be allowed and where the authority to do this hails from		The right for a member to chooses is conferred by clause 7 (e) of RF.R.5.10

	qualified retirement income providers, ensure that the rights to transfer the present value of remaining contractually guaranteed incomes or, in the case of programmed withdrawal schemes, to transfer the value of the balance of funds undisbursed as withdrawals, to other qualified retirement income providers and the charges or penalties or discounts that may apply to such transfers are factually, comprehensively and clearly disclosed to such retired members prior to their acceptance of such contracts; and			
6I	ensure that the exposure to risk of loss by any inactive member or retired member who is a prospective contract- holder with a qualified financial institution or qualified retirement income provider in the event of the insolvency of the issuer of the contract is clearly disclosed.	Requires that the "risk of loss" as a consequence of the insolvency of the financial institution or retirement income provider be disclosed to prospective contract holders. This seems to be a superfluous requirement that will add no practical value – the risks attaching to contractual benefits to be provided by any financial institution or retirement income provider is endemic in the transaction. This is so for all business they are registered to do. It os for this reason that the solvency and capital adequacy of these types of institutions are tightly regulated. Delete the clause.		Clause 6(e) requires nothing more than disclosure to the member. The member needs to be made aware of the risk they are taking on, even if it's the obvious.
Standard No. RF.S.5.13, the heading.	The text contains a typographical error – "A communications strategy for a retirement must". The word "fund" after the word "retirement" is omitted.	Correct the typographical error.	The typo in the heading of clause 5 will be corrected by inserting "Fund".	
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.15 Requirements For The Annual Report Of A Fund				
Clause 5(b) [Page 304 of GN 737]	Indiscriminate use of the term "fund" (which is a defined term) in contexts where reference is not made to "fund" as defined. A different term(s) should be used to make the necessary distinctions.	Reword clause to read: "(b) disclose the investment policy of the fund including options available to members to allocate their contributions and amounts comprising their member's individual account to separate investment portfolios; and"	The grammar to be reviewed and to substituting the second funds	
Clause 5(c) [Page 304 of GN 737]	Requires net annual returns to be reported – this is, especially for funds allowing individual member choice on investments (such as RA funds) is not practically doable, as the individual choices made may influence a	Delete requirement for "net return" reporting in this clause and throughout the rest of the standard.	The grammar to be reviewed and to consider substituting the second funds	This is an annual report done in hindsight. This is relevant for transparency to member. Also, relevant to disclose the target investment return versus the actual return.

	particular member's net return on his/her member's individual account.			
Section 3	Kindly note that section 401(12) of FIMA requires a financial institution or financial intermediary, "commencing 12 months after the date of commencement of this Act and within 90 days of the end of the financial year end of the financial institution or financial intermediary, send a copy of its annual financial statements, together with the report of the auditor to NAMFISA." *Kindly advise how this report is different from the report referred to in the standard, which is due within 6 months of year end? Are these 2 separate reports to be submitted*	Kindly advise		Section 401 refers to annual financial statements and auditor report. Section 410(6)(e) refers to a fund report to which this standard also refers. These are two different reports.
5(b)	The annual report of a fund that is a defined contribution fund must – (b) disclose the investment policy of the fund including options available to members to allocate their contributions and funds comprising their accounts to separate funds; and	Indiscriminate use of the term "fund" (which is a defined term) in contexts where reference is not made to "fund" as defined. A different term(s) should be used to make the necessary distinctions. Reword clause to read: "(b) disclose the investment policy of the fund including options available to members to allocate their contributions and amounts comprising their member's individual account to separate investment portfolios; and"	No reservation – the word "funds" in line 2 of clause 5(b) must be substituted with "amounts" and again the words "funds" in the second line 2 must also be replaced with "portfolio" or such other grammatical sound words	
5(c)	Report the gross and net annual rates of return on the fund (or on each separate fund available for members to allocate their contributions and funds) for the current year and prior 4 years (5 years in total).	Requires net annual returns to be reported – this is, especially for funds allowing individual member choice on investments (such as RA funds) is not practically doable, as the individual choices made may influence a particular member's net return on his/her member's individual account. Delete requirement for "net return" reporting in this clause and throughout the rest of the standard.		The reporting is done hindsight, the fund should know what was earned and what was allocated. Disclosure of gross and net is necessary for transparency; and also, to compare the fund's actual performance versus its intended performance.
Sec3(a)	It is not clear why the report must be submitted in both written and electronic form. Once electronic signatures are accepted legally, would it not be easier for both the fund and NAMFISA if it is submitted only in electronic form?	Proposal to delete "in both written and electronic form".	No reservation to the proposed change.	
Sec3(b)	FIMA and subordinate legislation require extensive reporting which will require more resources on fund level and also more time spent by NAMFISA to review all information received. The process should be stream-lined to minimize the time spent on reporting and avoid duplication of reporting. Information requested	NAMFISA to look at all the reports required by this standard, and determine which information NAMFISA wants to be included in which report to stream-line the process and avoid duplication. This standard should thus only list those items that are not required to be included in the annual financial statements or the quarterly COA returns,		Noted, however the report envisaged herein is an annual report which will obviously contain overall information pertaining to the fund activities in a given calendar year.

	is duplicated in the various reports such as the quarterly COA returns, annual financial statements, rules of the fund and new FIMA reports. Duplicate reporting will result in information overload to the member and unnecessary costs incurred by the fund which will ultimately be borne by the member. At the end of the day the member will not derive any benefit from the increased reporting.	both of which would already have been submitted to NAMFISA, or any other information that was already submitted to NAMFISA. Specific requirements are needed for this additional reporting. What can be requested that the funds are not already reporting on? This will avoid having double reporting on the same matters pertaining to the funds.		
Schedule 1, Item 9	What is meant with rate of return? When we refer to the net rate, what is deducted from the rate which is referred to as the gross rate?	A common formula for determining the return on income is needed to ensure the industry applies the same formula and that the industry reports uniformly. Definitions needed for ROI, Net ROI etc.		The words are common terms in accounting and bear no special connotation to warrant a definition.
Schedule 1, Item 14:	Reference here should be to the financial year of the fund and not the calendar year as provided for in the schedule	This will ensure corresponding values with the funds' AFS		There is no mention of calendar year. The annual report is to be prepared after the end of the fund's financial year.
Note1:	What does the contribution flow entail? If this refers to the current sec13A reports then it should refer to such provision in FIMA and not to contribution flow. "Contribution flow" should be defined.	Clarity needed and clear definitions to be added to ensure correct interpretation by all affected parties.		Legislation cannot define each and every word used were such words bear no special connotation other than its ordinary meaning. Words not defined should be given their ordinary meaning.
Note 1:	What level is used to determine materiality?	Materiality to be defined as a percentage of the change in investment and loans.		Materiality should be the same level as defined in the annual financial statements.
Note 1:	Disclosure of administrative activities of the fund is excessive and the benefit to the member of reporting this to NAMFISA is not clear. The reporting required is very detailed in that it requires reporting as to which administrative activities were done during the year and by whom. The administrative activities are governed by the service level agreement between the fund and the administrator. It will be very time-consuming, and thus costly, to compile this section of the report, and there does not seem to be any benefit to the member as a result of this.	Remove the requirement of the fund to report on administrative activities in this detail to NAMFISA.		Note 1 states that the administrative activities of the fund should be report in a summary form – thus this shortens this item of the report.
RF.S 5.15 (Page 303) Requirements for the Annual report of a Fund	Section 3: - Is the timing appropriate? -Please clarify if this is investment gains and losses etc? Why is it required here in financial statements? Numberings of paragraphs and sections is inconsistent.			There is sufficient time to prepare the annual report for submission to the regulator. The details of a report are in schedule 1 to the Standard.
RF.S 5.15 (Page 304) Requirements for the Annual	Section 5 © Is this repeated disclosure already submitted?			This is not a repetition of disclosure. It should be noted that different report under FIMA is prepared for different purpose.

report of a Fund				
RF.S 5.15 (Page 304) Requirements for the Annual report of a Fund	Dection 6 ©: - Aren't these disclosures already submitted in statutory reports already? -Seems to be too onerous and repetitive			The above immediate comment applies here.
R.F.S.5.15 clause 3(a) *(RF.S.5.15 - Requirements for report of the board to NAMFISA)*	It is not clear why the report must be submitted in both written and electronic form. If it is via ERS, a submission in electronic form should be sufficient?	NAMFISA should determine whether the report must be submitted in written or electronic form. If submission is required in electronic form on ERS, the requirement for submission in written form should be removed.	Agreed – to amend clause 3(a) to allow either format of submission.	
R.F.S.5.15 clause 3(b)	This clause lists information that must be included in the annual report to NAMFISA in so far as it is not already included in the annual financial statements. Some information is included in both reports, e.g. membership and financial information. This results in duplications. Also, every time the information requirements of one report changes, users have to determine the impact on the other report. This makes it even more time-consuming and costly to prepare the reports.	NAMFISA is the custodian of both reports. NAMFISA should thus decide which information must be audited and therefore included in the annual financial statements. Similarly, NAMFISA should decide what other critical (unaudited) information NAMFISA requires from funds and only those should be listed in RF.S.5.15. This will make both reports more uniform across Industry users and make them much easier to prepare.		Clause 3(a) is qualified by the wording "insofar as the following is not already included in the annual financial statements" thus the annual report envisaged in clause 3 may be leave / exclude such info that is already included in the fund's AFS.
RF.S.5.15 clause 3(b)	Once FIMA is effective, there are numerous reporting requirements to NAMFISA, such as the annual report to NAMFISA, annual financial statements to NAMFISA, quarterly Chart of Accounts reporting, quarterly contribution report, rules of the fund etc. The increased reporting requirements will require more time and resources and therefore will come at an additional cost to funds, which will ultimately be borne by the member.	NAMFISA should streamline the information required by all different reports to reduce the reporting requirements to NAMFISA to the minimum required information and avoid any unnecessary and duplicate reporting.		The above immediate comment applies here.
RF.S.5.15 clause 3(b)(vi)/ Schedule 1 item 10	This reporting item requires a comparison of an actual result to an expected result, which implies that retirement funds need to prepare budgets. Retirement funds generally do not prepare budgets because it does not add any	Reporting requirement to be removed.		A fund should have a targeted return and whether this target has been met or not. And what does that mean for the fund.

	value: E.g., Contributions and expenses are mostly a percentage as determined by the Rules of the fund applied on the payroll. Investment income depends on market performance. The purpose and value of this reporting item is therefore not clear. Any additional requirements add to the fund costs, which will ultimately be borne by the member. Any requirements that do not add any value to the member should thus be removed.			
RF.S.5.15 clause 3(b)(viii)/ Schedule 1 item 12	This reporting item requires a disclosure of the administrative activities of the fund during the year and must be reported both as to what was done and by whom. The administrative activities are governed by the service level agreement between the fund and the administrator. It will be very time-consuming, and thus costly, to compile this section of the report, and there does not seem to be any benefit to the member as a result of this. It will be impossible to include this level of detail in a report for umbrella funds.	Reporting requirement to be removed. Alternatively, replace this requirement with a statement by the Trustees whether or not they are satisfied with the administrative functions performed in terms of their service level agreements.		This clause simply requires the fund to provide a summary of its administrative activities which is not already included in the AFS.
Clause 4(v): "The annual report of a retirement fund to NAMFISA must be in the form of Schedule 1 to this Standard and must be prepared within six months after the end of the fund's financial year, and must at a minimum – (v) a summary of the key financial data reported on by the auditor	Management report findings and management comments thereon are drafted for the purpose of communications with those charged with governance in order to assist them in fulfilling their oversight responsibilities, as required by the International Auditing Standards. Management report findings range from small "housekeeping" matters to significant deficiencies in internal controls. NOTE: Any deficiencies identified by the audit that are so severe as to impact the financial statements are required to be communicated in the audit report on the financial statements. Consider for example that the a DB Funds annual report is publicly available. Management report findings can easily be misunderstood or taken out of context and create confusion if read by anyone other than those charged with governance to whom they are addressed. This is one of the reasons that management report findings are not appropriate disclosure in the annual financial statements.	Clause 4(v): a summary of the key financial data reported on by the auditor and a commentary on the results of the fund's operations during the year under review (contributions received, investment income accrued, gross and net rate of return earned on the fund's portfolio, benefits paid, net increase or decrease in the fund), including the management report findings by the auditors of the fund; 7. A copy of the management report findings by the auditor shall be submitted to NAMFISA within <insert period> of year-end.	Agree with proposal that the management report be excluded from the annual report but that it should be simultaneously submitted to NAMFISA together with the annual report. Clause amended accordingly.	

and a commentary on the results of the fund's operations during the year under review (contributions received, investment income accrued, gross and net rate of return earned on the fund's portfolio, benefits paid, net increase or decrease in the fund), including the management report findings by the auditors of the fund;	BON issued BIA circular 4/99 which requires the bank to submit a copy of the management letter to BON. We recommend requiring that the management report findings be disclosed directly to NAMFISA rather than being included in the annual report.			
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.17 Categories Of Persons Having An Interest In The Compliance Of A Fund With The Provisions Of Section 270(7) And The Reports That Must Be Submitted By The Principal Officer Or A Person Authorised Under Section 270(8) To Such Categories Of Persons With Respect To Such Compliance				
General comment	The entire standard deals with "employer contributions" to a fund and related matters – certain funds, such as RA funds and Preservation Funds do not have "employer contributions" and it is unclear what is expected in this standard from funds without "employer" contributions?	Please clarify position w.r.t. funds where there is no "employer" involvement.	.	The standard refers to a report in compliance with section 270(7) of FIMA. Section 270 deals with an employer of any member of a fund.
	General comments	The entire standard deals with "employer contributions" to a fund and related matters – certain funds, such as RA funds and Preservation Funds do not have "employer contributions" and it is unclear what is expected in this standard from funds without "employer" contributions?	The standard covers payment of contributions by all. To monitor section 270 compliance. The schedule is a guide the word employee in the schedule to be replaced by member.	

		Please clarify position w.r.t. funds where there is no “employer” involvement.		
Sec2	Does this tie in with the current sec13Areporting? Sec270 FIMA deals with contributions, do the funds now have to report to members on the contributions as well?	Clarity needed as what exactly the report that goes to the members etc. should entail and why this is necessary?		The report has to be prepared for multiple users. Members have a direct interest in the fund and events that may affect it. Members should therefore be informed if their contributions are deducted from their salaries, but not paid over to the fund.
Sec 2(a)-(g):	Not all these parties have value in quarterly reporting.	By when should these reports be submitted to interested parties and also, if it is sent to the actuaries and auditors it might lead to additional costs for the funds. What does this report aim to achieve? Does it have to be provided to the members individually or upon request and through the HR office at the participating employer of an umbrella fund?	Auditors and valuators removed from list in clause 2.	All these questions are addressed in the subsequent clauses of this Standard RF.S.5.17. The report must be prepared as at the end of each calendar quarter and be provided to the persons referred to in clause 2 within one month of that date. The notification referred to in sub-clause (1) must state that the members referred to in that sub-clause may request electronic copies of the most recent report and that these will be provided free of charge. The manner of providing these reports is not prescribed, it is up to the fund decide on the manner of providing the reports.
Sec2(g)	Who will have the discretion to determine what other parties might have an interest in the Fund?	What criteria will be used to determine who has an interest or will be deemed an interested party apart from the listed parties?		A person must demonstrate their interest in the compliance with section 270 before the Board can furnish such persons with a copy of the report.
Sec4	Valuators and auditors work on an annual basis, this might lead to additional costs for the funds	The information provided here is not of value on a quarterly basis, rather make it annually.	Agreed – to furnish the section 270 compliance to auditor and valuator annually. But in respect of other users, the period to remain quarterly.	
Sec4	The 30-day period is very short.	Can we consider a longer period to make it more compliable for administrators having to provide the data?		The allowed 30 days is sufficient for quarterly reporting.
Schedule 1	What is the purpose of providing this data quarterly? If this is for policy making provision, then annual data should suffice. Instead of quarterly submissions we can consider annual submissions to the relevant parties.	Standard to be changed to, instead of quarterly submissions, require annual submissions of this report to the relevant parties.		That would defeat the purpose of this report. The persons listed in clause 2 have an interest in the compliance of the fund as it relates to the payment of contributions. Example, members should be informed if their contributions are deducted from their salaries, but not paid over to the fund.
RF.S.5.17 clause 2 *(RF.S.5.17 – Quarterly contribution report)*	Clause 2 requires the principal officer of a retirement fund or an authorized person to provide a report with respect to the compliance of the fund with the provisions of section 270 (payment of contributions) to the persons who have a continuing and material interest in the compliance of the fund with the provisions of	Amend clause 2 by removing: (a) active members and f) NAMFISA.		The report has to be prepared for multiple users. Members have a direct interest in the fund and events that may adversely affect it. Section 265(2) refers to a standard this is the standard.

	that section. These persons include active members and NAMFISA. The fund is already required by section 265(2) of the FIM Act to notify all active and retired members and NAMFISA if contributions to the fund remain outstanding for longer than the period specified in the standards. The fund is therefore already reporting non-compliance with section 270 to all active and retired members, and NAMFISA, in terms of section 265(2) of the FIM Act. If members and NAMFISA are already informed about any non-compliance with section 270, the purpose in funds having to provide members and NAMFISA with a report on the compliance of the fund with the provisions of section 270 is not clear. The preparation and distribution of this report will require time and resources, and will thus result in additional costs to the fund, which will ultimately be borne by the member. This report should therefore only be required if there is value added to the member or other stakeholders in receiving this information.			
RF.S.5.17 clause 3 & Schedule 1 *(RF.S.5.17 - Report to persons having an interest in the compliance with Payment of contributions)*	1) As per clause 3, the contribution report should be provided to persons having an interest in compliance with payment of contributions, which include the auditor and the valuator. It is not clear why this report needs to be sent to the auditor and the valuator. The auditor and valuator would request the relevant information from the fund when performing their statutory duties. 2) What is the reason for sending all the detailed information in the report as per RF.S.5.17 Schedule 1 to the members, e.g. total payroll? Would it not suffice to send the member only critical information that is of interest to the member such as whether the employer paid over the contributions in time? Payroll information is sensitive and particularly for smaller organisations, might unintentionally result in disclosure of individual salaries.	1) Remove auditor and valuator from list of interested persons per clause 2 Reduce the information required in the report to include the critical information only and exclude sensitive information such as payroll.	Amended clause 4 so that auditors and valuators are only provided with the report on an annual basis.	In regard to assertion that salary info should be removed due to sensitivity, we wish to state that the information is provided at fund level, not member level.

	3) 2) The information that is considered sensitive are the salary amounts. These have to be stated per contribution category. For smaller organizations where there are only 1 or 2 persons in a contribution category, the salary of that person(s) will be known to the other members.			
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.18 Matters to be included in an investment policy statement, including limits				
Standard RF.S.5.18	A general comment pertaining to credit balances limited to 20% of fund assets per banking institution and unlisted investment of between 1.75% - 3.5% of fund assets. Where the Funds' Investment Policy provide for specific investment portfolios in insured products deemed not to be part of the assets of the Fund, the "uninsured" investment portion is so small that bank balances in its wider definition as per Regulation 13 breaches the 20% credit limit easily and it becomes impractical to keep the credit balances per banking institution at a 20% limit and at the same time stay within the unlisted investment range of 1.75%- 3.5% at the same time.	Allow for exemption of Regulation 13 pertaining to unlisted investments and credit balances where reasonable motivation exist for such exemption, i.e. impracticalities, insignificant unlisted investment commitments as a % of assets.		Regulation 13 of the Pension Funds Regulations will be preserved in terms of schedule 3 of FIMA. Regulation 13(14) provides for exemption from any provision of regulation 13. Current regulation 13(12) reads "The investments of a fund referred to in section 2(3)(a)(ii) of the Act are not subject to this regulation provided that the investments by such fund in credit balances as contemplated in item 1 of Annexure A does not exceed 10% of the value of the insurance policies at any given time." The 20% and unlisted assets limits to do not apply to such funds
General Comment #1	The standard, which is made in terms of section 410(6)(s) of the Act, does not fully address the matters section 410(6)(s) requires of it to do. It only deals with requirements of the investment policy but does not at all address the matters referred to in sections 410(6)(s)(i) and (ii). This leaves a significant lacuna that must be addressed.	Include in the standard the determinations as are currently contained in regulations 12 and 13 (and related) to the Pension Funds Act.		The provision of sec 410(6)(i) and (ii) as far as it relates to investment of fund assets is fully dealt with in the current Pension Fund Regulations and those Regulations will be reserved in terms of the Schedule 3 of FIMA.
General comment #2	The standard makes no specific provision for funds wishing to invest purely in either fund policies or individual long-term insurance policies per member. It is suggested that the current regulations made in this regard under the Pension Funds Act can be incorporated.	Include in the standard the determinations as are currently contained in regulations 12 and 13 (and related) to the Pension Funds Act.		In terms of Schedule 3 of FIMA, the current Pension Fund Regulations will be preserved and remain in force.
Clause 6 [Page 314 of GN 737]	The defined term "fund" is used indiscriminately to also refer to things another than "fund" as defined. This leads to confusion, uncertainty and unintended outcomes. A	Reword first paragraph of the clause as follows: "Where the rules of a defined contribution fund permit active members to direct the allocation of their contributions, or their	The grammar to be reviewed and consider to refer to investment funds.	

	different term(s) should be used to make the required distinctions clear.	contributions and those of the employer, to investment portfolios managed by a fund investment advisor that is a registered financial institution or registered financial intermediary or to investment portfolios managed by some other registered financial institution or registered financial intermediary, the Statement of Investment Policy must stipulate that:"		
Clause 6(a) [Page 314 of GN 737]	The defined term "fund" used indiscriminately and confusingly. In addition, the requirement that members must annually receive full descriptions of all the investment portfolios that they may choose from with all the particularity described, is not from a practical perspective doable, nor would it be particularly useful to the member. Some funds give their members a very large investment choice, up to about 400 investment portfolios in some instances – sending these members all the required details on that many options would not help the member in any practical way and would place a significant burden on the fund and administrator. It is suggested that this information be made available on request of the member, not as a compulsory annual exercise.	Reword the clause to read: "an active member must receive, at the member's request, clear descriptions of each of the various investment portfolios available to them, which descriptions must include their specific investment policies, their risk exposures, rate of return objectives and expense charges, including details as to periodic management fees and charges for inter-fund transfers and withdrawals where applicable;"	The grammar to be reviewed and consider to refer to investment funds.	If a fund chooses to give 400 options for a member to choose from it must place the member in a position to make an informed choice. Disclosure is fundamental to the member understanding what they are choosing. Given the risk assumed by DC fund members, it's of utmost importance to ensure enhanced disclosure
Clause 6(b) [Page 314 of GN 737]	What constitutes adequate diversification and/or exposure to riskier assets, varies from member to member depending on the member's unique personal circumstances. It is thus not possible or advisable to attempt to do this using a broad-strokes approach. All the information needed to make this assessment is already contained in the information that must be made available to the member as per clause 6(a) hereof. This clause does not advance the matter any further.	Delete clause or, alternatively, delete everything in the clause starting with: "so as to prevent..."		Diversification is used in its ordinary meaning as would be understood by a person versed in the practice of dealing with assets. The wording that is proposed to be deleted is qualified by the wording "imprudent"
Clause 6(d) [Page 314 of GN 737]	Indiscriminate and confusing use of the defined term "fund". Additionally, it is required that comprehensive account statements be provided at least quarterly to members including, inter alia, the net rate of return earned. The frequency required is very high and it is recommended that statements be provided annually to members. If a member requires information within such an annual regular statement period, the member may request same, and it will then be provided (see clause 6(a) above. It	1. Replace word "fund" with "investment" 2. Reduce frequency to annually; 3. Replace "net" with "gross"	Noted in respect of the use of the term "fund."	If the member is making the choices a year is too long without an indication of how their choice is performing. Nothing prevent the investment fund manager from indicating a gross, but a net must be indicated the member must know the return they have actually earned.

	is also unclear what is meant with the stipulation that the member is entitled to get the statement "physically?" It is assumed this means in "hard copy", please clarify.			
Clause 7 [Page 315 of GN 737]	The entire aim and intent of this clause is unclear when viewed in the context of a fund which offers its members investment choice – the fund does not manage the investments to require a policy on the matters listed. Nor does the fund per se appoint and appraise the investment managers – the member chooses where to invest in the universe of investment portfolios made available by the fund and each managed by its own investment manager. The member in concert with his/her financial intermediary chooses where to place the member's investments and will themselves assess how satisfied or otherwise they are with the managers. Free-market competition will ensure that all managers will attempt to give the best possible performance.	Please clarify intent and logic behind the required items in the context of a fund offering full and free member choice as to investment.		The explanation given under column 3 is part of the logic. Please have a look at the objects and duties of a board under sections 264 and 265 of FIMA. After collecting contributions from a member, a fund should never be able to completely remove its self from what happens to the contributions as done in the description. That is not what a retirement fund as defined in FIMA. The board must still exercise prudence in selecting the investment portfolios and investment managers it wishes to make available to members.
Schedule 1 [Page 316 of GN 737]	Schedule does not make provision for nor is suitable for funds investing purely in fund policies or individual policies for its members. In a RA fund, for example, the fund will generally take out an individual policy in respect of every member and within such policy there will be investment choice.	Improve schedule or confirm that Schedule is only necessary in instances where a fund does not purely invest via a fund policy or individual policies taken out for each member.		Please note schedule 1 is a sample summary. There is no provision that requires it. It is meant to provide guidance.
Section 2	"The board of a fund must develop and maintain a Statement of Investment Policy, and, unless exempted from this requirement pursuant to clause 5, in doing so may consider advice from the fund investment advisor, if applicable." *Investment advisor does not appear to be defined*	Kindly define investment advisor		The words "investment advisor" must be given their ordinary grammatical meaning.
Section 9(c)	"have regard to and comply with all legislative requirements pertaining to the investments of retirement fund." *Is this a reference to the Pension Fund Regulations and investment limits therein set out? If so, suggest specifically referencing the legislative requirements in order to avoid confusion in future.*	Kindly reference the legislative provisions that apply		This Standard relates to Statement of Investment Policy and simply require the Statement of Investment Policy to consider and comply with the investment legislative requirements as exist then. Providing a list would be impractical or limitative as applicable legislative requirements is determined by the nature of fund investments.
	General comment	The standard, which is made in terms of section 410(6)(s) of the Act, does not fully address the matters section 410(6)(s) requires of it to do. It only deals with requirements of the investment policy,		The provision of sec 410(6)(i) and (ii) as far as it relates to investment of fund assets is fully dealt with in the current Pension Fund Regulations which has been preserved in terms of sec 2 of the Schedule 3 of FIMA.

		but does not at all address the matters referred to in sections 410(6)(s)(i) and (ii). This leaves a significant lacuna that must be addressed. Include in the standard the determinations as are currently contained in regulations 12 and 13 (and related) to the Pension Funds Act.		
	General comment	The standard makes no specific provision for funds wishing to invest purely in either fund policies or individual long-term insurance policies per member. It is suggested that the current regulations made in this regard under the Pension Funds Act can be incorporated. Include in the standard the determinations as are currently contained in regulations 12 and 13 (and related) to the Pension Funds Act.		In terms of sec 2 of Schedule 3 of FIMA, the current Pension Fund Regulations are preserved. Thus, it will continue to apply during FIMA until superseded by a standard issued under FIMA.
6	Where the rules of a defined contribution fund permit active members to direct the allocation of their contributions, or their contributions and those of the employer, to funds managed by a fund investment advisor that is a registered financial institution or registered financial intermediary or to funds managed by some other registered financial institution or registered financial intermediary, the Statement of Investment Policy must stipulate that	The defined term "fund" is used indiscriminately to also refer to things another than "fund" as defined. This leads to confusion, uncertainty and unintended outcomes. A different term(s) should be used to make the required distinctions clear. Reword first paragraph of the clause as follows: "Where the rules of a defined contribution fund permit active members to direct the allocation of their contributions, or their contributions and those of the employer, to investment portfolios managed by a fund investment advisor that is a registered financial institution or registered financial intermediary or to investment portfolios managed by some other registered financial institution or registered financial intermediary, the Statement of Investment Policy must stipulate that:"	The wording to be reviewed to ensure that its grammatically sound i.e., to use the term "investment funds".	
6(a)	active members must receive clear descriptions, at least annually, of each of the various funds available to them, which descriptions must include their specific investment policies, their risk exposures, rate of return objectives and expense charges, including details as to periodic management fees and charges for inter-fund transfers and withdrawals;	The defined term "fund" again used indiscriminately and confusingly. In addition, the requirement that members must annually receive full descriptions of all the investment portfolios that they may choose from with all the particularity described, is not from a practical perspective doable, nor would it be particularly useful to the member. Some funds give their members a very large investment choice, up to about 400 investment portfolios in some instances – sending these members all the required details on that many options would not help the member in any practical way and would place a significant burden on the fund and administrator. It is suggested that this information be made available	The wording to be reviewed to ensure that its grammatically sound.	The additional comment is not accepted. Given the risk assumed by DC fund members, it's of utmost importance to ensure enhanced disclosure.

		on request of the member, not as a compulsory annual exercise. Reword the clause to read: "an active member must receive, at the member's request, clear descriptions of each of the various investment portfolios available to them, which descriptions must include their specific investment policies, their risk exposures, rate of return objectives and expense charges, including details as to periodic management fees and charges for inter-fund transfers and withdrawals where applicable;"		
6(b)	allocation options available to active members are suitably circumscribed so as to prevent imprudent risk exposure due to inadequate diversification or excess allocation among higher risk asset classes;	What constitutes adequate diversification and/or exposure to riskier assets, varies from member to member depending on the member's unique personal circumstances. It is thus not possible or advisable to attempt to do this using a broad-strokes approach. All the information needed to make this assessment is already contained in the information that must be made available to the member as per clause 6(a) hereof. This clause does not advance the matter any further. Delete clause or, alternatively, delete everything in the clause starting with : "so as to prevent..."		It should be noted that a Statement of Investment Policy sets the policy for managing fund investments. The wording that is proposed to be deleted is qualified by the wording "imprudent".
6(c)	the fund will provide investment counselling workshops for active members at least once every three years to provide guidance and training in the management of investments with emphasis on the risk and return relationship and the need to monitor and adjust asset class allocations over time; and	The requirement that the fund must provide investment counselling workshops to all members at least every 3 years, is in theory a noble idea, but for many funds it is so unpractical and so burdensome that it would be for all practical intents and purposes impossible to do. Consider for example an RA fund with tens of thousands of members, literally scattered across Namibia and in fact the rest of the Globe. It would not be practically possible to provide "investment counselling" workshops in these circumstances to all these diverse and geographically scattered members. In practice, the member's financial intermediary will be responsible to advise these members and to ensure that they are appropriately advised, as is stipulated in INS.S.2.7. Delete the clause.		Where the fund wants members to direct the allocation of their contributions it must ensure that the members are making informed decisions.
6(d)	The fund management will provide active members with comprehensive statements of their account activity, fund balance marked-to-market and net rate of return on a quarterly	Indiscriminate and confusing use of the defined term "fund". Additionally, it is required that comprehensive account statements be provided at	The wording to be reviewed to ensure that its grammatically sound.	Here the member is directing the allocation of contribution they should know sooner than a year how their choice is doing in case adjustments are necessary.

	basis, as a minimum frequency, with such statements delivered either electronically or physically at the option of the active member.	least quarterly to members including, inter alia, the net rate of return earned. The frequency required is very high and it is recommended that statements be provided annually to members. If a member requires information within such an annual regular statement period, the member may request same and it will then be provided (see clause 6(a) above. It is also unclear what is meant with the stipulation that the member is entitled to get the statement "physically?" It is assumed this means in "hard copy", please clarify. Finally, an individual member's net rate of return will be influenced by his/her individual circumstances and choices, and cannot be supplied on a per-portfolio level – in terms of clause 6(a) the fees/costs have to be shown, which will enable the net return to be derived in a particular member's case. 1. Replace word "fund" with "investment" 2. Reduce frequency to annually 3. Replace "net" with "gross"		
7	Where the rules of a defined contribution fund permit active members to direct the allocation of their contributions, or their contributions and those of the employer, the Statement of Investment Policy must include the following.	The entire aim and intent of this clause is unclear when viewed within the context of a fund which offers its members investment choice – the fund does not manage the investments so as to require a policy on the matters listed. Nor does the fund per se appoint and appraise the investment managers – the member chooses where to invest in the universe of investment portfolios made available by the fund and each managed by its own investment manager. The member in concert with his/her financial intermediary chooses where to place the member's investments and will themselves assess how satisfied or otherwise they are with the managers. Free-market competition will ensure that all managers will attempt to give the best possible performance.		The explanation given under column 3 is part of the logic. Please have a look at the objects and duties of a board under sections 264 and 265 of FIMA. After collecting contributions from a member, a fund should never be able to completely remove its self from what happens to the contributions as done in the description. That is not what a retirement fund as defined in FIMA is.
Sec6(c)	Why only to active members?	This provision should include retired and deferred members as well and should not be limited to the active members of a fund.		Deferred members governed by preservation agreement. Retiree also have a contract in terms of RF.S.5.11 clause 4. The handling of their savings is dealt with in terms of the agreements.

Sec6(d)	Why only to active members	Living annuity pensioners should be privy to this information as well and it should not be limited to the active members alone.		Deferred members governed by preservation agreement. Retiree also have a contract in terms of RF.S.5.11 clause 4. The handling of their savings is dealt with in terms of the agreements.
Sec7(d)	We have no control over investment risk	Change the provision to mitigate or manage the uncontrollable risk as we would with any uncontrollable risk event.		Risk management is a function that cannot be abdicated by the board.
Schedule 1	This should not refer to the total portfolio	Reference should be had to the investment portfolio and not the total portfolio		The statement of investment policy of a fund should be comprehensive.
Schedule 1	The reference to GON, what does it relate to?	GON should be defined, if this relates only to Namibian Government Bonds, then we need guidance on how reporting should be one for international government bonds as well. Propose that the Chart of Accounts definitions be used in this regard.	Agreed – all abbreviations used in the schedules to be written in full when used the first time.	
RF.S 5.18 (Page 314) Matters to be included in an investment policy statement	Section 6 (c) - Is it the fund's responsibility to train members?			Where a fund requires members to choose their own investment portfolios, it is prudent for members to be familiarized with the risks/rewards of different investment options.
RF.S 5.18 (Page 315) Matters to be included in an investment policy statement	Section 8: Which party is required to provide justification? Valuator? Or the Board and investment advisors?			The Statement of Investment Policy is a fund document, thus it's the fund / board that must provide a justification for divergence in the rates envisaged in clause 8.
Clause 5(d)	The clause states: "annuity contracts issued by a life insurer registered under the Act which must be guaranteed as to capital and rate of return;" Does this refer to retirement annuity policies that are issued to members of retirement annuity funds prior to retirement? If so, does this aim to restrict the types of investment options available to the members to guaranteed funds only, not unit trusts or other types of investment options that are not guaranteed?	Clarity sought on what is meant by guaranteed capital and rate of return.		This clause must be read in the context it appears namely, the details of a Statement of Investment Policy; and not payment of member's retirement benefit. The words guaranteed capital and rate of return are used in their ordinary use.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
Standard RF.S.5.19 **Matters to be communicated to members and contributing employers and minimum standards for such communication**				

Standard RF.S.5.19	6(b) in the case of a defined contribution fund in respect of each active member or deferred member— (i) the contributions of the member received by the fund in the current year, indicating which portion of contributions are additional voluntary contributions; Should this not rather refer to the particular Funds' financial year	Clarity sought		Clause 6(b) refers to information that must be stipulated in a member's benefit statement which must be annually furnished to members. Current year is not defined it simply means the year in which something occurs. All dates fall within a financial year
Standard RF.S.5.19	6 (c) (ii) the projections of the balance in their account assuming different drawdown rates and returns, showing the sustainability of different rates over time; Technically difficult - which rate or averages will be used to determine these	Clarity sought		This is for illustration purposes and there shouldn't be any prescribed rates. The fund can make any reasonable assumptions and ensure that these are communicated fully to the members.
Standard RF.S.5.19	9b(iv) summary of all complaints made by active members, deferred members or retired members and evidence of the resolution or other disposition of such complaints; Would this include complaints received where the Fund has communicated its standards already? i.e. claims are payable within 30 days and the member raises a complaint on day 20 about none payment?	Clarity sought		Yes.
Standard RF.S.5.19	9 (b)(ix) request for information concerning any report or article published in the media concerning the corporate, financial or other status of the contributing employer where such report or article may reasonably be interpreted as involving the retirement fund directly or contingently. This is very vague and would social media form part of "published media"? What exactly does "involving the retirement fund" entail?	Clarity sought		Social media is also a publication platform. Clause 9(b)(ix) stipulates that '…where such report or article may *reasonably be interpreted*' thus its not every published article that must concern the fund; but only article which may reasonably be said to relate to the fund. This calls for objective assessment by the board.
Clause 6(b)(ii) [Page 319 of GN 737]	Requires details of employer contribution – not all funds have employer contributions.	Add "(if applicable)" to end of sentence.		Then the amount is zero
Clause 6(b)(iv) [Page 319 of GN 737]	Requires details of accumulated employer contributions – not all funds have employer contributions.	Add "(if applicable)" to end of sentence.		Then the amount is zero
Clause 6(b)(vi) [Page 319 of GN 737]	Requires details of investment portfolio wrt accumulated employer contributions – not all funds have employer contributions.	Add "(if applicable)" to end of sentence.		Then the amount is zero

Clause 6© [Page 319 of GN 737]	Requires certain details for “retired members” who elected “programmed withdrawal options”. A member electing a “programmed withdrawal option” will purchase this retirement income from a registered insurer in his/her own name. His/her fund membership thus terminates when electing a “programmed withdrawal option”. Given this, there will be no “retired members” in a DC fund who elected a “programmed withdrawal option.”	Delete clause 7 and delete the corresponding row from Schedule 1.		Programmed withdrawal scheme is not only provided by registered insurer but can also be provided by retirement funds (see clause 5(b) of RF.S.5.11). Moreover, the concerned clause (clause 6(c)) makes it clear that its applicable where programmed withdrawal scheme has been “optionally” made available to active members. Where the fund does not offer that option, the clause does not apply.
Clause 6(h) [Page 319 of GN 737]	Uses defined term “fund” indiscriminately and confusingly. Again requires “net returns” to be provided. As earlier indicated, this varies depending on each individual members circumstances and options exercised where applicable.	1. Replace “net return” with “gross return” 2. Replace “(or for each separate fund available...” with “(or for each separate investment portfolio available...”)	Use of the word fund to be reviewed.	
Section 6	“(a) Member’ s membership or employee number or other unique identifier, current municipal address, e- mail address, date of birth, gender, marital status, date on which the member became an active member, date on which the member became a deferred member or retired member, if applicable, date of retirement or early withdrawal if applicable, and identity(ies) of beneficiary(ies);” *Why is the gender and marital status important for a benefit statement? Kindly also note that the template statement attached to the standard also does not reference the gender and marital status.*	Suggest removing gender and marital status from benefit statement	To add the demographic details.	The gender and marital status of the member not only enhance identification and tracing of the member but also in determining the appropriate annuity
6(b)(ii)	the contributions of the employer received by the fund in the current year;	Requires details of employer contribution – not all funds have employer contributions. Add “(if applicable)” to end of sentence.		Please note law is of general application intended to cover everyone. If there is no employer the benefit statement should simply reflect that fact.
6(b)(iv)	the accumulated contributions of the employer to the end of the current year;	Requires details of accumulated employer contributions – not all funds have employer contributions. Add “(if applicable)” to end of sentence.		The response to clause 6(b)(ii) apply here too.
6(b)(vi)	the value of the investment portfolio corresponding to the accumulated contributions of the employer at the end of the current year; and	Requires details of investment portfolio with respect to accumulated employer contributions – not all funds have employer contributions. Add “(if applicable)” to end of sentence.		The response to clause 6(b)(ii) apply here too.
6(c)	in the case of a defined contribution fund, in respect of a retired member who has	Requires certain details for “retired members” who elected “programmed withdrawal options”. A member electing a “programmed withdrawal		Programmed withdrawal scheme can also be provided by retirement funds (see clause 5(b) and 3(f) of RF.S.5.11).

	elected a programmed withdrawal scheme as optionally made available to active members by the fund.	option" will purchase this retirement income from a registered insurer in his/her own name. His/her fund membership thus terminates when electing a "programmed withdrawal option". Given this, there will be no "retired members" in a DC fund who elected a "programmed withdrawal option." Delete clause 7 and also delete the corresponding row from Schedule 1.		Moreover, the concerned clause (clause 6(c)) makes it clear that its applicable where programmed withdrawal scheme has been "optionally" made available to active members.
6(h)	Report the net annual rates of return on the fund (or for each separate fund available for members to allocate their contributions and funds) and the investment expense percentage (including a breakdown of the different types of investment expenses) for the current year and prior 4 years (5 years in total); and	Uses defined term "fund" indiscriminately and confusingly. Again requires "net returns" to be provided. As earlier indicated, this varies depending on each individual members circumstances and options exercised where applicable. 1. Replace "net" return with "gross return" 2. Replace "(or for each separate fund available..." with "(or for each separate investment portfolio available...")	The grammar to be reviewed.	For transparency to the members, it's necessary to disclosure the net return.
6(h)	Requires projections under "different investment scenarios", but it is not clear which scenarios should be used to make these projections? Suggest clarity be added.	Add at the end of the sentence: ",which projections shall be based on the historic returns of the member's current investment portfolios and then projecting end values using the same historic returns as well as scenarios with returns at respectively 80% and 120% of the historic returns."		This is a subject requirement which a fund should be able to disclosure whatever they done.
Sec2(b)	All reporting to Members should be conducted annually.	This will ensure alignment with R.F.S.5.17 Schedule 1 and the comments made thereunder.		RF.S.5.17 relates to quarterly reporting on of the section 270 compliance report, this Standard relates to matters that must be communicated to member by funds. It's worth to note that some communication is required for specific event.
Sec3	All information to be reported on in section 3 is contained in the rules and the rules are to be provided to members per section 271(5) and section 272(9) of FIMA.	Why then have a report that states what is contained in the rules which the members have readily available access to? This will lead to higher administrative costs which in turn would diminish member savings.		This clause simply says this information should be provided; it does not prescribe which format. It can be a document - rules are a document.
Sec3(d)	This is restating what is contained in the rules	Members have access to the rules of the fund or the special rules of a participating employer which would grant them the information already, hence this would be telling them what they know and amount to duplicate reporting.		The above immediate comment applies here.
Sec3(g)	The information required would already be contained in the Investment policy statement	R.F.S.5.15(3)(b)(iv) already requires the information to be provided to members as part of the summary of the policies. Again, this would be double reporting and additional costs.		The above comment applies here.
Sec6(a)	Funds do not keep record of municipal addresses; this information is kept by the employer and in any case only accurate as at	The funds do not keep this information and would need time to collect the information and store it.		This is one of the reasons of the Funds' inability to trace members/beneficiaries. Funds should keep such basic member data.

	that time as many members are renting and thus moving often.			
Sec6(a)	"Municipal address" to be replaced with "residential address" since some members live in informal settlements or rural areas/ villages and might not have a municipal address.	"Municipal address" to be replaced with "residential address"	To be amended.	
Sec6(b)(v)-(vi):	Why does the information have to be split? The information required is pooled into the savings portion of the member, hence the splitting adds no value to the member	Combine these sections to only require a combined figure, i.e. “the value of the investment portfolio of the active member or deferred member as at the end of the current year”.		Where the fund does not maintain an employer contribution account such will not be necessary.
Sec6(b)(vii):	Why does the information have to be split? The information required is pooled into the savings portion of the member, hence the splitting adds no value to the member.	Reword the section as follows: “the net rate of return for the current and prior year in respect of each investment portfolio”		The member should be able to see the return earned on their savings.
Sec6(g)	Duplicate reporting. Members already receive a copy of the annual report to NAMFISA prepared as per Standard RF.S.5.15. A summary of the investment policy which is required under standard RF.S.5.15(4) would already be contained in that report; why report on it again?	Remove sec 6(g) or streamline with requirements of RF.S.5.15 to ensure that the requirement is only included once.	Clause 6(g) to be deleted.	
Sec6(i):	The requirement is very wide and it is not certain what exactly is required.	Specifics are to be provided as to what is needed to be used in calculating future values for the projection statement		The projections of retirement benefits are dependent on different investment option each fund avails to its members.
Schedule 1	ROI and CY	The terms are to be defined to ensure uniform use and avoid misunderstandings. If CY is calendar year, then the amount indicated might cause confusion as it would differ from the member’s annual benefit statement which is delivered as at the financial year end of the fund.	All abbreviations used in the schedules to be written in full the first time they are used.	
Formula in schedule 1:	IE IGR is to be defined	No current definition of the terms in place, hence, this might cause confusion and inaccurate reporting.	All abbreviations used in the schedules to be written in full the first time they are used.	
RF.S 5.19 (Page 318) Matters to be communicated to members and participating employers and standard of communication	Section 3(d) (iv): - What is the definition in respect of vs other modes of exit such as resignation transfers etc., is it consistent with the Act?			It should be noted that a member does not resign from a fund but ceases to contribute to a fund.
RF.S 5.19 (Page 319) Matters to be communicated to members	Section (d) : - For deferred members?			Yes if the fund offers such choice.

and participating employers and standard of communication				
RF.S 5.19 (Page 320) Matters to be communicated to members and participating employers and standard of communication	Section (f) (ii): - All contributions iro Rules or member contributions What are MIR's? This has not been covered elsewhere.	A detailed definition of MIR must be included.		All contributions paid with regards to that member.
RF.S.5.19 clauses 3 & 6 *(RF.S.5.19 - Matters to be communicated to members and contributing employers and minimum standards for such communication)*	Whilst it is important that members are kept informed, the receipt of too much information can be overwhelming to the member and result in the member's attention not being drawn to the important information. In addition, the compilation and the distribution of the information is time-consuming, and thus costly. Any information that does not add value to the member should therefore be removed. In terms of FIMA, members receive copies of the rules of the fund (section 271(5) - upon becoming a member) as well as any rule amendments (section 272(9) - upon implementation thereof). The rules need to be in plain language. The member therefore does not need to receive any information that is already contained in the Rules of the fund. The following information requirements of the Standard do not add value or are already contained in the Rules of the fund: • Clause 3(a): an explanation of the objectives of the fund (included in the Rules of the fund) • Clause 3(a): the risks involved in its operations and conditions that would tend to maximise the likelihood of success (does not add value to the member) • Clauses 3(b); 3(c); 3(d) with the exception of member-specific values; 3(e); 3(f); 3(h) (included in the Rules of the fund)	• The clauses that do not add value to the member or where the information is already included in the Rules of the fund as indicated under "Comment/ Description of issue" should be removed (i.e. clauses 3(a); 3(b); 3(c); 3(d) with the exception of member-specific values; 3(e); 3(f); 3(h)). Clause 6(b)(iii); 6(b)(iv); 6(b)(v); 6(b)(vi); 6(b)(vii): These clauses to be amended so that only the combined figures are required, and not a split of these between employer and member: • Accumulated contributions to the end of the current year • Value of the investment portfolio as at the end of the current year • Net rate of return for the current and prior year in respect of each investment portfolio held by the member.		This clause simply says this information should be provided; it does not prescribe which format. It can be a document - rules are a document. Moreover, it should be noted that there is a need to address the current information asymmetry and ensure that there is full disclosure of what the member is getting themselves into. FIMA will usher in enhanced disclosure and transparency dealing between funds and members and improve member participating in the affairs of the fund such is evident from this Standard on member communication. It is important for the risk bearing members of DC to know and also for a DB member.

	Clause 6(b)(iii); 6(b)(iv); 6(b)(v); 6(b)(vi); 6(b)(vii): The split of this information between the employer and the member does not add value to the member. A split would only add value if vesting scales would apply, however vesting scales are not allowed under FIMA.			
RF.S.5.19 clause 6(a)	"Municipal address" to be replaced with "home address" since some members live in informal settlements or rural areas/ villages and might not have a municipal address.	"Municipal address" to be replaced with "home address"	Agreed – to amend to physical address.	
RF.S.5.19 clauses 3 & 6 *(RF.S.5.19 - Matters to be communicated to members and contributing employers and minimum standards for such communication)*	The information required by the Standard to be provided annually to the member is excessive and might result in the member's attention not being drawn to the important information due to the excess of information. For example, the following requirements are seen to be not critical to the decision-making of the member in the benefit statement/ other annual communication: Clause 3: a. Explanation of objectives of the fund (Author's note: This information would be included in the Rules of the Fund) b. The risks involved in its operations and conditions that would tend to maximise the likelihood of success (Author's note: What use would this information be to the member?) c. Terms and conditions that would apply to the termination of the retirement fund (Author's note: These would probably depend on the timing and circumstances of the termination of the fund once the event occurs which are unknown at the time of writing the annual report. Besides, rules of the fund written in plain language and required to be communicated to members, already provide for terms in the event of wound-up of a fund.) Clause 6: d. Benefit statement to include member's current municipal address (Author's note: The cost to benefit of this requirement is	The Standard to be reviewed to remove all information not critical to the decision-making of the member, as indicated under "Comment/ Description of issue".		The earlier comments to clauses 3 of this Standard applies *mutatis mutandis* here.

	negative; what is the purpose of this information?) e. The value and net rate of return respectively of the investment portfolio at end of year split into portion corresponding to accumulated contributions of the member and portion corresponding to accumulated contributions of the employer (Author's note: What is the purpose of this split of investment portfolio between member and employer?) f. For a retired member who has elected a programmed withdrawal scheme: (i) projections of potential retirement benefits under different investment scenarios (Author's note: This is very wide and unpractical. How should this be executed in practice?)			
Clauses 2-8	A retirement fund must provide specified communications to active and retired members of the fund. Funds work with the contributing employers and not with the members directly.	Can the contributing employers, who have all members' contact details, be used to channel the required information?		In a retirement fund the relationship is between the member and the fund. A fund should not be able to say I do not deal with my members for whose interest I exist. A fund should have the contact details of its own members. Clauses simply requires funds to ensure that it communicates with its members, even if this function is outsourced the fund bears the responsibility and is liable for ensuring that such communication occurs.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.20 Matters To Be Included In A Code Of Conduct To Be Adopted By The Fund				
Section 2(j)	"The board must satisfy itself that all parties involved in the maintenance and administrative or investment operations of the fund comply with a code of conduct that the board considers sufficient and appropriate." *Is the code to be put in place by the Board or are these parties expected to have their own Codes in place?*	Kindly advise		The code is required to be provided for in the rules by section 261. It thus follows that the obligation to put the code in place vest on the Board.
Sec2	The code of conduct is normally not included in the rules of the fund	The rules may refer to the code of conduct but should not contain the code of conduct. Alternatively, the rules may prescribe the existence of a code of conduct which is then maintained as a separate document.		FIMA 261(6)(b) requires the rules to contain a code of conduct.

		Delete the following from section 2: "and must be included in the rules of the fund in compliance with section 261(6)(b) of the Act".		
Sec2(a):	What sanctions are allowable?	What sanctions does NAMFISA propose?		This is beyond our scope. The trustees in the exercise of their fiduciary duty and in their collective wisdom to decide what is appropriate for their specific fund's circumstance.
R.F.S.5.20 clause 2 *(RF.S.5.20 - Matters to be included in code of conduct)*	The code of conduct is normally not included in the rules of the fund. The rules may refer to the code of conduct but should not contain the code of conduct. Alternatively, the rules may prescribe the existence of a code of conduct which is then maintained as a separate document.	Delete the following from section 2: "and must be included in the rules of the fund in compliance with section 261(6)(b) of the Act".		Section 261(6)(b) - the rules of a fund must provide a code of conduct.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.22 **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 RF.S.5.22	5 (a) any statements by or opinions of an independent retirement fund advisor or a valuator of a transferor fund or a transferee fund; What is the definition of an "independent retirement fund advisor"?	Clarity sought		The wording 'independent retirement fund advisor' has no special connotation thus should be given its ordinary meaning. This could be a consultant, or anybody from which retirement fund advice is sought.
General comment	This standard appears to be regulating what section 14 in the current Pension Funds Act does and as such refers only to "amalgamations and transfers of business" not to the scenario where, for example, an individual member resigns form his employer and wishes to transfer his accrued benefit in his current pension fud to his new employer's pension fund. The reference to having to comply with Part 8 of Chapter 10 of the Act seems to confirm this view, but it is not clear from the rest of the wording of the standard.	Please confirm that standard is only addressing "amalgamations and transfers of business" not individual member transfers between funds.		The standard addresses transfers/amalgamations as provided for in section 446 and 447 of FIMA.
Section 5(a)	"any statements by or opinions of an independent retirement fund advisor or a valuator of a transferor fund or a transferee fund;" *What is the definition of an "independent retirement fund advisor"?*	Kindly define		The word "independent retirement fund advisor" must be given its ordinary grammar.l This could be a consultant, or anybody from which retirement fund advice is sought.
	General comment	This standard appears to be regulating what section 14 in the current Pension Funds Act does and as		Standard deals with a transfer agreement which is defined as between transferor fund and transferee fund.

		such refers only to “amalgamations and transfers of business” not to the scenario where, for example, an individual member resigns form his employer and wishes to transfer his accrued benefit in his current pension fud to his new employer’s pension fund. The reference to having to comply with Part 8 of Chapter 10 of the Act seems to confirm this view, but it is not clear from the rest of the wording of the standard. Please confirm that standard is only addressing “amalgamations and transfers of business” not individual member transfers between funds.		
RF.S 5.22 (Page 327) The transfer of any business from a fund to another fund	Section 4 (d) (ii) What is the nature of the analysis required?			The impact of the transfer on the respective funds involved.
RF.S 5.22 (Page 328) The transfer of any business from a fund to another fund	Section (v) – needs more clarity as to the parties that need to be involved. Is it retirement Fund advisor, an investment consultant, actuary etc?			This clause refers to transferee and transferor funds. The funds are required to provide the description in the transfer agreement after considering a report by an independent retirement fund advisor.
RF.S 5.22 (Page 328) The transfer of any business from a fund to another fund	Section (ix) – Are the statement of costs associated with the transfer legislated/ scheduled? Please clarify			Yes/No. ? Transfers come at a cost the clause requires the transfer agreement to contain a statement of costs.
RF.S 5.22 (Page 328) The transfer of any business from a fund to another fund	Section 5 “Reports to be appended to transfer agreement” There is no template for transfer agreement. Should be a boiler plate template available?			The nature and format of the report depends on which reports are applicable. And is left in the discretion of the transacting parties.
RF.S 5.22 (Page 328)	Section 5(a): This is potentially in conflict with Section 4 (d) (v)			There is no contradiction between clause 4(d)(v) and clause 5(a) – the former refers to the report serving as a basis of analysis and the latter to the report being annexed to the transfer agreement.

The transfer of any business from a fund to another fund				
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.23 **The fee that may be charged to members for copies of certain documents, and the reports and other information that must be provided by the board of a fund to its members free of charge**				
Standard No. RF.S.5.23	Copies free of charge *2. A retirement fund must provide a copy of the following documents to members free of charge, irrespective of whether the copy is required to be provided to the member pursuant to any provision of the Act or whether the copy has been requested by the member on an ad hoc basis—* Can the Fund provide it in electronic form only and where the member then requests for a hard copy, that a hard copy is provided once? Also, would the access for members to a Fund Website and Facebook suffices i.e. providing a link where the member can download the documents?	Clarity sought Propose that the preferred distribution method should be electronically		Standard RF.S.5.23 does not prescribe the format or method of providing copies to member. It is for the fund to adopt a method which will enable it to comply with the requirements of the Standard. This can be either in electronic or hardcopy format.
Standard RF.S.5.23	*3 (2) (d) the minutes of meetings of the board and meetings of members, insofar as such minutes relate directly to the member;* Can these instances be specified and would an extract of the minutes then suffice i.e. published in a newsletter / website / Annual Report	Clarity sought		The provision requires minutes insofar as it relates **directly** to the member; it does not require the minutes pertaining to other discussion of the meeting; it will be an extract of the minutes. 3(2)(d) does not refer to instances. It may not be prudent to publish board minutes relating directly to a member in an annual report, on a website or in a newsletter.
	5. (1) *Fees for a paper copy of a document to which clause 3 applies that are charged by a retirement fund must be approved by the board, and in any specific case may not exceed the lowest cost of copying the document in question charged in the commercial market for making copies at that time*. It will be impractical for the Fund to do a survey on the lowest cost of copying for Board resolution should the Board approved cost for whatsoever reason be higher than the lowest cost of copying in the commercial market	This should rather refer to a cost recovery basis as most Funds would have their own copy machines or a contract agreement with a Copier.	Amended the clause to reflect a cost recovery basis.	

Section 2	"A retirement fund must provide a copy of the following documents to members free of charge, irrespective of whether the copy is required to be provided to the member pursuant to any provision of the Act or whether the copy has been requested by the member on an ad hoc basis –" *Kindly advise whether this may be a soft copy. Can potentially become expensive for funds – especially umbrella funds – if hard copies are required.*	Allow soft copies to be provided		The clause does not prescribe the format of furnishing copies of the required document. The requirement is that the member be given the document.
Section 3	"(1) A retirement fund may charge reasonable fees for copies of the documents listed in sub-clause (2), where such documents: (a) are not required to be provided to members by any provision of the Act; (b) have been specifically requested by a member." *What is reasonable? Section 5 says board approved and lowest charge – so perhaps refer to Section 5?*	Kindly clarify what is meant by reasonable or reference section 5	To amend clause 5 for fees to be a cost recovery basis.	The fees charges should not be high so that its prohibitive least it negates the right of the members to request copies.
Section 4	"(3) In the event that a member has requested that a copy of a document to which clause 2 applies be provided in paper format, the retirement fund shall provide the paper copy of the relevant pages at a reasonable charge." *This appears to contradict clause 2, which says it shall be provided free of charge. Or is it the intention that clause 2 is only free of charge if provided in soft copy?*	Kindly clarify	To amend clause 4(3) to refer to clause 3(2)(a), meaning a member may be charged for a document that was already previously provided to the member free of charge. Meaning for the second time, the same document, it may be charged.	
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.24 Application of Registration				
???	*4 (d) proof of payment of the prescribed registration / application fee;* Is this N$5 fee still applicable?	Clarity sought		There is no N$5 referred to in the standard. General Standard No: GEN.S.10.23 stipulates the prescribed fees
	APPLICATION FOR THE REGISTRATION OF A FUND Can the process not be automated?	Please align the form	We take automation to mean electronic. The application may be done electronically. Due to the assessment required the process of applying for registration cannot be automated.	

	SIGNATURE OF DEPONENT	Assign this to a specific person, i.e., PO or Chairperson/Trustee		The application is for the registration of a fund, there can be no PO or Trustees in a fund that does not exist yet. Also, the deponent is not a prescribed officer so as to allow flexibility to funds.
Section 4	"(a) one original set and one copy of the rules of the fund duly signed and certified by the chairperson of the board/interim board as well as an additional board member as being the rules which will become effective on the date of registration of the fund or the date of commencement of the operations of the fund, whichever is the later;" *Practically, for an existing Fund, will these new rules that are submitted together with registration documents, become effective on the same date as registration or must application for rule approval be separately submitted?*	Kindly advise		A fund derives its existence from its rules this apply to existing fund as well. The application for registration of a fund cannot be separated from the rules. So, every application for registration must be accompanied by proposed rules as per section 252(2). Rules become effective from the date of registration of a fund. Under FIMA rules will no longer be approved by NAMFISA but will be noted.
Annexure A section 1	"The principal office of the fund" *Can it be the same as the administrator office?*	Kindly advise		Yes/no? All that is required is that a fund must have a principal office.
Annexure A Section C	*What is the purpose of the column for comments?* "(b) The date on which the fund will come into operation;" *Is this the date it was initially approved or the date of registration under FIMA?*	Kindly advise		For additional comments, if any. The date is date upon which the fund intended to commence business.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
STANDARD RF.S.5.25 Form Of Certificate Of Registration For A Fund				
General comment	*Would it be necessary to indicate the type of fund on the Certificate – ie. Defined Contribution Fund? Beneficiary fund?*	Kindly advise		No, some funds are hybrid funds and a fund may change from DB to DC through rules amendment. Thus, if DB/DC is indicated on the certificate of registration such would require change to the certificate also. A certificate of registration is only issued pursuant to an application for registration.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
REGULATION RF.R.5.3 The terms and conditions on which the board of a fund may distribute some or all of an actuarial surplus, pursuant to subsection 260(8)				

RF.R.5.3	The valuator would often allocate investment returns that was not fully allocated to members as part of the valuation report. Would this part require the Fund to submit a plan to NAMFISA for their approval? This would most of the time not be practical.	Clarity sought		No. Investment return is not actuarial surplus. This Standard applies to actuarial surplus rather than investment return.
Regulation RF.R.5.3	1.1 Regulation 3(1) provides that the rules of a Fund must authorise the Board of the Fund to distribute the surplus as of the date of inception of the Fund, unless sub-clause (2) applies. 1.2 Regulation 3(2) provides that in the with an actuarial surplus and the 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 includes informing participants of the amendment 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. 1.3. This proposed Regulation is legally untenable, in that: 1.3.1 The Fund has been in existence for approximately 40 years operating under its specific rules, including relating to the distribution of an actuarial surplus; 1.3.2 The Rules of the Fund were amended in relation to the distribution of the actuarial surplus many years ago including the active participants in the Fund; 1.3.3 NAMFISA cannot revisit this process many years down the line by seeking to retrospectively require a particular process contained in draft Regulation 3(2) to the satisfaction of NAMFISA; 1.3.4. In the matter of Chairman Sanlam Pensioen Fonds (Kantoorpersoneel) v Registrar of Pension Funds, 2007 (3) SA 41 (TPD) the court entertained an application for a declaratory order that the South African Pension Funds Act did not have any retrospective effect in respect	1.1. Regulation 3 violates a number of fundamental principles in law and should simply be scrapped. 1.2. Should the Minister of Finance be intent on retaining it, it should at least only be of prospective application.		It should be noted that the board is responsible for management of the business of the fund. The board is bound by legislation, rules and common law.Further, a constitutional legislation can change common law. Lastly, legislation is not retrospective unless expressly stated so. There is nothing in the Regulation that has retrospective application.

	to the section relating to the determination and utilisation of an actuarial surplus. The court found that it had no retrospective effect and that the court would not easily be persuaded that this was implied in the enactment that it should have retrospective effect (at para [45]). There is also no express provision or language that would suggest that the FIM Act and the Regulations should be interpreted to have retrospective effect. This is in line with the presumption against retrospectivity (National Iranian Tanker Co. v MV Pericles GC, 1995 (1) SA 475)). 1.4 In any event, the Regulation goes counter to the principle of international jurisprudence as well as that of the Namibian Supreme Court in relation to the distribution of an actuarial surplus, in the circumstances of the RPF's Rules (referred to in the submission in respect of the FIM Act).			
Approval of Plan Clause 4€	2.1 Regulation 4 provides certain conditions under which NAMFISA may approve a Plan for the distribution of an actuarial surplus of a Fund. 2.2 The condition contained in Regulation 4€ provides that "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". 2.3 This provision is legally and financially untenable in that: 2.3.1 This contradicts the very essence of the fiduciary duties of the Board of Trustees of the Fund, in particular their duty to ensure that for the foreseeable future the Fund will remain financially sound and be able to meet its liabilities for the payment of benefits, as and when they arise without imposing on the employer any undue financial burden or exposing it to undue financial risk. 2.3.2 By subjecting the decision to majority vote by "participants" which could include the employer, members, former members,	2.1 As has already been indicated in the submissions in respect of the FIM Act, the Regulation should reflect the position that the decision should lie with the Board of Trustees, but the Trustees should obtain the consent in respect of the proposed plan from the sponsoring employer. 2.2 Should this not be the case, any voting process would be completely impractical and lead to a number of legal disputes by every participant simply voting in his/her own best interests, and not necessarily in the interest of the sustainability of the Fund.		The management of the business of a fund resides in the board thus only the board is competent to decide whether or not to distribute an actuarial surplus. The members who have an interest in the business of a fund should have a voice. There is nothing preventing a participating employer from having a voice but they cannot be the decision maker. The wording "participant" is defined to mean "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, members, former member, deferred member, dependant and nominee, as applicable…" Therefore, the board may exclude certain of the possible listed participants that the board consider are not entitled to surplus apportionment from voting. In regard to the comment that participants involve in the voting will pursue their interest to the detriment of the fund, trustees are charged with the management of the Fund by sections 264 and 265. Trustees are required to uphold the interest of the Fund. In any event, the voting envisaged in clause 3(2) is a voting on rules amendment rather than the apportionment of a surplus itself. Clause 4(e) provides for participants to vote on the Plan as well.

	dependants and nominees, this would mean that the employer and the Board of Trustees would simply be dictated to by the majority. 2.3.4 This is a fundamentally flawed approach which could lead to the impoverishment of the Fund and the violation by the Trustees of their fiduciary duties, as well as completely undermine the fundamental principles established in international jurisdictions and by the Namibian Supreme Court in respect of the distribution of actuarial surpluses.			
Regulation 6	3.1 Draft Regulation 6 provides for a cap on the actuarial surplus that may be distributed in the case of a fund that is not terminating in its entirety, the maximum limit being 75% of the actuarial surplus in the fund. 3.2 This is both legally and financially untenable, in that: 3.2.1 It contradicts section 268(8) of the FIM Act in that that section provides that a Board of a Fund may, subject to certain conditions, distribute some or all of its actuarial surplus. There is thus a contradiction between section 268(8) and draft Regulation 6. 3.2.2 In any event the RPF approach (that has been acceptable to the sponsoring employer) is to maintain a funding level of at least 125% at all times. This funding level caters for a one in twenty year financial event, such as a Global Financial Crisis, Covid Pandemic, etc. that could cause a 20% devaluation in assets. 3.2.3 The approach as proposed by Regulation 6 will not achieve that goal and could put the financial soundness of the Fund (and ultimately the sponsoring employer) at risk. 3.2.4 For example: Year 1: Funding ratio = 145%	3.1 The maximum actuarial surplus which may be distributed in terms of draft Regulation 6 should be reworded to require a certain minimum funding level threshold, such as the 125% as proposed, as set out in Rössing's example. 3.2 It is to be noted that the Global Financial Crisis and Covid in fact happened period, thus giving a concrete example of the challenges the Fund might face in a relatively short period of time. 3.3 It is submitted that before any actuarial surplus distribution is proposed – for the reasons already advanced in the submissions on the FIM Act and in these submissions – that in the approval of the distribution Plan, the consent of the sponsoring employer should be required.		There is no contradiction between regulation 6 and section 268(8) as the latter allows the board to distribute "some" or "all" of the surplus. The board is still empowered to decide what portion of the surplus it wishes to distribute, but within the parameters of clause 6, which puts a cap on any distribution of surplus.

	3.2.5 If 75% of the surplus is distributed, the funding ratio will drop to 111.25. This is well below the 125% funding ratio previously adopted by the RPF to declare a surplus. 3.2.6 Should a black swan event occur in Year 2, with the result of a 20% value loss in the assets, the funding ratio would drop to 89%, requiring the sponsoring employer to then be required to pay into the Fund to ensure its financial soundness. 3.2.7 This is – as already referred to – grossly unfair to the sponsoring employer who – under the current draft Regulation – is subject to a majority vote on the Distribution Plan and thus does not have to give its consent to the level of the distribution of the actuarial surplus in the Fund, but at the same time has to guarantee the funding level to ensure the financial soundness of the Fund.			
Circumstances where Plan must not be approved – regulation 7(c)	4.1 Regulation 7 provides for circumstances where a distribution Plan should not be approved by NAMFISA. 4.2 It is unclear what Regulation 7(c) means. It would seem that the employer, who has established and funded the Fund, would have to prove that it was entitled to an actuarial surplus from the date of inception, otherwise a contribution holiday could not be assigned to it. 4.3 The Fund's active members' notional portion of the pension contribution has historically been minimal, with the bulk of the contribution required in order to meet the RPF's liabilities coming from the employer contribution, the ratio between the two, potentially being as high as 30:1 in terms of contributions. 4.4 Both the employer and employees have been on a contribution holiday, due to the exceptional investment returns on the Fund. Both parties however should enjoy the fruits of these returns in proportion to the extent that they have remained participants to the Fund. 4.5 It is simply untenable to now require that an employer which intends to distribute an	4.1 Due to the lack of clarity as to what draft Regulation 7(c) entails, NAMFISA is requested to explain the intention of this wording and its intended application. 4.2 It is proposed that specific wording be included in Regulation 7 to specifically provide for the allocation of an actuarial surplus to a contribution holiday. Such contribution holiday should reflect the portion of the contributions made by both the employer and the active employees.		Clause 7(c) should be given its ordinary meaning. Where a plan to distribute actuarial surplus propose to distribute a surplus to a contributing employer who has not had an entitlement to the surplus or who has not established a valid claim to distribution of surplus, such plan will not be approved by NAMFISA. Whether the actuarial surplus should be used to fund contribution holiday, it is a decision of the board – and consideration should be given to the provision of the fund rules. It should be noted that some funds have more than a single participating employer.

	actuarial surplus by way of a contribution holiday would now have to prove a valid claim in this regard. This is a decision for the Trustees of the RPF, to be taken in terms of the applicable Rules of the Fund.			
Supporting Schedules for a Surplus Distribution – supporting schedules Schedule 1, item 7	5.1. The supporting Schedule at paragraph 7 requires that in the application for approval of the Surplus Distribution Plan the applicant must indicate whether the Plan has been approved by any trade union or syndicate that represents any participants, where applicable. 5.2. It is unclear as to why this requirement is brought in when the definition of "participant" in Regulation 1(f) makes no mention of a trade union. 5.3. This requires approval of the surplus distribution plan by the trade union that represents any participants.	5.1 Due to the conflict between the supporting schedule and Regulation 1(f), it is submitted that reference to the trade union should be removed from paragraph 7 of the supporting schedule. 5.2 It is entirely inappropriate for the trade union to approve. In this regard reference is made again to the majority vote issue as opposed to the fiduciary duties of Trustees. 5.3 It is also not understood what the wording "syndicate that represents any participants" would refer to.	To be amended - the definition of "participant" in clause 1 does not include trade union or similar body. Amended by deleting all references to trade union.	
RF.R.5.3 Sec1(h)	What would constitute a surplus in a fund? Also, would a contribution holiday amount to a surplus if the fund and members have not contributed for an extended period of time. Namfisa to explain what a plan would entail? Is CPI catchup part of the surplus for distribution which needs to 2/3 voting and plan for approval? The regulation therefore needs to be clearers in this instance on when distribution needs to take place. Will this include, for example, a CPI pension increase when returns not earned such an increase, so the increase causes the surplus to reduce? And a continued contribution holiday.	The regulation needs to be clear on what qualifies as a distribution and comment on each of the item in the previous column		Clause 1(1)(f) provides that net actuarial surplus is calculated in RF.S.5.1. RF.S.5.1 is quite clear as to what constitutes an actuarial surplus which may then be distributed by board. The entire RF.R.5.3 provides the terms and conditions on which the board may distribute an actuarial surplus thus it's unclear from the comments what more should the Regulation expound. The Regulation regulates the distribution of surplus. The board is vested with discretion on how the surplus should be used, of course such to the fund rules. Pension increase is regulated by RF.S.5.7 thus it's not clear from the comment how the issue of pension increase is brought in the comments to this Regulation.
Sec 2(c)	There could be disputes taking up to 7 years and a need to reflect fairness on withholding distribution to other members, or can the fund proceed to distribute to other members in the meantime?	NAMFISA must consider legal action and on that basis consider whether or not to approve the plan. Dispute should not necessarily hold up the submission of the plan for distribution to NAMFISA.		Where the surplus is the subject of litigation, it's unreasonable to allow the distribution of surplus prior to conclusion of litigation.
Sec 2(i)	Does NAMFISA now have to approve a distribution plan	Is this constitutional in terms of the right to property		In terms of clause 2(i) the distribution plan must also be approved by NAMFISA. Legislation is deemed constitutional until such time a court of law pronounces otherwise.
Sec 4(e)	Practically speaking how will the Funds get pensioners, or even umbrella fund members to nominate or vote, especially in the instance	Remove voting process and replace with objection process. Proposal: Trustees to take responsibility for distribution. Only look at the guidance of the		The fund will need to devised way that will get pensioners to vote on the plan. Probably the same way that retired members will elect half of the board of trustees of the fund. The principle here is that all

	where the pensioner numbers far exceed the active members?	trustees requesting objections from members and pensioners and trustees to consider the objections. Each objection to be taken into account if not resolved by the board of trustees.		members who are affected and or impacted should have a say.
Sec 7(c)	Does this section imply that the regulations allow payment of surplus directly to employers	NAMFISA to provide further clarity on the intention and practical operation of this section.		No. Subsection (b)(v) of the definition of "pension fund" in the Income Tax Act precludes the employer from deriving any monetary advantage from moneys paid into or out of the fund,
Schedule 1: Clause 6	What is the correlation between the surplus and employer's tax obligations?	Remove clause 6 in its entirety		Surplus may arise from contributions. Contributions accrue tax benefits.
Clause 9(b)	Auditors do not audit fund data, only financial statements. Without expensive actuarial input, how will they appreciate what data is important and what is not?	Remove the clause in its entirety		Financial statements contain 100% fund (financial) data. Valuators to a certain extent rely on the work of auditors when performing valuations.
Schedule 2	Voting processes impractical for deferred members and pensioners	Replace voting process with an objection process		Deferred members are members of a fund thus should also participate in voting like any other member active and retired members. The wording "participant" is defined to mean "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, members, former member, deferred member, dependant and nominee, as applicable…" Therefore, the board may exclude certain of the possible listed participants that the board consider are not entitled to surplus apportionment from voting. In regard to the comment that participants involve in the voting will pursue their interest to the detriment of the fund, trustees are charged with the management of the Fund by sections 264 and 265. Trustees are required to uphold the interest of the Fund. In any event, the voting envisaged in clause 3(2) is a voting on rules amendment rather than the apportionment of a surplus itself. Clause 4(e) provides for participants to vote on the Plan as well.
Sec 1(h)	What would constitute a distribution of a surplus in a fund? Also, would a contribution holiday amount to a surplus if the fund and members have not contributed for an extended period of time. NAMFISA to explain what a plan would entail?	"The regulation needs to be clear on what qualifies as a distribution".		This Regulation RF.R.5.3 must be read with Standard RF.S.5.1. Actuarial surplus is defined in Standard RF.S.5.1. The Plan must comply with clause 5 or 6 of this Regulation. Contribution holiday is funded from amounts allocated to specific reserve accounts (member reserve account or employer reserve account). Any allocation to such reserve accounts effectively constitutes surplus apportionment.
Sec 2(c) Schedule 1 Clause 5	There could be disputes taking up to 7 years and a need to reflect fairness on withholding distribution to other members, or can the fund proceed to distribute to other members in the meantime?	NAMFISA must consider the nature of the legal action and on that basis consider whether or not to approve the plan. Legal disputes should not necessarily hold up the submission of the plan to NAMFISA and approval of the plan by NAMFISA.		This Regulation makes it clear as to when NAMFISA can approve a plan to distribute actuarial surplus. Where the surplus is the subject of litigation, it's unreasonable to allow the distribution of surplus prior to conclusion of litigation.

Sec 2(i)	Does NAMFISA now have to approve a distribution plan	Is this constitutional in terms of the right to property?		Yes.The regulation specifies circumstances when NAMFISA must approve the Plan (clause 4), and circumstances when NAMFISA must not approve the Plan (clause 7).
Sec 4(e)	Practically speaking how will the Funds get pensioners or even umbrella fund members to nominate or vote, especially in the instance where the pensioners exceed the active members	Remove voting process and replace with objection process. Proposal: Trustees to take responsibility for distribution. Only look at the guidance of the trustees requesting for objections from members and pensioners and trustees to consider the objections. Each objection to be taken into account.		Given that pensioner members and active members are allowed to vote for the board of trustees as per section 261, a similar approach can be used to vote for this distribution? The wording "participant" is defined to mean "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, members, former member, deferred member, dependant and nominee, as applicable…" Therefore, the board may exclude certain of the possible listed participants that the board consider are not entitled to surplus apportionment from voting. In regard to the comment that participants involve in the voting will pursue their interest to the detriment of the fund, trustees are charged with the management of the Fund by sections 264 and 265. Trustees are required to uphold the interest of the Fund. In any event, the voting envisaged in clause 3(2) is a voting on rules amendment rather than the apportionment of a surplus itself. Clause 4(e) provides for participants to vote on the Plan as well.
Sec 7(c)	Does this section imply that the regulations allow payment of benefits to employers	NAMFISA to provide further clarity on the intention and practical operation of this section.		The distribution of surplus to the employer is permissible but payment of benefit to employer not permissible. A surplus is not a fund benefit. Reference should also be made to the definition of "participant" in clause 1(e) which includes among others employer.
Sec 8	This Regulation was written for DB funds. Clause 8 then makes the entire Regulation applicable to DC funds where a DC fund has an excess of the fund's assets over its liabilities, despite the nature of a DC fund and its surpluses being totally different to the nature of a DB fund and actuarial surpluses of a DB fund. One of the provisions of this regulation is the determination of the amount that may be distributed (clause 6). The amount that may be distributed may not exceed the lesser of 3 amounts and therefore will result in an "undistributed balance" remaining in the fund. This will disadvantage exiting members in a defined contribution fund and is also in contradiction with the definition of a defined contribution fund.	The requirements that apply to the distribution by a DC fund of an excess of the fund's assets over its liabilities should be simplified and stated separately in the Regulation, with due consideration of the nature of DC funds and that the size of the excess is usually not a large amount. It would be sufficient to require the fund's valuator to approve the distribution instead of submission of a Plan to NAMFISA, member voting etc.		The decision to distribute is that of the board. In terms of clause 8, this Regulation applies to defined contribution funds only to the extent that a defined contribution fund has excess amounts for distribution. There are no forced distributions.

	Due to the size of surplus amounts in DC funds being usually relatively small, the process that needs to be followed as per the regulation is not justified in that the cost of seeking approval might be more than the value of the surplus to be distributed. (Types of costs: Actuarial fees, communication to members for voting and drafting plan for NAMFISA approval after submission etc)			
Schedule 1: Clause 6	What is the correlation between the surplus and employer's tax obligation?	Remove clause 6 in its entirety		Contributions that give rise to surpluses have tax benefits that is the relationship.
Schedule 1 Clause 7	Conflicting with the initial provision under clause 4(e) and our proposed objection system as suggested above to clause 4(e),	Remove clause 7 in its entirety	Agreed – to remove trade union	
Schedule 1 Clause 9(b)	Auditors do not audit fund data, only financial statements	Remove clause in its entirety		Financial statements contain 100% fund (financial) data. Valuators to a certain extent rely on the work of auditors when performing valuations.
Schedule 2	Voting processes impractical for umbrella funds and retired/ deferred members	Replace voting process with an objection process		As stated earlier, voting is to be done the same way half of the board of trustees is voted by active and retired members.
RF.R.5.3 clause 8 (*RF.R.5.3 – 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)*)	The regulation is written to apply to defined benefit funds in the first instance and then via clause 8 requires the provisions of this regulation to apply where a defined contribution fund distributes amounts representing the excess of the fund's assets over its liabilities. The provisions of this regulation should not apply to defined contribution funds due to the following reasons: • The "surplus" in a defined contribution fund is usually relatively small and therefore the costs of following the provisions in this regulation are not justified (voting process, submission of plan to NAMFISA, etc.). • One of the provisions of this regulation is the determination of the amount that may be distributed (clause 6). The amount that may be distributed may not exceed the lesser of 3 amounts and therefore will result in an "undistributed balance" remaining in the fund. This will disadvantage exiting members in a defined contribution fund and is also in contradiction with the definition of a defined contribution fund.	Delete clause 8. Alternatively, amend clause 8 by significantly reducing the requirements for the distribution of a "surplus" of a defined contribution fund. These requirements should be limited to the Actuary of the fund to approve the calculation of amounts allocated to members.		Clause 8 applies to DC only in the event a DC has excess amounts.

	It is not clear why it is necessary to apply the onerous requirements as set out in clauses 2 – 4 of the regulation to an amount which the actuary has determined in the valuation report (in terms of section 268(8)) and which is due to the members in a defined contribution fund.			
RF.R.5.3	The proposed Regulation RF.R.5.3 deals specifically with 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) of the FIM Bill Section 1(f) in the above regulation defines a "net actuarial surplus" with reference to Standard RF.S.5.1, which makes it clear that the particular standard only applies to defined benefit funds. Sec 268(8) of the FIM Bill states: "The board of a fund may, subject to such terms and conditions as may be prescribed by the regulations, after it receives a report of the valuator and the report reveals an actuarial surplus as provided for in the standards, distribute some or all of that actuarial surplus. While the above paragraph already raised some concerns for the sponsoring employer to a defined benefit fund ("DB"), we had trusted that the proposed regulations to be issued by the Minister, would address the issue of protecting the rights of the sponsoring employer, to ensure some control over its financial destiny. This could have easily been achieved by pertinently allowing for such rights protection, either in the fund rules or the regulations. We have emphasized certain wording above, that simply allow for distribution if there is a surplus and this begs the question: should the only consideration be that there is a surplus and we must distribute? The impracticality of these standards is surely unfathomable. The Fund is one of only two remaining DB funds in Namibia. The Fund is also the only DB fund in Namibia, which has declared a number of generous surplus distributions. Will recall that a major surplus distribution was successfully defended in the Supreme Court of Namibia in *Rossing Uranium & RPF v Former members of*	… Recommend the redrafting of the proposed Standards and Regulations to ensure that rights, obligations and consequent protections remain intact for sponsoring employers of DB funds. The negative impacts from the current draft would impact both sponsoring employer and DB funds respectively. …		It is worth noting that an employer has no right in law to the surplus. The board is responsible for management of the business of the fund. The board is bound by legislation, rules and common law. FIMA repeals the Pension Funds Act, 1956 and is applicable to all funds indiscriminately. Further, according to Article 66(2) of the constitution common law may be repealed or modified by an Act of Parliament.

	RPF case SA30/2016, a case which in particular dealt with the rights of the sponsoring employer and consequent protections afforded to such sponsoring employer of a DB, as to the control over the fund's financial destiny. This matter was addressed extensively and ultimately addressed the disagreements regarding the rights of a sponsoring employer. This principle has now become part of our common law and should be incorporated in any future standards and regulation. In our view, not only on the basis of the outcomes of this judgement, but on the basis of the fact that we do not agree that these draft new incorporations are even constitutional. … The current Fund rules requires the consent of the sponsoring employer before such a surplus distribution can be done. This is in line with the concept of protecting the rights of the sponsoring employer (as referenced in the Supreme Court decision of *Rossing Uranium & RPF case* supra) as the sponsoring employer guarantees the financial viability of the RPF and therefore the pension payable to pensioners in accordance with the formulae set out in the rules. This right is also consistent with international practice. … Under the new FIM Bill, consent from the sponsoring employer would no longer be required. It would merely be up to the Board of the Fund to decide, as referenced above. Effectively, this will remove all checks and balances and controls instituted for benefit of the Fund and as a result affecting the benefits of its members. The Board can now distribute the entire surplus in one year (or allocate extra-ordinary benefit increase to members), exposing the sponsoring employer to a situation or possibility where it would have to pay into the Fund to restore the required funding level the very next year, upon the instruction of the very same board that caused the funding level to drop to unacceptable low levels. Clearly, this would be an anomaly and unacceptable situation for any employer and complete dissolution of the Fund may result as the only alternative.			
Section 3(1)	Section 3(1) and (2) seems to indicate there now needs to be a voting process by an			The wording "participant" is defined to mean "a person whom in the opinion of the board is entitled to participate

and (2)	extensive amount of participants, which per the definition of "participant" is indefinitely wide, and probably impractical in our case where over 85% of the membership are pensioners spread around the country. It would seem, to, that the sponsoring employer would only have 1 over on such an election. The reality of this scenario is that there would be no proper corporate governance applied, as individuals will consider their individual needs rather than the implication and sustainability of the Fund. There would then be no basis for Fund rules because this section effectively overrides the effect of these rules and corporate governance, allowing destruction which will surely result from the current application. The purpose can surely not be to meet the unreasonable expectations of each member? The Fund is expected to make decisions to the benefit of all members, meaning the majority, and all this clause does now is to create the potential for drawn out disputes and litigation, and ambiguity, and will create an anomalous situation. The sponsoring employer is ultimately the party that needs to guarantee the benefits to the members of the Fund. As such, it would seem grossly unfair to remove its consequent protections, and simply limit the decision-making powers regarding benefit increases and future surplus distributions to the trustees. In same way that the sponsoring employer is stripped of its rights, there cannot exist obligations without these rights and that speaks of its embodiment of the entire Fund. The roles of the sponsoring employer cannot only be limited to contribution as and when required to do so. The impact of decisions made will affect the sponsoring employer's business, finance and have a negative impact on the members in the long run, contrary to the intention to benefit members. This will simply not result from these changes. We emphasize that it is because of these rights that were provided to the sponsoring employer that the Fund has flourished and grown. It would seem that the drafters of the Standards and Regulations have little or no appreciation of the rights, obligations and consequent protections of the sponsoring employer in the cased of a DB fund. We further			in the distribution of actuarial surplus and may include an employer, sponsor, members, former member, deferred member, dependant and nominee, as applicable…" Therefore, the board may exclude certain of the possible listed participants that the board consider are not entitled to surplus apportionment from voting. In regard to the comment that participants involve in the voting will pursue their interest to the detriment of the fund, trustees are charged with the management of the Fund by sections 264 and 265. Trustees are required to uphold the interest of the Fund. In any event, the voting envisaged in clause 3(2) is a voting on rules amendment rather than the apportionment of a surplus itself. Clause 4(e) provides for participants to vote on the Plan as well.

	believe that it is unlikely for the Standards and Regulations, in the current proposed form, to withstand a legal challenge, given a multitude of local and international legal cases and precedent already made on this subject matter.			
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
REGULATION RF.R.5.4 **Prescribed funds and beneficiary funds that may be exempted pursuant to subsection 254(1)(b)**				
RF.R.5.4 clause 2 (*RF.R.5.4 - The prescribed funds or beneficiary funds that may be exempted pursuant to section 262(1)(b)*)	Clause 2 of this regulation states that 'Pursuant to section 262(1)(b) of the Act, NAMFISA may exempt beneficiary funds from the requirement that the active and retired members of the fund have the right to elect members of the board in terms of the provisions of section 261(3) of the Act.' Section 262(1)(b) of the Act already contains this same provision for beneficiary funds, making the regulation in its current form superfluous. Section 262(1)(b) of the Act also provides for NAMFISA to exempt a prescribed fund from the provisions of section 261(3) of the Act. The regulation should therefore rather state which prescribed funds can be exempted from the provisions of section 261(3) of the Act.	Delete clause 2 of the regulation. Add which prescribed funds can be exempted from the provisions of section 261(3) of the Act.	Agreed. Regulation to be deleted.	
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
REGULATION RF.R.5.5 **Loans which may be granted to a member and guarantees which may be furnished to a person in respect of a loan granted or to be granted by such person to a member, pursuant to section 269**				
RF.R.5.5	*2 (a) to redeem a loan granted to the member against security of-* *(i) a pledge by the member to the fund of the benefit contemplated in clause 4(b);*	Clarity sought		It is for a fund to determine how it grant loans within the prescribed scope.

	How will Funds deal with current pension backed home loans that exceed 25% of a members' benefit considering the 75% prescribed preservation?			
	A fund may, if its rules so permit, contribute to any other fund registered under the Act, or any medical aid fund, friendly society or insurer registered under the Act, which is conducted for the benefit of the members of the said fund. Medical aid after retirement - could a fund make monthly/quarterly/annual payments for medical aid and insurance premiums on behalf of members - clarity on this.	Clarity sought	Clause 13 is misplaced and will be deleted. This Regulation has nothing to do with the subject matter	
RF.R.5.5 Clause 2 (a) (ii)	This clause does not consider the requisite permissions from the spouse.	Please provide clarity.		There is no required permission from the spouse. The applicant must ensure that they can met the terms and conditions of the loan. In this case ability to provide the property as security.
Sec 10	Link the level if guarantee to the actuarial assessment Does the section refer to direct loans and guarantees?	Level of guarantee to be linked to actuarial assessment, clarity to be provided		This clause provides that the fair value of the property should not be fixed at an amount higher than the true purchase price of the property.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
REGULATION RF.R.5.7 **The rate of interest payable on the value of a benefit or right to a benefit not transferred, before the expiration of the applicable period, pursuant to subsection 262(9)(c)**				
Sec 4	Can the rate not be calculated simpler to allow for easier calculations with clear timelines stipulated. The prescribed rate as per the regulation is onerous and complex, with a large number of inputs required for the calculation thereof. The calculation of the rate will result in additional costs to the fund which will ultimately be borne by the member. Further, the complex calculation of the prescribed rate may delay the transfer of the benefit further. There thus does not seem to be any benefit to the member of such a complex calculation of the prescribed rate. The way the regulation is written currently, the prescribed rate changes daily as some of the rates are calculated on a 'rolling basis' as they 'end on the date of termination of the Prescribed Period' instead of being rates 'as at end of last quarter, last month etc'. To illustrate: If we start to calculate the rate today for payment in 5 working days, some of the inputs will have changed by the payment date	The prescribed rate should be replaced with a rate that can be easily calculated, is readily available and takes current market factors into account, such as a rate linked to the repo rate. Eg. repo rate plus x% (4%?) as at the end of the month immediately preceding the month in which the transfer is effected	Agreed – to simplify the determination of the chargeable rate i.e., repo rate plus 4	

	already. It is therefore impossible to apply the regulation and is another argument to replace the current prescribed rate with a simpler, straight-forward prescribed rate.			
Schedule 1	Name and Address of Applicant's Beneficiary: The member would already have a beneficiary nomination form which is regularly updated (as per RF.S.5.9). It does not make sense to duplicate this here. The Schedule also only makes provision for one beneficiary which might result in contradicting information to the existing beneficiary nomination form as per RF.S.5.9	Name and Address of Applicant's Beneficiary: These 2 items should be deleted from Schedule 1.		This form is filled in if transfer situation may have changed.
RF.R.5.7 clause 3/ definition of "Prescribed Period"	As per clause 3, where the transfer of a former member's transfer value has not been completed within the Prescribed Period, the retirement fund must pay late payment interest on the transfer value, calculated from the expiration of the Prescribed Period up to the date on which the transfer is completed. The Prescribed Period ends 60 days after the date on which a retirement fund has received a valid request in writing from the member to transfer his/her benefit in the form of Schedule 1 to this regulation. There is no requirement that other conditions for the transfer have to be met by the member before the expiry of the Prescribed Period, e.g. the member to ensure that the member's tax affairs are in order to facilitate the issue of a tax deduction directive for the transfer before the expiry of the Prescribed Period. As a result, if the late payment interest earned by the member is higher than market rates, the member might unreasonably delay the transfer on purpose.	The Regulation should be adjusted as follows: The definition of "Prescribed Period" in the regulation should be amended to clarify that the "valid request in writing" includes that all statutory requirements are in place as well in order for the fund to be able to process the transfer, including that a tax deduction directive has been issued for the member.		If there are outstanding items the fund should communicate to the member that it is unable to process the transfer for whatever reason and inform the member that such transfer cannot be made until such reasons have been resolved. No need to specify as in the scenario sketched there is an impossibility of performance.
RF.R.5.7 clause 4 (*RF.R.5.7 - The rate of interest payable on contribution*	The calculation of the late payment interest as set out in clause 4 of the regulation is complicated and impractical to apply: • The determination of the prescribed rate of interest is based on the greater of a number of different rates, which need to be obtained from various sources and might	Replace the "prescribed rate" with a rate that can be easily calculated, is readily available, and takes current market factors into account. A rate linked to the repo rate can fulfil these criteria, for example repo rate plus x% (4%?) as at the end of the month immediately preceding the month in which the transfer is done.	Agreed - to simplify the calculation of the prescribed rate i.e., repo rate plus 4.	

s not transmitted or received, and on the value of a benefit or right to a benefit not transferred, before the expiration of the applicable period, pursuant to section 270(9))	not be readily available on a daily basis. We attempted such a calculation and were unable to obtain all the inputs from publicly available sources. • Also, the way the regulation is written currently, the prescribed rate might change daily and therefore the calculation has to be reperformed each time the regulation has to be applied. By the time a new variable is obtained, another variable might be outdated again. • The calculation of the prescribed rate is therefore complicated and impractical to apply and will result in increased costs to the fund and possible delays in the payment of the transfer benefit to the member. The purpose of such a complex calculation is not clear.			
RF.R.5.7 Schedule 1	"Name of Applicant's Beneficiary" and "Address of Applicant's Beneficiary": The purpose of these requirements on the member transfer form is not clear.	"Name of Applicant's Beneficiary" and "Address of Applicant's Beneficiary": These 2 items should be deleted from Schedule 1.		See earlier response on this
RF.R.5.7 Schedule 1 (*RF.R.5.7 - The rate of interest payable on contributions not transmitted or received, and on the value of a benefit or right to a benefit not transferred, before the expiration of the applicable period, pursuant to section 270(9))*	In the definition of "Prescribed Period", the aforementioned regulation makes reference to "a valid request in writing in the form of Schedule 1 to this Regulation". The heading in Schedule 1 is: "Form prescribed for a former member of a retirement fund applying to the fund for the transfer of the value of their retirement benefit accrued as a member of that fund". The form in Schedule 1 is therefore the "Notice of Transfer" form that is currently used by retirement funds. As the forms are already existing in one form or another or even programmed on an administration system, it will be difficult and impractical to have them look identical to the form per Schedule 1. Is it in order if retirement funds amend their current "Notice of Transfer" form to ensure that all the information as per Schedule 1 of RF.R.5.7 is included without the form being identical to the form in Schedule 1?			Schedule 1 of Regulation RF.R.5.7 is a notice of transfer form which must be completed by a member transferring their benefits to another fund. Accordingly, the notice of transfer presently used by retirement funds should be amended to contain all the information of Schedule 1 upon commencement of FIM. Upon commencement of FIM, retirement funds will be required to develop a form that meets the requirements of the law.

	Follow up question: What is the purpose of the "Name of Applicant's Beneficiary" and "Address of Applicant's Beneficiary" on the transfer form? Can this be removed from Schedule 1? If a member passes away after submission of the withdrawal claim, the benefit is paid to the deceased's estate and not to the beneficiaries as it is not a death claim for the transferring fund. The member is also not a member yet of the new fund; therefore, it will also not be a death claim in the new fund. The member would have been requested to complete a beneficiary form annually in any case per RF.S.5.9.			
RF.R.5.7 clause 4	1) The calculation of the late payment interest as set out in clause 4 of the regulation is complicated and impractical to apply: The determination of the prescribed rate of interest is based on the greater of a number of different rates, which need to be obtained from various sources and might not be readily available on a daily basis. Also, the way the regulation is written currently, the prescribed rate might change daily and therefore the calculation has to be reperformed each time the regulation has to be applied. By the time a new variable is obtained, another variable might be outdated again. The calculation of the prescribed rate is therefore complicated and impractical to apply and will result in increased costs to the fund and possible delays in the payment of the transfer benefit to the member. The purpose of such a complex calculation is not clear. If the prescribed rate is higher than the underlying rate earned by the fund, the difference has to be recovered from a reserve. This might disadvantage other members since their returns earned might be less as a result.	The Regulation should be adjusted as follows: 1) The Prescribed rate of interest as per clause 4 should be based on a readily available rate, should be able to be easily calculated and practical to apply. We suggest the repo rate calculated on a monthly basis based on the repo rate as applied at the end of the previous month. (Repo rate since this closely matches the underlying rate of investment in a conservative portfolio which is the portfolio in which the Transfer Value is most like to be invested in). The late payment interest should strictly only be accrued from the date that the member has met all conditions for the transfer (as per comment on RF.R.5.7 clause 3 above) in order not to disadvantage other members.	Agreed - to simplify the calculation of the prescribed rate i.e., repo rate plus 4.	

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
REGULATION RF.R.5.8 **The protection of unpaid contributions and the rate of interest payable on contributions not transmitted or received**				
Sec 5	Can the rate not be calculated simpler to allow for easier calculations with clear timelines stipulated. The prescribed rate as per the regulation is onerous and complex, with a large number of inputs required for the calculation thereof. The calculation of the rate will result in additional costs to the fund which will ultimately be borne by the member. Further, the complex calculation of the prescribed rate may delay the payment of contributions further. There thus does not seem to be any benefit to the member of such a complex calculation of the prescribed rate. The way the regulation is written currently, the prescribed rate changes daily as some of the rates are calculated on a 'rolling basis' as they 'end on the date of termination of the Prescribed Period' instead of being rates 'as at end of last quarter, last month etc'. To illustrate: If we start to calculate the rate today for payment in 5 working days, some of the inputs will have changed by the payment date already. It is therefore impossible to apply the regulation and is another argument to replace the current prescribed rate with a simpler, straight-forward prescribed rate. The regulation stipulating minimum rates also need to make provision where fund interest is more it should be applied to compensate the member for the interest lost during the period of late payment	The prescribed rate should be replaced with a rate that can be easily calculated, is readily available and takes current market factors into account, such as a rate linked to the repo rate. Eg. repo rate plus x% (4%?) as at the end of the month immediately preceding the month in which the contributions were paid late.	Agreed – to simplify the determination of the chargeable rate i.e., repo rate plus 4.	
RF.R.5.8 clause 5 (*RF.R.5.8 - The protection of unpaid contributions and the rate of interest payable on contributions not*	The calculation of the late payment interest as set out in clause 5 is complicated and impractical to apply: • The determination of the prescribed rate of interest is based on the greater of a number of different rates, which need to be obtained from various sources and might not be readily available on a daily basis. We attempted such a calculation and were unable to obtain all the inputs from publicly available sources.	Replace the "prescribed rate" with a rate that can be easily calculated, is readily available, and takes current market factors into account. A rate linked to the repo rate can fulfil these criteria, for example repo rate plus x% (4%?) as at the end of the month immediately preceding the month in which the transfer is done.	Agreed - to simplify the calculation of the prescribed rate i.e., repo rate plus 4.	

transmitted or received)	• Also, the way the regulation is written currently, the prescribed rate might change daily and therefore the calculation has to be reperformed each time the regulation has to be applied. By the time a new variable is obtained, another variable might be outdated again. This complicated calculation of the late payment interest will result in increased costs to the fund as well as delays in the finalization of the month end processing and therefore reporting to members. The purpose of such a complex calculation is not clear.			
RF.R.5.8 clause 5 (*RF.R.5.8 - The protection of unpaid contributions and the rate of interest payable on contributions not transmitted or received*)	As per clause 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. The prescribed period commences on the 8th day after the end of the month for which the contributions are payable and ends on the day on which the outstanding contributions plus interest are paid. The calculation of the late payment interest as set out in clause 5 is complicated and impractical to apply: The determination of the prescribed rate of interest is based on the greater of a number of different rates, which need to be obtained from various sources and might not be readily available on a daily basis. Also, the way the regulation is written currently, the prescribed rate might change daily and therefore the calculation has to be reperformed each time the regulation has to be applied. By the time a new variable is obtained, another variable might be outdated again. This complicated calculation of the late payment interest will result in increased costs to the fund as well as delays in the finalization of the month end processing and therefore reporting to members. The purpose of such a complex calculation is not clear.	The Regulation should be adjusted as follows: The Prescribed rate of interest per clause 5 should be based on a readily available rate, should be able to be easily calculated and practical to apply. We suggest the repo rate (+4%?) since the repo rate takes current market factors into account.	Agreed - to simplify the calculation of the prescribed rate i.e., repo rate plus 4.	

GENERAL COMMENTS RELATING TO CHAPTER 5				
General comments	The following sections of the FIM Act make reference to standards but it seems that the standards have not yet been issued: • Section 249, definition of 'defined contribution fund': (d) only an expense reserve required by the terms of the fund is held or is required to be held as stipulated in the **standards** or by generally acceptable actuarial practice;" (*As per the Actuary that we consulted, it is also not clear what an expense reserve per generally acceptable actuarial practice is, therefore a standard is required to provide clarity*). • Section 265(2): Standard specifying the period within which all active and retired members and NAMFISA must be notified of late payment of contributions • Section 282(2) – no standard issued for housing loans yet • Section 282(4)(b): Exemption from prohibited investment (investment of assets in participating employer) – NAMFISA cannot exempt funds unless this Standard is issued • Section 366(2): Standard(s) dealing with the requirements of application for registration as fund administrator • Section 393(1): Extent to which the provisions of sections 394(a) (*1/3 of Board of directors of FI that is a company to be independent*), 395(2) (*Duties of board*) and 397 (*Audit committee*) apply to members of a board of trustees or any other board of a financial institution that is not a company (*i.e. a retirement fund*) • Section 449(1): Standard providing the form and manner of the application to NAMFISA for amalgamations and transfers in sections 446 & 447	NAMFISA to issue the Standards for the sections as specified under "Comment/ Description of issue"	The Standard under sections 249, 282(2) and 449(1) were deemed not critical to operationalize FIMA. However, same will be drafted in future. Standard under section 366 – has been drafted and will be published for public consultation. Standard under section 393(1) is not applicable to chapter 5 as a retirement funds are not "a company".	In respect of the expense reserve comments, there is no actuarial practice in calculating an expense reserve for a DC scheme. Mainly because contributions are made specifically for expenses, risk benefits and member accruals. The fund, through its rules, may set up an expense reserve e.g., when the employer is contributing 3% towards expenses + risk benefit while only 2.5% is being utilized. The balance 0.5% may be set aside to cover future expenses that may overlay the actual contributions. But this is entirely per rules of the fund, hence the wording "expense reserve required by the terms of the fund is held". Section 265(2) see RF. S. 5. 17 clause 4.

Definitions for Standards and Regulations for Chapters 5 and 10	Chapter 10 Part 1 "Preliminary" in section 1 contains various definitions that are relevant to standards issued for Chapter 10. In addition, some Chapter 10 standards also contain definitions, e.g. GEN.S.10.12 and GEN.S.10.20. Definitions for Chapter 5 standards are included in each individual standard. This results in duplication of definitions. Definitions for Chapter 5 regulations are included in each individual regulation. This results in duplication of definitions and inconsistent definitions, e.g. definition of "former member" in RF.R.5.3 and RF.R.5.7.	All definitions relating to General Standards should be moved to Chapter 10 Part 1 "Preliminary" in section 1 for consistency and easy reference. Similarly, there should be a preliminary standard and a preliminary regulation for Chapter 5 containing all the definitions for consistency and ease of reference.		Not necessary to have a Standard containing only definitions. However, we take note of the concern that definitions must be consistent throughout the Standard for consistency.
Reference to "standards" in **section 249 of FIM Bill**	The definition of 'defined contribution fund' in section 249 of the FIM Bill reads as follows: "means a retirement fund in which – … (d) only an expense reserve required by the terms of the fund is held or is required to be held as stipulated in the **standards** or by generally acceptable actuarial practice;" The Standard referred to in this section that sets out/ defines the requirements for expense reserves for defined contribution funds has not been issued yet. It is also not clear what "an expense reserve as stipulated by generally acceptable actuarial practice" means.	1) Is it correct that the Standard referred to in this section has not yet been issued? If not, please quote the Standard that should be referred to? If the Standard has not been issued yet, when is it expected to be issued? This is a critical standard.		The enabling provisions stipulate that NAMFISA "may" issue certain standards, not "must' issue standards. Standards will thus only be issued as and when the need arises.
	Will the quarterly Chart of Accounts (COA) reporting continue after the FIMA effective date? In terms of the FIM Act (Schedule 3, section 2(1)), "any subordinate legislation or measure made under a repealed law remains in force unless it is in conflict with this Act and is deemed to be made thereunder until superseded by a subordinate measure made under this Act." In terms of which legislation are the quarterly COA reports required and has this been superseded by a FIMA legislation or not?			The Chart of Account ("CoA") will continue under FIMA. To cover all quarterly reporting.
	We propose and strongly request that NAMFISA should determine which information should be		Agreed let us have consolidated reporting guide.	

	included in the annual financial statements (AFS) and which information should be included in the annual report to NAMFISA (RF.S.5.15). NAMFISA is the custodian of both reports. RF.S.5.15 lists numerous requirements and requires those requirements to be included in the annual report to NAMFISA in so far as they are not included in the AFS (clause 3(b)). NAMFISA should decide which information must be audited and therefore included in the AFS. Similarly, NAMFISA should decide what other critical information NAMFISA requires from funds and only those should be listed in RF.S.5.15. This will make both reports more uniform across Industry users and make them much easier to prepare.			
	Has NAMFISA consulted the audit profession around the 90 day AFS submission deadline for all industries' AFS finalisation? There are quite a number of entities affected, i.e. pension funds, medical aid funds, insurance companies, asset managers, etc. We foresee that auditors will have challenges to meet this tight deadline given the number of audits to be performed for the same financial year end within the tight deadline.			Yes and this is a common practice with other regulated entities?
	Does the application of section 276 of FIMA to the death benefit of an active member result in prohibiting retirement funds from offering specified spouses and children's pension? In this scenario there would still be a lumpsum payable upon death of the member in addition to the specified spouses and children's pension which could be distributed to other dependants/ nominees if applicable. Does the application of section 276 of FIMA to the death benefit of a pensioner result in prohibiting retirement funds from offering specified spouses pension, i.e. specified spouses pension upon death of pensioner, where the spouse continues to receive a % of the pension upon death of pensioner? In this case there would be no lumpsum payable on death of the pensioner in addition to the specified spouses pension.			FIMA does not prohibit retirement funds from offering specified spouses and children's pension. please see section 276(4) on major dependants and nominees. In light of the above, the third question falls away. Death of a retired member save for observance of section 276 depends on benefit payable at death as per retirement income agreement.

	If the answer to 1) and 2) above is yes, does this mean that retirement funds may only make lump sums available upon death of members (active and retired)? What about the retirement funds, including GIPF, that currently offer specified spouses and children's pension and have done so for many years? The retirement fund members that have contributed a portion of their salary towards this benefit over all these years (resulting in a lower portion going towards retirement savings) will then suddenly lose this benefit. This will therefore result in a disadvantage to those members.			
	Will section 276 of FIMA apply to the distribution of a deceased beneficiary's benefit where the beneficiary continued to receive a benefit from the retirement fund and has outstanding benefits from the retirement fund at the time of death?			Section 276 applies to a death benefit payable upon death of a member.
	Which retirement benefits may a retirement fund offer under FIMA upon the disability or death of a member prior to retirement? Herewith our interpretation: "Retirement fund" is defined under FIMA as "an association of persons established with the objects of receiving, holding and investing contributions of individuals and their employers for the purpose of providing retirement benefits in accordance with the rules of the fund adopted for such purposes and includes such other funds as the Minister may prescribe by regulation". "Retirement benefits" are defined as "benefits payable to individuals on or after their retirement or on their disability, death or termination of employment prior to retirement or on separation from a retirement fund or to their survivors, dependants or nominees". RF.S.5.7 prescribes the minimum benefits that a fund must provide to its members, and states in clause 3 that "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".			AS correctly put "Accordingly, as long as the retirement benefits offered by a retirement fund fall within these three parameters, **retirement funds are free to decide what benefits <u>they will offer</u>** on death or disablement. This includes any risk benefits that are specified in the Rules of the Fund, e.g., GLA, PHI and funeral benefits in addition to the fund credit of the member." Double emphasis on the fact that the fund is the one offering the benefit. In other words, the promise of such benefit is being made by the fund and will be honoured by the fund.

	The following parameters therefore apply to retirement benefits offered by a retirement fund: 1. The retirement fund must be a type of fund as prescribed by regulation and the retirement benefits that are offered must adhere to the Income Tax parameters for that type of fund. 2. The retirement benefits must be in accordance with the rules of the fund. 3. The retirement benefits must meet the requirements of RF.S.5.7 Minimum benefits that a fund must offer to its members. Accordingly, as long as the retirement benefits offered by a retirement fund fall within these three parameters, retirement funds are free to decide what benefits they will offer on death or disablement. This includes any risk benefits that are specified in the Rules of the Fund, e.g. GLA, PHI and funeral benefits in addition to the fund credit of the member.			
GENERALCOMMENTS OBSERVATION OF THE CHAPTER 5 STANDARDS				
General comments	RF.S.5.3 clause 3 footnote and references to footnote not included in Gazette			Generally, a legislation should not include footnote. The removed footnotes are inconsequential.
	RF.S.5.4 clause 3: Gazette references to clause 0 instead of clause 6		To be corrected	
	RF.S.5.4 clause 3: Gazette sub-clause numbering different to version on NAMFISA website		Numbering after subclause (y) of clause 3 will be corrected.	
	RF.S.5.4 clause 7: Gazette references to clause 0 instead of clause 5		To be corrected	
	RF.S.5.5 - Gazette numbering of clauses different to version on NAMFISA website and numbering of clauses in Gazette does not make sense		Numbering after clause 1 will all be attended and corrected.	
	RF.S.5.7 clause 1(1)(h) - Gazette references to clauses do not seem to be correct		To be corrected – to refer to clauses 13 and 14.	
	RF.S.5.7 - addition of clause 2 in Gazette and resulting re-numbering of clauses			The addition was necessary
	RF.S.5.23 clause 3(2) - numbering ((2)) omitted in Gazette		Numbering to be corrected	

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
	There appears to be no consultation prescribed for regulations under the FIM Bill. As these are made by the Minister, which may present an anomaly, ultimately not ensuring that practical regulations result from this process	… That in compliance with applicable standards in terms of passing Regulations and Standards, the stakeholders affected by these Standards, Laws and/or Regulations be consulted and engaged in determining and concluding these laws. We find it highly questionable that laws are being promulgated with a fair process of engagement being adhered to, and this alone would be sufficient grounds for challenging these laws. …		Our law-making process has no such requirement. However, the Minister in his wisdom has chosen to consult on regulations.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
General comments	… The monthly pension that a retiree receives is in many cases the major source of income that sustains their livelihood during these twilight years of their lives. Maximisation of this pension income would be in their best interest and every opportunity that allows for this should be foremost in the minds of regulators, taxation authorities and the Government at large. It is indeed unfortunate that many pensioners who retire are unaware of the complexities of maximising pension income and do not really understand living annuities, life annuities and other technical jargon that confuses rather than enlightens them. To compound matters, even for the well informed who know exactly where to place their funds, the current pensioner's fund investment practises, and the fact that you are forced to deal with an intermediary like the many retirement fund administrators, makes the process much more expensive where maximum benefit is derived by the Financial Advisors, Asset Managers and off course the Administrators to the detriment of the pensioner. The pensioner is left with a very nominal income which he then pays tax on. The pension and insurance industry is predatory with the pensioner's interest being marginalised in the interest of the industry. My review of the living and life annuities offered by	A pensioner may want to invest 2/3rd pension in entirely Government Securities, both Treasury Bills and Government Bonds. There is an active secondary market for these securities, gilt edged securities as they are Government issues and default risk is virtually zero, coupon payment is tax free. Allowing this avenue would also bolster the demand for Government Securities. Coupons payments on Government Securities are tax free. I will be availing this tax benefit. To facilitate the process and to ensure compliance one can utilise pension fund administrators to make available the 2/3rd of pension to allow to bid in Government auctions. Once the bid is allocated they can settle the cash consideration payable to Bank of Namibia. A nominal fee mutually agreed will be paid to XXXXXX retirement fund administrators to facilitate compliance in terms of holding of investments and provision of a certificate of holdings on annual basis that provides assurance that the funds are still invested and not used for any other purposes. This would be their only role to ensure compliance. This will be avoiding all charges associated with having fund managers manage the investment,	Indeed, in future will consider the maximization of retirement benefits so as to ensure retirees' retirement benefit can sustain them for an extended period. The lack of understanding of different types of annuities by retirees highlights the need to set a system that safeguards them and does not leave it up to them entirely. The Standard GEN. 10-17 which obligates funds to ensure that all communication with the consumer (beneficiaries are in plain language will eliminate the current usage of jargons that result in misunderstanding of the nature and conditions of product being purchased. Moreover, Standard RF.S.5.11 (Alternative forms of payment of pensions for the purposes of defined contribution funds) is one such instruments intended to safeguard retirees and ensure consistent forms of	

	four retirement fund companies, reflect that their annual charge for managing the so-called selected portfolios ranges from 1.40 % (percent) to 2.63 % (percent). There is no consistency in the charging structure as the same portfolio issued by the same issuer have different asset management fees, etc. Some also charge an initiation fee which is a percentage of the investment value, I fail to understand this charge which is exploitative and does not follow any ethical or rational logic. It is to be noted here that the pensioner is bound to these charges for the rest of their lives regardless of the performance or value of the portfolios, under the current pensioner's fund investment practises. If these charges and the annual draw down rate percentage which at 60 years is approximately 7.4 % (percent) is considered together the portfolio would have to have returns of at least 10% (percent) for a neutral position with no growth potential. If this continues for a few years the pensioner's capital would also decline significantly over the same timeframe. This status quo needs to change where the pensioner is persistently and consistently disadvantaged and the whole eco-system of the insurance and pension industry benefits from the current situation. Further, the 2/3rd tax free reinvestment requirement cannot continue indefinitely until the pensioner's death, it needs to end within a reasonable time frame subsequent to which the pensioner can reinvest the funds in other ventures like property, etc., where capital appreciation as well as inflation indexed rental can be a source of income. The fees associated with the current forced upon practise would fall away and would be much more beneficial to the pensioner. …	having financial advisors and will be solely responsible for the performance of the portfolio. This option should be made available to all pensioners who are retired or will be retiring into the future. As a future consideration the indefinite period of investment/until the pensioner dies needs to be relooked at and a reasonable timeframe be set, subsequent to which the pensioner should be allowed to re-invest funds in other ventures like property, etc. …	payment of retirement benefit. In regard to comment on fund investment practices such as use of intermediaries which are averred to be detrimental to retirees, the involvement of intermediaries and the extent of their involvement and the level of costs depends largely on the fund and how it conducts its business thus there is a need for member active participation in shaping the nature of the fund they belong to. Standard RF.S.5.19 (Matters to be communicated to members and contributing employers and minimum standards for such communication) will encourage the participation of members in the fund. Additionally, the minimum 50% representation on the board of trustees by members will enhance member representation and participation in shaping the nature of the fund. In regard to the comment that retires should be allowed to invest in Government securities due to the low risk of default and tax free of coupon in return, though this is a progressive approach towards independent dealing with own benefits with the optimism to maximizing return, the approach needs highly literate retires and may not be feasible for the majority of retires.	

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
General	Retirement fund is defined in the Act as: "means an association of persons established with the objects of receiving, holding and investing contributions of individuals and their employers for the purpose of providing retirement benefits in accordance with the rules of the fund adopted for such purposes and includes such other funds as the Minister may prescribe;" In line with this definition, an employment relationship is assumed. Since the Standards are applicable to "retirement funds" as defined in the Act, are other funds (e.g. retirement annuity and preservation funds) excluded until prescribed by the Minister, and when will this occur?	Clarity sought		The proposed interpretation is too restrictive and it lose sight of the object of a retirement fund. The definition of retirement fund does not state that contributions be paid by employer. Contributions could be paid by employers only or by members only or both member and employer or by way of a single transfer of retirement benefit provided its "in accordance with the rules of the fund…". Also, kindly take note of Regulation RF.R.5.1.
	Whether a registered trust (for the same purposes as a beneficiary fund), currently managed by the Master, will be required to transfer/ moved over into a Beneficiary Fund under FIMA/ be registered as a Beneficiary Fund upon Promulgation;			Under FIMA any business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying, on behalf of beneficiaries, pension death benefits, must register as a beneficiary fund, see definition of "beneficiary fund" in section 249 of FIMA. Thus, trusts registered by the Master of High Court that are involved in receiving, administering, investing and paying, on behalf of beneficiaries, pension death benefits must register as beneficiary fund under FIMA.
	Whether NAMFISA will accept and review draft Beneficiary Fund Rules ahead of FIMA promulgation			NAMFISA will no longer approve fund rules under FIMA. However, where NAMFISA observe that fund rules are non-compliant with FIMA, NAMFISA may direct the fund to amend the non-compliant rules. Moreover, fund rules which are inconsistent with FIMA are invalid to the extent of the inconsistency. In terms of section 253 of FIMA it's a registration requirement that fund rules must not be inconsistent with FIMA. NAMFISA has prepared a rules template to guide funds
	Whether NAMFISA will approve and allow operation/functionality of a Beneficiary Fund ahead of the promulgation of FIMA			In terms of section 256 of FIMA, upon commencement of FIMA, existing association or business that operate as a beneficiary fund may continue with its operation for a period of 12 months. However, during the said 12 months period, such association or business must submit an application for registration as a beneficiary fund to NAMFISA in terms of section 252 of FIMA. Where a beneficiary fund fails to submit an application for

				registration within the 12 months period, it must cease operating as a beneficiary fund. It's a criminal offence to continue operating as a beneficiary fund thereafter. The registration of beneficiary funds occurs under the empowerment of FIMA. If FIMA is not in force NAMFISA will have no empowerment to approve or allow anything with regards to beneficiary funds.
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
RETIREMENT FUNDS GENERALLY (Chapter 5)	1.1 The Fund is a typical Defined Benefit Pension Fund in that the employer carries the risk of funding the defined benefits. Since 1 January 1992 the benefits have been funded from the employer surplus account, which is under the employer's control. This meant that both the employer and the members of the Fund have had a contribution holiday. 1.2 On 1 April 2012, after the conclusion of extensive discussions, a first surplus distribution was awarded with the employer determining the split. A second surplus distribution was awarded in May 2018. 1.3 It is the duty of the Trustees of the Fund to ensure that the Fund is – and for the foreseeable future will remain – financially sound and be able to meet its liabilities for the payment of benefits, as and when they arise, without imposing on the employer any undue financial burden or exposing it to undue financial risk. 1.4 It is for this reason that the Rules of the Fund, like most defined benefit, balance of costs, funds, provide that the Rules of the Fund may not be amended without the consent of the participating employer and no benefit increases or other benefit improvements may be made without such consent. 1.5 The employer's argument is that all surpluses in a Defined Benefit Fund are attributable to an overcontribution by the employer. To the extent to which the assumption made by the valuator of the Fund results in the Fund's assets exceeding its actuarial liabilities, the employer can be said to have contributed more than is required in terms of the rules of Fund and thus is entitled to a contribution holiday.	1.1 Rössing proposes that the FIM Act be amended to reflect the position in law enunciated by international jurisprudence and Namibian jurisprudence referred to in the specific comments. It is completely untenable for a sponsoring employer (such as Rössing) to have no say over the utilisation of an actuarial surplus in circumstances where it has to guarantee the financial viability of the RPF, thus ensuring that pensions are paid to beneficiaries in terms of the RPF's Rules. 1.2 Should the Minister of Finance not be amenable to effecting amendments to the FIM Act to reflect this principle, Rössing proposes that this principle is expressly provided for in the Regulations made by the Minister of Finance under section 465 of the FIM Act and the Standards issued by NAMFISA under section 409 of the FIM Act.		FIMA has already been promulgated. The present consultation pertains to the proposed subordinate legislation to be made or issued under FIMA; and not FIMA itself. Section 265 charges the board of a fund with the duty to manage the fund. Further, at common law the board (trustees) stands in a fiduciary position to the fund. FIMA through RF.R.5.3 will regulate the distribution of actuarial surplus.

	1.6 The right of an employer to apply the surplus in a Defined Pension Fund to take contribution holidays has been accepted by the Supreme Court of Canada (in the matter of Kerry (Canada) Inc and Superintendent of Financial Services v Association of Canadian Pension Management and Canadian Labour Congress, 2009 SCC at 39), by the Supreme Court of Appeal in South Africa in TEK Corporation Provident Fund and Others v Lorentz, 1999 (4) SA 884 (SCA) and by the Namibian Supreme Court in Rössing Uranium Ltd and Another v the Rössing Pension Fund, 2017 (3) NR 819 (SC) at para [38]. 1.7 Where the Rules of the Fund (para 19) provide that the employer must contribute at the rate determined by its valuator to be required to ensure that it will continue to be financially sound for the foreseeable future, and the valuator, taking into account the unallocated surplus in the Fund, determines that no contributions are required to be made by the employer, that is not a "use of the Fund's assets". It is not even a "benefit" of the employer "to the detriment of the Fund or its members" or otherwise. It merely constitutes an absence of liability in terms of the Rules of the Fund to make contributions to the Fund (TEK case supra at para [23]). 1.8 The Fund, the power and duties of its Trustees, and the rights and obligations of its members and the employer are governed by the Rules of the RPF, the Financial Institutions and Markets Act, No. 2 of 2021 ("the FIM Act") – when it comes into operation – and the common law. The Trustees of the Fund are under a fiduciary duty to act in the best interests of the members of the Fund (Robertson v Randfontein Estate Gold Mining Co. Ltd, 1921 AD 168 at 177). This would apply to any proper exercise of a discretion by the Trustees in allocating or distributing an actuarial surplus. The employer does not owe a fiduciary duty to the Fund but owes at least a duty of good faith to the Fund, its members and beneficiaries. (Rössing case supra at para [38]).			

	1.9 By deferring the decision-making discretion on the apportionment of the surplus to the employer, the Fund's Trustees are not impermissibly abdicating their responsibility for the management of the Fund to the employer. This is because the Rules of the Fund expressly confer the final decision in respect of a surplus distribution to the employer after the Trustees have made recommendations to the employer when an actuarial evaluation discloses a substantial surplus. (Rössing case supra at para [48]). As the English courts have stated, it must be open to the employer to look after its own interests, financially and otherwise, in the future operations of a Defined Pension Fund in deciding whether or not to give its consent (Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd, [1991] 2 All ER 597 (Ch).			
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
Registration Requirements of a Retirement Fund Section 253	2.1 In terms of section 253(1), before approving the application and registering a retirement fund, NAMFISA must be satisfied on reasonable grounds that the requirements of subsection (2) have been met. Subsection (2) sets out a number of principles to which a fund's rules must adhere. 2.2 NAMFISA may also refuse to register a Fund where the rules of the Fund are not consistent with the FIM Act and are not based on sound financial principles (section 253(1)(b)) and where the Fund unfairly discriminates directly or indirectly against any person (section 253(1)(c)). 2.3 It is unclear as to what factors might or might not be taken into account in determining whether a Fund "unfairly discriminates directly or indirectly" against any person. Clearly a Fund would be entitled to distinguish between different types of beneficiaries and the benefits that they might enjoy. It is to be assumed that	2.1 The employer proposes that the FIM Act be amended to more narrowly prescribe the basis upon which NAMFISA might exercise a discretion in relation to "sound business principles" and "unfair direct or indirect discrimination". 2.2 Should the Minister of Finance not be amenable to amend the Act, the employer proposes that the Regulations be promulgated by the Minister to more clearly define the parameters of the in terms of section 253. This should also take into account – as a factor – the fact that a fund has been operating for many years under certain rules which have previously been approved by NAMFISA.		FIMA was promulgated in 2021 already. The present consultation pertains to the proposed subordinate legislation under FIMA; and not FIMA itself. RF.S.5.24 deals with application for registration. NAMFISA is an administrative body thus discretion can only be exercised within the confinement of the law. All existing funds must apply for registration within 12 months of commencement date of Chapter 5; and all fund applying for registration must meet the registration requirement of FIMA. Note that under FIMA NAMFISA will no longer be required to approve the rules of a fund. However, NAMFISA my direct a fund to amend its rules in certain circumstances (section 271(3) of FIMA).

	this would not form some form of indirect "discrimination". 2.4 Section 253 ignores the reality that a Fund typically gets established as part of an employer/employee relationship and the package offered to employees. As a result, the Rules of the Fund, to a large extent, have been either established by the employer, or often are a result of negotiation between the employer and a representative of a trade union, taking into account the principles of affordability and the acceptability of the package or benefits offered to the parties. 2.5 It is of concern to the employer that the Fund Rules have been enforced for many years and have been approved by NAMFISA in the past, as well as a number of amendments thereto. This broad power for NAMFISA to interfere with the existing rules is of concern to the employer.			
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
Existing Pensions section 255(2)	An existing Fund, such as the RPF, must after 12 months of the date of commencement of the Act make application to NAMFISA for registration as a retirement fund. This would mean that section 253 would apply. The comments in relation to section 253 thus also apply to this section.	3.1 The comments in relation to section 253 are repeated here.		See response to comment on section 253
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
Cancellation or Variation of registration of fund section 259	In terms of section 259(1) NAMFISA may take any of the actions set out in subsection (2), in the event of NAMFISA acting reasonably finding that any of a number of circumstances exist in respect to a registered Fund. This includes where a Fund has failed to comply with the FIM Act or no longer meets the requirements for registration (section 259(1)(b) and (c)).	The ambiguity has to be removed from section 259(4) by amending the subsection to make it clear that: Any taking control of assets of a fund by NAMFISA is only on a provisional basis, and This intervention is only permissible where the jurisdictional requirements contained in section 259(1) have been met. Section 278, read with Standard RF.S.5.6 (paragraph 29) should be amended to clearly		FIMA has already been promulgated. The present consultation pertains to the proposed subordinate legislation under FIMA; and not FIMA itself. NAMFISA is an administrative body thus its subject to legislation. Section 259(1)(a) to (j) clearly list the circumstances under which a fund's registration may be cancelled or the registration conditions varied. Clause 29 RF.S.5.6 deals with the payment of unclaimed benefits at a fund's voluntary termination or dissolution. It does not deal with surplus.

	In terms of section 259(2) NAMFISA may in those circumstances take a number of steps, including cancellation of the Fund's registration, varying the conditions of its registration and take any other steps which NAMFISA may consider necessary or advisable. 4.3 Section 259(4) provides that: "Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of the registered fund". This is a poorly drafted provision: Firstly, it is unclear as to the basis upon which NAMFISA could exercise such a drastic discretion. It could be argued on the basis of such interpretation that the power of NAMFISA to provisionally suspend registration or take control of the assets must be exercised in circumstances as set out in section 259(1). However, this is by no means clear; Secondly, section 259(4) is ambiguous. It is unclear as to whether the taking control of the assets of a fund would be merely "provisional" or whether NAMFISA may finally take control of assets of a fund in exercising a power under section 259(4); Thirdly, should section 259(4) be interpreted to mean that NAMFISA could take final control of the assets of a Fund, in an arbitrary fashion without acting within the confines of the discretion afforded in terms of section 259(1) the effect could be entirely draconian; Fourthly, it is unclear what would happen to the assets which NAMFISA is empowered to take control of in terms of section 259(4). For instance, it might be argued that this would form the basis for the dissolution of the Fund in terms of section 278 of the FIM Act; Fifthly, should a fund be able to be dissolved on this basis, section 278 makes any dissolution subject to the requirements of any Regulations made by the Minister of Finance or Standards issued by NAMFISA under the FIM Act; and sixthly, the draft standard relating to a dissolution of a fund pursuant to section 278 (Standard No. RF.S.5.6 provides in paragraph 29 that any unclaimed benefits must be paid either into the	spell out that any unclaimed benefits should not be paid into the Guardian's Fund, but should be Fund is dissolved.		

	Guardian's Fund or such other fund as may be designated for this purpose by the Minister of Finance. Rössing's concern is that this might in these circumstances constitute an expropriation of the assets of the Fund. Although dissolution in terms of section 278 should be in in terms of and in the manner provided for by the Rules of the Fund, it is conceivable that the remaining amount will end up in the Guardian's Fund and thus leave no potential to provide further benefits to the members of the Fund.			
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
Investigations by a valuator in regard to actuarial surplus section 268(8)	Section 268(8) provides as follows: "The board of a fund may, subject to such terms and conditions as may be prescribed, after it receives a report of the valuator and the report reveals an actuarial surplus as provided for in the standards, distribute some or all of that actuarial surplus". On a proper interpretation of this section the Board of a Fund has the sole discretion to distribute an actuarial surplus subject to such terms and conditions as may be prescribed by the Minister of Finance by way of Regulations. In effect, the Trustees could declare a surplus in one year and market conditions in the very next year could lead to a situation where the Fund is not financially sound, requiring the employer to pay into the Fund. This is highly inequitable. Submissions have already been made in this regard in relation to the need of the FIM Act to reflect the correct principles applied in international jurisdictions as well as the Namibian jurisdiction in relation to the right of the employer, as the guarantor of the Fund, to sanction the granting of a surplus given that it is the sponsoring employer. The draft Regulations relating to the terms and conditions upon which a Board of the Fund may	The FIM Act should be amended to provide that the employer, as guarantor of the Fund, should be required to consent to the scheme for the distribution of the actuarial surplus. Should the Minister not agree to the amendment of the Act, then the Regulations made by the Minister should reflect this principle. The FIM Act must be amended to ensure that the whole actuarial surplus is not distributed in order to ensure the financial viability of the Fund. Regulation 6 of the draft Regulations must be amended to ensure that the maximum amount of the actuarial surplus to be distributed ensures that the Fund remains financially sustainable. This issue is expanded upon in the comments on the draft Regulations.		FIMA has been promulgated and await commencement. The present consultation pertains to the proposed subordinate legislation under FIMA; and not FIMA itself. RF.R.5.3 regulates the distribution of actuarial surplus. Funds are not obliged to distribute actuarial surplus – it is the board's discretion and decision whether or not to distribute an actuarial surplus that has arisen. There is no regulation 6. There is no inconsistence between RF.R.5.3 with sec 268(8), as the regulation simply states the maximum percent of actuarial surplus that may be distributed in respect of a fund that is not terminating in its entirety – whereas sec268(8) states some or all actuarial surplus may be distributed.

	distribute some or all of an actuarial surplus pursuant to section 268(8) of the FIM Act provide in Regulation 6 that an amount equal to 75% of the actuarial surplus in the Fund may be distributed. This conflicts with section 268(8) of the FIM Act in that the section refers to the distribution of "some or all of that actuarial surplus". There is thus a direct conflict between the Act and the draft Regulations, where on the one hand the Act entitles the Board of a Fund to distribute the whole of the actuarial surplus, whilst the draft Regulations refer to a maximum of 75% of the surplus. The fact that in terms of section 268(8) a Board may distribute the whole actuarial surplus negates the fiduciary duties of the Trustees to preserve a percentage of the actuarial surplus in order to ensure the financial soundness of the Fund, particularly where there might be adverse financial or claims experiences during a particular year.			
STD/REG No. & Section:	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
Payment of contributions section 270	Section 270(1)(b) provides that despite any provision in the Rules of a Fund, the employer must pay in full any contribution for which the employer is liable under the Rules of the Fund. Section 270(5) further provides that any amendment to the Rules of a Fund relating to the reduction of contributions or the suspension or discontinuation of the payment of contributions does not effect any liability to pay any contribution which became payable at any time before the date on which the amendment took effect in terms of section 272 of the FIM Act. It is unclear as to the intended scope of these provisions. The question arises as to whether the section means that contribution holidays for a sponsoring employer and employees would no longer be permitted in terms of the	NAMFISA needs to provide clarity on the intention of these sections. Should the intention be to preclude a sponsoring employer declaring a contribution holiday, then the section needs to be amended. This is based upon the rationale contained in paragraph 1 of these submissions. However, it should be borne in mind that it could be argued with some force that, in terms of Rule 19 of the RPF Rules, where a contribution holiday is declared in regard to the actuarial surplus, there is no liability upon the employer to make payment in terms of section 270(1)(b) of the FIM Act. This is simply on the basis that the RPF is over- funded.		The process at hand is consultation on subordinate legislation; and not finding the meaning of the provision of FIMA. The interpretation of provisions of FIMA that do not relates to the consultation of subordinate legislation.

	Act, or that surpluses could no longer be used to be allocated to such contribution holidays.			
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Amendment of rules of the Funs section 272	Section 272 provides that the Board of a Fund may, in the manner directed by its Rules, amend the Rules. This section must be read together with the draft Regulations relating to the terms and conditions upon which a Board of a Fund may distribute some or all of an actuarial surplus. Draft Regulation 6, as already indicated, in providing for the distribution of an actuarial surplus in an amount equal to 75% of the surplus, puts the financial sustainability of the Fund at risk.2 In this context, section 272(1) does not provide that the consent of the sponsoring employer must be obtained where it comes to the amendment of the Fund's Rules and particularly where this relates to or impacts upon the actuarial surplus.	Section 272(1) should be amended to require that the rules of a fund may only be amended with the consent of the sponsoring employer.		FIMA has been promulgated and awaiting commencement. The present consultation pertains to the proposed subordinate legislation under FIMA; and not FIMA itself. The business of a fund should be run by the board of trustees and not according to the dictates of any participating employer. FIMA does not prohibit the participating employer from nominating or electing trustees.
General	Assuming FIMA commences on 01 October 2022, could you please confirm whether the following due dates in terms of FIMA are applicable for the June 2022 year-end: • AFS – Within 90 days after the end of its financial year – 28 September 2022. • Valuations Report – Within 180 days after the end of its financial year – 27 December 2022. OR as the June 2022 year-end is before the effective date of FIMA (1 October 2022), would the current submission dates of 31 Dec 2022 for the AFS stand and would the Fund be required to submit a Valuation Report as at December 2022?			We are unable to confirm as section 468 empowers the minister to set different commencement dates for different FIMA sections

	Why should we start getting FIMA-ready now when we have 12 months from when FIMA comes into effect to do so? And we don't even have the final regulations and standards			On 1 October 2021 FIMA was promulgated in the Government Gazette and will commence on a date determined by the Honourable Minister of Finance. In terms of section 468(2), the Minister may determine different commencement dates in respect of different provisions or Chapters of FIMA. The 12-month period from effective date is a transitional period within which funds must apply for registration. In terms of section 261(4) the requirements relating to fitness and propriety of trustees, the board to be composed of minimum 4 trustees and that half of the board of trustees must be member-elected commences within 3 months of commencement of Chapter 5. Moreover, in terms of section 261(5) the requirement relating to independence of trustees also commences after 3 months of commencement of Chapter 5. Thus, funds must comply with the above 3 requirements. Before the 12 months.
	What happens in a case where the fund rules do not comply with FIMA?			Fund rules that do not comply with FIMA are invalid to the extent of the inconsistency (section 271(2)) and NAMFISA will direct the fund to amend such inconsistent rules. In case of application for registration, it should be noted that section 253(1)(b) requires that before approving and registering the fund, NAMFISA must be satisfied on reasonable grounds that the proposed fund rules are not inconsistent with the Act.
	Is NAMFISA going to issue a set of "model rules" or a rules template that funds can/must follow?		NAMFISA will issue a rules template. However, the rules template only serves as a guideline for funds, thus, its encumbered-on funds to ensure that its rules are consistent with FIMA, the standards and the regulations, and ensure its rules are fit for purpose.	
	What happens to the umbrella and retail funds whose boards are not independent of the sponsor when FIMA starts?			Within 3 months of commencement of Chapter 5, the requirement that trustees must be fit and proper, the board must be constituted of minimum 4 trustees and half of the board must be member-elected. Moreover, the independence requirement commences within 3 months of commencement of Chapter 5.

	What about the administration of retirement funds during the first 12 months, since fund rules will not be FIMA-compliant immediately following FIMA's effective date? Different funds might interpret FIMA differently. Will NAMFISA provide guidance?			Section 364 prohibits unregistered persons from carrying on the business of fund administration, thus fund administrators must be registered. To ensure smooth transition the current regime whereby fund administrators are not required to be registered, section 369 states that a person carrying on the business of fund administration on the date of commencement of FIMA is deemed registered as a fund administrator. However, such fund administrator must, within 12 months of commencement of FIMA, apply for registration as fund administrator.
	Will Funds have to simultaneously submit all their documentation, e.g., rules, code of conduct, and policy statements, to NAMFISA?			The question is understood to seek clarity with regard to submission of documents at the time of submission of application for registration. Section 252 of FIMA, read with the relevant standards (i.e., RF.S.5.20, RF.S.5.24 and the General Standards) lay down the registration requirements and the various documents that must be submitted by funds together with the application for registration. In terms of section 252 an application for registration must be accompanied by the proposed rules and documents listed in Annexure A of Standard RF.S.5.24. The code of conduct is part of the fund rules (Standard RF.S.5.20, read with section 261(6) (b)).
	Will NAMFISA stagger the application process to register existing funds under FIMA, e.g., work alphabetically, or will it be first come, first served?			No decision has been made at this stage. Section 255(2) requires existing funds to submit their application for registration within 12 months after commencement of chapter 5. Thus, a fund can continue to operate pending the approval or decline of the application for registration. However, NAMFISA would like to urge funds not to wait until towards the end of the registration period but to timeously lodge their application for registration.
	Will there be any changes to the ERS system?		There will be new forms uploaded onto the ERS system aligned to the requirements of FIMA and its subordinate legislation.	
	Once NAMFISA and the industry have agreed on the content of the standards to be published in the gazette, will NAMFISA issue "guidance notes			Section 409 states that NAMFISA consults the industry before issuing a standard. This is the process we now are dealing with.NAMFISA may issue industry guidance where there is a need but following the due process as per this section.
	Will funds have time to redo all their documents in "plain language"?			Plain language is a requirement of the law thus the board of trustees should ensure the fund complies with the law. NAMFISA urges funds to look at their rules and act

				proactively in addressing provisions not consistent with FIMA at the earliest opportunity, and where applicable, within the prescribed FIMA timelines.
	What happens to funds where their financial year-end coincides with or follows shortly after FIMA's implementation date?			Notwithstanding financial year-end coinciding with FIMA's effective date, funds must comply with FIMA as and when it comes into effect.
	Will funds have enough time to amend their rules and communicate this to members in advance?			The Minister will determine the date or dates on which FIMA, or parts thereof comes into effect. Once these dates are determined it is a fund must ensure compliance. The board of trustees is vested with the responsibility of managing the fund thus it is incumbent on the trustees to ensure rules are aligned to the law and the necessary communication to members has taken place, in time.
	Should funds already be communicating with their members about how FIMA is going to affect their benefits?			That's an internal operational matter which is peculiar to each fund based on each fund's peculiar circumstances.
	What about employers whose contributions are in arrears when FIMA starts? Must the fund start charging them interest even if their rules do not cater for this?			Section 270(9), read with Regulation RF.R.5.8, does not distinguish between outstanding contributions prior-FIMA and post-FIMA. Interest will be charged on contributions that remains outstanding from the effective date going forward.
	Will NAMFISA help funds more or give guidelines when funds submit their "new" FIMA rules, financial statements, valuation reports etc., for the first time?			Under FIMA NAMFISA will not approve or register fund rules as is the current practice under the PF Act. Draft fund rules submitted with the application for registration must be consistent with FIMA failing which the application for registration may be declined. In regard to rules amendments, funds must send a copy of the proposed rules to NAMFISA not less than 30 days before the implementation of the rules (section 272). NAMFISA may object or direct the fund to amend any provision of the rules which is non-compliant with FIMA. NAMFISA may issue guidelines, bulletins, rules, directives and other measures were deemed necessary. Lastly, annual financial statements and actuarial valuation assessment that will be done after the commencement of FIMA must be conducted in accordance with FIMA and its subordinate legislation. Standards RF.S.5.2 and RF.S.5.15 provide guidance as far as actuarial valuation report and annual financial statement are concerned. However, should the need arise, NAMFISA will provide guidance were deemed necessary.
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General observation	There is inconsistency in the manner in which provisions are referred to. Whilst provisions are commonly referred to as clauses/sub-clauses, there are instances where they are referred to as paragraphs. For instance, Standard No. PRE.S.1.1 contains the following wording under clause 3 “Subject to clauses 4, 5, 6 and 7, and subject to the approval by NAMFISA, an individual who falls within any of paragraphs 3(a), 3(b) or 3(c)”. Standard No. RF.S.5.4 contains the following wording “employees of various employers that do not fall within the ambit of clause 3(j)(i)”.	There should be alignment across all standards when it comes to the manner in which provisions are referred to. Granted there might be a difference between the manner of referencing provisions under standards and those under regulations. However, there should be little if any disparity when it comes to standards across the board, or regulations for that matter.	This is noted and corrected	