

Breakdown - Industry Comments

Chapter.2 – Insurance

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
INS.S.2.19 – INSURANCE GOVERNANCE				
INS.S.2.19				
Clause 1(b)	Clause 1(b) defines conflict of interest as “a situation in which a key person, director or of the board encounters while rendering a financial service to a client...”	NAMFISA to provide clarity on whether there are members of boards who are not Directors	The word “members.” has been removed. The definition has been altered to align to the definition of “conflict of interest” under GEN standards but narrowed down to “key persons and directors”	
Clause 1(d)	The clause defines ‘Independent Auditor’ to mean the auditor appointed under section 17 of the Act who is not currently employed, has not been employed by the insurer or reinsurer in any capacity for past 6 years and is not related to the insurer or reinsurer, its affiliates, associates, its senior managers or its service providers. Comment: auditors also perform non-audit work.	Consider removing ‘Service providers’ from the listed persons	The word “Service providers” has been removed in order not to limit the options in the market pool. The term of service has also been changed to 6 years.	
Clause 1(e)(i)	The clause states that an ‘Independent Director’ is a director who has no direct or indirect interest in the registered insurer or reinsurer or any related party to it. Comment: The terms ‘direct’ or ‘indirect’ are ambiguous.	NAMFISA to provide clarity on whether this means that Directors can also not be clients of insurers and reinsurers.	The term has been redefined to align with GEN.S.10.10 meaning of independent director	

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Clause 2	The clause relates to the application of this Standard and dictates that it applies to all registered insurers and reinsurers but does not exclude other Standards in the event of a conflict.	NAMFISA to clarify if there is a conflict between the standards, which one would take precedence.	The specific standard would apply and it would give the context in which it would apply.	
Clause 6(a)	The clause provides that an 'Independent Director' means a director who has not been employed by the insurer within the preceding 5 years. It is not clear what informs the 5 years requirement as Best Governance Practices such as the NAMCODE on the Independence of a Director suggest 3 years	Consider changing 5 years to 3 years in line with Best Governance Practices.		The 5 year window period proposal is rejected and instead increased to 6 year to align to best practice.
Clause 6(b)	The clause further states that 'Independent Director' means a director who "... within the preceding 5 years, has not had any business relationship with an insurer/reinsurer (other than service as a director..." This is contradictory and raises the question of whether a director will still be deemed to be independent if they have been a director in the preceding 5 years.	NAMFISA to clarify issue.	The director should have not been employed in senior or executive position by the insurer for a period preceding 6 years instead of 5 years in order to be independent.	
Clause 8	The clause states that a director who is regarded as an independent director of a holding or related party shall not be deemed or considered independent on	Independent Directors of a holding company should also be regarded as independent for the subsidiary when		The standard does not prohibit directors of holding companies from sitting on subsidiaries but under this standard they will not constitute part of 1/3 independent directors requirement under

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	the subsidiary within the group. Ensuring that a third or majority of the directors on the subsidiary are independent as per this clause would be a very expensive exercise because more directors would have to be appointed.	serving concurrently on the same Boards.		section 394 and 10 of FIMA nor seen as independent to avoid or reduce the risk of familiarity that may result in conflicting interest.
Clause 9	The clause provides that to ensure independence, no director shall serve for more than 6 years consecutively. Consider NAMCODE 18.17.	The insurer/reinsurer should be allowed to determine its own independence through board assessments and the Regulator to have oversight of such assessments, as set out in the Governance Codes. Independence should be assessed after the 9 years as recommended by NAMCODE.	Clause 9 has been merged with clause 18 to deal the Board of directors service tenure. Tenure for non-executive directors will be limited to a period of consecutive 9 years, of which a term shall run for 3 years. NO directors should be allowed to serve on the board for life even when they pass the supposedly independence “tests” set by own entity due to familiarity risk.	
Clause 10(5)	The clause renders a director who serves on more than one board within a group not to be independent. This clause will inadvertently increase the costs of appointing directors as more directors would need to be appointed to satisfy the requirement of independent directors.	Independent Directors of a holding company should also be regarded as independent for the subsidiary when serving concurrently on the same Boards.		Being a director of the Holding company takes away the independence thereof or other affiliates. Further, it is likely that the director will promote the interest of the holding company or the subsidiary alone based on the prevailing circumstances. Clause 10 has been deleted while clause 8 remains.

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Clause 11	<p>The clause states that an independent Auditor shall be engaged for a maximum duration of five (5) years beyond which he/they are no longer considered independent. This clause does not differentiate between an audit firm and auditor for purposes of independence and the rotation of independent auditors should ideally be regulated by the Public Accountants and Auditors Board (PAAB)</p>	<p>The clause should differentiate between an audit firm and auditor for purposes of independence and the rotation of auditors should be regulated by PAAB. The Standard should also state the period after which the auditor will be considered independent again</p>		<p>Clause 11 has been replaced by clause 9 to provide for tenure of both auditor natural person and firm appointment and also subjecting the rotation of partner thereof to the PAAB code of ethics as recommended by ICAN. The maximum 6 year service tenure and the waiting period of 3 years before reappointment is prescribed.</p>
Clause 13	<p>Clause 13 talks about Board composition and states that no board shall only be of foreign executive directors (Principal officers, chief financial officers, chief operational officers etc.).</p> <p>Every board of a registered insurer and reinsurer should balance the board with Namibian executives. This clause is not necessary as Section 10(1)(c)(i) of FIMA already states that at least 50% of directors must be Namibian citizens or holders of permanent residence permits and who are resident in Namibia</p>	<p>Suggest that this entire clause be removed as the matter is already provided for in FIMA.</p>	<p>The clause has been deleted because section 10 and 394 of FIMA and the remaining clauses and or provisions in the standard will ensure balance in the composition of directors is maintained.</p>	
Clause 16	<p>The clause prescribes a non-exhaustive list of board committees to be set up by the registered insurer/reinsurer.</p>	<p>Regulator to consider recommending this as a guideline as opposed to prescribing it.</p>		<p>The clause lists minimum committees that an insurer needs to have in place as per the best practice. Corporate governance codes and the functions must be</p>

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				carried out by the entity, whether or not this is done by a committee or by nominated persons that will be the specific entity's discretion. The insurer can have more committees as per their need in addition to the list.
Clause 18	The clause limits the term of service for board members to 6 years without differentiating between board members	This provision should be limited to independent non-executive directors. It cannot apply to executive directors. The Standards already mandate one third to be independent and that should be a sufficient mitigation.	Amended the clause to provide for the maximum term of office of 9 years, with cooling-off period of 3 years and to reflect that this refers to non-executive directors.	
Clause 19	The clause dictates that the board must make sure that the filling of interim vacancies should be done by the Board of Directors or the members at an AGM, and if the next AGM is far for the person with the next most votes to be elected, particularly with insurers/reinsurers. Board appointments are regulated by the Companies Act and the founding documents of a company. NAMFISA's authority with regards to Board composition should be limited to the functions prescribed by FIMA	Consider removing the provision. Should the provision remain, consider rephrasing the following "and if the next AGM is far for the person with the next most votes to be elected, particularly with insurers/reinsurers."	Deleted the clause. The matter will be dealt with in terms of the Companies Act, 2004 and principle 19.1 NAMCODE, deals with this in a more procedural and detailed manner.	
Clause 22	The clause states that the board should implement appropriate measures to address any identified inadequacies, including any training programs for Board Members. Training programmes should not be limited to when there are	The clause should rather seek for the continuous development of directors, regardless of whether inadequacies have been identified or not.	The clause has been amended to also include continued development.	

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	identified inadequacies			
Clause 24	<p>This clause is on the rotation of board members and provides that the board should consider occasional rotation of members and of the chairs of subcommittees, or tenure limits to serve on a sub-committee, as this can help to avoid undue concentration of power and promote fresh perspectives. Decision to rotate members should be left to the members of the Board. Annual performance assessment will determine whether there is undue concentration of power which the Board will address.</p>	Consider removing the provision		Amended the clause so that entities should establish and implement this in accordance with their business mandate or principles. Note that Reference to 18.13, recommends rotation.
<p>Standard No. INS.S.2.19 section 9</p> <p>To ensure independence, no director shall serve for a consecutive period of more than 6 years</p>	<p>The NAMCODE give guidance and best practices on Governance in Namibia.</p> <p>An extract of NAMCODE for Independent Director par 18.5:</p> <p>“An independent director should be independent in character and judgement and there should be no relationships or circumstances which are likely to affect, or could appear to affect this independence. Independence is the absence of undue influence and bias which can be affected by the intensity of the relationship between the director and the company rather than any particular fact such as length of service or age”</p>	To ensure independence, the Board of directors should comply with the requirements of the code of corporate governance prescribed by NAMCODE		<p>The NAMCODE may serve as good point of reference, but essentially it is a guiding document and not law. This makes enforcement difficult.</p> <p>The tenure for non-executive directors is now increased to 9 years with a cooling off period of 3 years. NAMFISA’s view is that there is a direct link between objectivity and length of service due to familiarity risk.</p>

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	<p>NAMCODE par 18.6 gives more guidance on An independent non-executive director.</p> <p>18.14 At least one-third of non-executive directors should retire by rotation yearly, usually at the company's AGM or other general meetings, unless otherwise prescribed through any applicable legislation. These retiring board members may be re-elected, provided they are eligible. The board, through the nomination committee, should recommend eligibility, considering past performance, contribution, the objectivity of business judgement calls and succession planning.</p> <p>18.15. Every year, non-executive directors classified as 'independent' should undergo an evaluation of their independence by the chairman and the board. If the chairman is not independent, the process should be led by the LID. Independence should be assessed by weighing all relevant factors that may impair independence.</p> <p>The classification of directors in the integrated report, as independent or otherwise, should be done on the basis of this assessment.</p>			

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	<p>18.16. Any term beyond nine years (e.g. three three-year terms) for an independent nonexecutive director should be subject to a particularly rigorous review by the board, of not only the performance of the director, but also the factors that may impair his independence at that time. The review should also take into account the need for refreshing the board.</p> <p>Recommendation: We recommend that Namfisa refers to NAMCODE for the requirements for the board of directors for best practise and not refer to length of service.</p>			
<p>Standard No. INS.S.2.19 section 5(a)</p> <p>“The board of a registered insurer ... (a) Consist of a minimum of 5 directors of which a third shall be independent nonexecutive directors</p>	<p>The NAMCODE give guidance and best practices on Governance in Namibia. An extract of NAMCODE on guidance on board size. 18.10 Every board should consider whether its size, diversity and demographics make it effective. Diversity applies to academic qualifications, technical expertise, relevant industry knowledge, experience, nationality, age, race and gender. Issue the board should consider whether the size make it effective</p>	<p>The board of a registered insurer or reinsurer shall should comply with the requirements of the code of corporate governance prescribed by NAMCODE</p>		<p>The prescribed minimum number is 5 members as per the FIM Act, thus it is a mandatory requirement.</p> <p>Again, the NAMCODE may serve as good point of reference, but essentially it is also a guiding document, not law.</p>
<p>Standard No. INS.S.2.19 section 11 “An independent</p>	<p>In Namibia the PAAB are bound by the IESBA International Code of Ethics for Professional Accountants (previously known as the IFAC Code</p>	<p>An independent Auditor shall comply with the IESBA International Code of Ethics with regards to audit partner rotation.</p>		<p>Although, guidance from these international codes are noted, the Authority is of the view that there must be term limits to reduce</p>

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<p>Auditor shall be engaged for a maximum duration of six (6) years beyond which he/they are no longer considered independent</p>	<p>of Ethics) (the “Code”) and therefore all accountants and auditors registered with the PAAB are required to comply with the Code, including provisions related to audit partner rotation.</p> <p>The Code deals with the question of audit rotation and long association as part of its consideration of auditor independence and requires that for the audits of Public Interest Entities (PIEs) the audit partner, the engagement quality control reviewer (EQCR) and any other key audit partner may not serve for longer than 7 cumulative years and must serve a “cooling off” period during which that person does not act in that capacity for the audit client.</p> <p>Recommendation: We recommend that Namfisa require compliance with the IESBA International Code of Ethics for Professional Accountants.</p>			<p>familiarity risk. The tenure is a regulatory requirement. In this instance NAMFISA is of the view that a period of 6 year service term and 3 year cooling off period will suffice. NAMCODE does not prescribe the term of service.</p>
<p>Standard No. INS.S.2.19 section 5 (a) and (b) “The board of a registered insurer ...</p> <p>a) Consist of a minimum of 5 directors of</p>	<p>Section (a) gives guidance on the number of independent directors when the Board consists of 5 members (1/3), whereas section (b) only gives guidance on non-executive directors if the board is more than 5 members, but not independent directors. So, the issue is whether the 1/3 guidance is also applicable to more than 5 directors?</p>	<p>More clarity should be provided for the requirement for independent directors on a Board of more than 5 members</p>	<p>Yes, section 10 and 394 of FIMA 1/3 independent requirement will apply to boards consisting of more than 5 directors.</p>	

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<p>which a third shall be independent non-executive directors</p> <p>b) Where the board consist of more than 5 directors the Majority shall be non-executive directors</p>				
INS.S.2.19 (Page 2)	<p>GENERAL COMMENTS</p> <p>The Standard does not allow for any exceptions/exemptions.</p>	NAMFISA to allow for applications for exemptions to be made where exceptional circumstances apply		<p>The Standard does not make provision for exemptions, however there is a general exemption provision in terms of section 53 of the Namfisa Act and specific exemptions under section 393(2) of FIMA to which the entities may opt or directed to resort to should the need arise.</p>
	<p>There is no definition of foreign director. Would a South African citizen with Namibian residency be deemed a foreign director? To avoid various interpretation and confusion, it is suggested that foreign director be defined.</p>	<p>Include a definition of foreign director.</p>	<p>The clause relating to foreign directors has been removed as section 10 and 394 will apply.</p>	
Section 6 and 8	<p>The definition of independence is very restrictive as with GEN.S.10.8. The available pool of suitably skilled and qualified directors is limited in Namibia it is our request that NAMFISA consider removing or allowing for exceptions for large</p>	<p>To clarify or define what is meant by “service contract” and whether an insurance policy or financial product offered by that financial institution would deem that person as no longer independent?</p>		<p>The service contract, means a contract a person enters into to provide services of any kind to a registered insurer, i.e contract to provide IT solutions. It generally would exclude insurance policies</p>

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	<p>conglomerates whereby an independent nonexecutive person serves on the Holding Board and other subsidiary Boards.</p> <p>Also with regards to section 6(c) – what is meant by service contract? If a Director has an insurance policy with the financial institution, would this classify as rendering that person no longer independent?</p>	<p>To remove clause 8 that speaks to a director of a holding company will not be regarded as independent or include an exemption or perhaps allow for same on the basis that there is at least one more independent director(s) who is/are not associated with the group.</p>		<p>or financial product that a director may hold as an ordinary customer.</p> <p>A conflict of interest would arise if one board member serves on both boards because one cannot make decisions that contradict each other whilst serving on the different boards. Therefore clause 8 is stayed because it does not prohibit directors from serving on more than one board, rather such a director would not be seen to be independent.</p>
Section 18	<p>This section states that tenure of directors is limited to 6 years.</p> <p>This is quite restrictive especially in terms of executive directors and also not aligned to banking regulations nor to the provisions of the King IV Report. It is proposed that the tenure be aligned and that rare exceptions be allowed upon assessment and approval by the Board and NAMFISA.</p> <p>Also there is not clarity with regards to the computation of 6 years from the date of this standard and also whether a Director who has previously served for 6 years may after a certain period</p>	<p>A non-executive director may serve up to a maximum of 10 years. The limitation however shall not apply to an executive director.</p> <p>Notwithstanding the term of office of (10) ten years, an outgoing director of may, with the prior approval of NAMFISA, be reappointed as a director on the board of that particular entity, or of another entity after having observed a cooling off period of two years.</p> <p>In exceptional instances, and after the Board has performed the necessary assessment, they may extend the appointment of an independent non-executive</p>		<p>Amended the tenure period to 3 year term and maximum 9 year period and cooling off period of 3 years. We have considered the best practice and benchmarked with other jurisdictions. Namcode also sets guideline but nothing stops NAMFISA from proposing other timelines.</p>

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	serve again to that specific entity or another entity?	director and submit same for consideration and approval by NAMFISA.		
See clause 5(1)(a)	Clause 5(1)(a) speaks to independent nonexecutive directors; however (b) speaks only to nonexecutive directors. We believe that there was an omission of "independent" before non-executive in clause (b) as well otherwise it would contradict clause (a).	Insert the word "independent" in front of non-executive directors in clause 5(1)(b).foreign.	Clause 5 has been deleted as it is no longer necessary. Section 10 and 394 of FIMA will apply	
General Comment	Need to ensure the requirements under GEN.S. 10.3 and Standard No. INS.S.2.19 are fully aligned - Standard No. INS.S. 2.12 section 3(e) provides that a registered insurer or registered reinsurer will be considered to have a sound financial position when the insurer or reinsurer maintains standards of corporate governance that are at a minimum as high as those required by Standard No. GEN.S. 10.3 - Governance of financial institutions and intermediaries.	Ensure alignment between the Standards.	There is no longer Governance standard under Chapter 10, so all references to 10.3 can be removed. Please refer to INS S. 2.12	
General Comment	There is no definition of related party.	NAMFISA to confirm if the comments made on related parties have been accepted in order for us to more fully comment on these Standards.	The definition for related party has been inserted as follows. A party is related to another entity or person if the party is - (a)an affiliate of, or an associate of, the entity or person; (b)in a joint venture with the entity or person; (c)a member of the senior management	

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			<p>personnel of the entity or person; or (d) considered to be controlled by the entity or person, pursuant to section 3 of the Act</p> <p>Yes. All the Comments have been accepted also.</p>	
Section 1(b)	Defines “conflict of interest” as a situation in which a key person, director or member of the board encounters, while rendering a financial service to a client, if that situation- (i) impairs the objectivity of the financial institution or financial intermediary in any aspect of rendering the financial service to the client; or (ii) prevents the financial institution or financial intermediary from rendering the financial service to the client in an unbiased and fair manner or from acting in the best interest of the client	A director and a member of the board is the same thing. We recommend deleting “member of the board”. Please also clarify under what circumstance would a director be seen as “rendering a financial service”?	<p>Deleted the word “members.”</p> <p>In his or her capacity during day to day operations of running an insurance company.</p>	
Section 1(b) and (d)	Refers to ‘key persons’ and then again ‘senior managers’ – however, there is no consistency in the terminology used and there are also no definitions provided. It is worth noting that throughout the remainder of the Standard, the term used is ‘senior manager’.	Kindly choose one of the phrases and then define it and use consistently throughout all Standards.		The term “key person” has been redefined to carry the meaning as defined in GEN.10.2, “key person” means any person responsible for managing or overseeing, either alone or together with another responsible person, the activities of a financial institution or financial intermediary relating to the rendering of the financial services, and includes those individuals or other entities holding more than

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				<p>20% of the financial institution or financial intermediary's voting rights”</p> <p>The term “ senior management has also been defined unedr clause 1 as “senior management” means a team of individuals at the highest level of a registered insurer or reinsurer’s management who are involved in the day-to-day responsibilities of managing the insurer or reinsurer, and who hold specific executive powers conferred onto them, with and by authority of the board, and may include the principal officer and line management”.</p>
Section 1(e) and Section 6 & 7	There appears to be definitions and criteria for what constitutes an ‘Independent Director’ in all these sections, which appears to be repetitive.	Suggest that the criteria set out at section 6 and 7 be incorporated into the Definitions section for consistency and ease of reading.		The clauses 6 and 7 are setting out the criteria and not just providing a pure definition of the term, thus merging of the two is not appropriate in this regard.
Section 6(b)	Refers to a ‘significant customer or supplier’. No definition is provided for what would be considered a ‘significant supplier or customer’.	Define ‘significant customer or supplier’.	<p>The standard is clear in that it lays out the criteria that must be met based on several factors and brings in consistency and uniformity on how it should be applied.</p> <p>Removed the word "significance" and replaced with material which means a customer or supplier</p>	

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			whose dealing are big enough to influence or impact business operations. The level of how material a customer or supplier is to an insurer will be determined on a case by case basis under any given circumstances.	
Section 8 read with Section 10(4)&(5)	The current practice in the market is to have directors serving on the boards of more than one entity within an insurance/financial service group of companies, and still be considered as an independent director for both such. Given skills constraints exasperated by the potential conflicts of interest, the pool for potential appropriately skilled independent directors is very limited.	Request the regulator to relook this provision and allow that independent director sitting on more than one board in a group of company be considered independent, perhaps subject to a limitation as to the number of boards they are allowed to sit on?		The standard does not prohibit directors of holding companies from sitting on subsidiaries but under this standard they will not constitute part of 1/3 independent directors requirement under section 394 and 10 of FIMA nor seen as independent to avoid or reduce the risk of familiarity that may result in conflicting interest.
Section 9 read with Section 10(2) and 18	<p>To ensure independence, no director shall serve for a consecutive period of more than 6 years.</p> <p>In Section 18 it is also stated that the term of service for board member shall be limited to 6 years.</p> <p>This requirement is not in line with generally accepted good Corporate Governance practice. Namcode recommends a term of at least 9 years and provides as follows:</p>	<p>1.We suggest alignment with codes of good practice.</p> <p>2.Please clarify whether the limitation in tenure also applies to executive directors (i.e CEO).</p> <p>Possibly overly restrictive and detrimental to business continuity.</p> <p>3.Furthermore, how will the six years be counted in practice for current directors? From the date</p>		<p>The NAMCODE may serve as good point of reference, but essentially it is a guiding document and not law. This makes enforcement difficult.</p> <p>The tenure for non-executive directors is now proposed to be increased to 9 years with a cooling off period of 3 years. In our view there is a direct link between objectivity and length of service due to familiarity risk.</p>

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	<p>“Any term beyond nine years (e.g. three three-year terms) for an independent nonexecutive director should be subject to a particularly rigorous review by the board, of not only the performance of the director, but also the factors that may impair his independence at that time. The review should also take into account the need for refreshing the board. Independent non-executive directors may serve longer than nine years if, after an independence assessment by the board, there are no relationships or circumstances likely to affect, or appearing to affect, the director’s judgement. The assessment should show that the independent director’s independence of character and judgment is not in any way affected or impaired by the length of service.”</p> <p>The term “consecutive “is not defined. If there is a month gap between the end of one term and the commencement of another, will this be compliant?</p> <p>Furthermore, the section seems to apply to all directors (be it executive or non-executive directors).</p>	<p>they were employed or from the date FIMA commences, considering the rule that legislation should not apply retrospectively.</p>		<p>Section 467 FIMA deals with issues related to transition i.e. period will run into the FIMA period and if such expires then , new appointment will have to comply with FIMA</p>
Section 11	<p>An “independent Auditor” shall be engaged for a maximum duration of six (6) FIVE years beyond which he/they are no longer considered</p>	<p>Please clarify what type of audit rotation is meant by this section to avoid confusion (auditor vs firm level). Consider aligning rotation</p>		<p>The clause applies to the audit partner or firm. The tenure is 6 years.</p>

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	independent. Term too short and not aligned with international best practice – Namcode recommends compliance IFAC rotation requirements for listed entities i.e. key audit partner should be rotated after having served for seven years.	requirements and the maximum duration with international standards on auditing and global best practice. Skill constraints should also be considered. We propose the use of the term "Engagement partner" instead of "Independent auditor" in line with International standards on auditing, IFAC; to avoid confusion (auditor vs firm level).		In line with our regulatory powers, we will issue the requisite requirements suitable to this industry. The tenure is a regulatory requirement. In this instance NAMFISA is of the view that a period of 6 year service term and 3 year cooling off period will suffice. NAMCODE does not give guidance to term of service.
Section 15	“The board of a registered insurer/reinsurer should have a minimum number of five (5) board members ...” The minimum number of Board members should not be prescribed as entities /companies differ and the figure should be based on the complexity of the entity.	We suggest removal of minimum number of five (5) board members.		Section 10 of the FIM Act necessitates this. FIM also tries to create consistency amongst the entities.
Section 16	Board Committees- “Pursuant to section 398 of the Act, the registered insurer or reinsurer’s Board should set up the committees necessary for the performance of the following functions but not limited to – (1) Investment; (2) risk management; (3) asset management; (4) policyholders protection; (5) ethics; and (6) nomination and remuneration.” Having all these committees may not make sense, either because the entity is too small or for reasons of efficiency etc (See King IV concept of proportionality) - Cost vs benefit. Best practice should be followed.	Suggest rewording this to make it clear that the committees set up in accordance with S398 fulfill the following functions in terms of their mandates: (1) Investment; (2) risk management; (3) asset management; (4) policyholders protection; (5) ethics; and (6) nomination and remuneration. This means that NAMFISA looks rather at ensuring that the functions above are achieved rather than separate committees being set up for each function.		This determination would be entity specific and determined by the corporate structure of the company in terms of importance and not each functionary must be separate, as long as the function or role is carried out. Clause sets minimum 6 but can have more.

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General	NAMFISA must ensure that the requirements under Standard No. INS.S.2.19 and GEN.S. 10.3 are fully aligned - Standard No. INS.S. 2.12 section 3(e) provides that a registered insurer or registered reinsurer will be considered to have a sound financial position when the insurer or reinsurer maintains standards of corporate governance that are at a minimum as high as those required by Standard No. GEN.S. 10.3 - Governance of financial institutions and intermediaries.		There is no longer Governance standard under Chapter 10, so all references to 10.3 has been removed. Please refer to INS S. 2.12	
General	As per our previous comments (submitted on 28 February 2022) on the main body of the Act and the other standards, there is no definition of related party. Can NAMFISA confirm if the comments made on related parties have been accepted in order for us to more fully comment on these regulations?		The definition for related party has been inserted as follows. “A party is related to another entity or person if the party is - (a) an affiliate of, or an associate of, the entity or person; (b) in a joint venture with the entity or person; (c) a member of the senior management personnel of the entity or person; or (d) considered to be controlled by the entity or person, pursuant to section 3 of the Ac	

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			Most of the Comments have been considered and where necessary also accepted and incorporated.	
	<p>Clause 9 (independence) does not take into account an independence test at all. We recommend a test be used as per King, the Nam Code and other international pieces of law to assist in assessing the independence of a director. What would be preferable is to assess, on a regular basis, the independence of a director. In order to facilitate this,</p>	<p>we recommend introducing the test into the definition of an independent director, eg: <i>“Independent Non-executive director” means a director who:</i></p> <ul style="list-style-type: none"> - <i>is not involved in the day-to-day management of the business and has not been so involved at any time during the previous financial year;</i> - <i>is not a prescribed officer, or full-time employee, of the company or another related or interrelated company, and has not been such an officer or employee at any time during the previous three financial years;</i> - <i>is not a significant customer or supplier of the NBF/market participant, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship;</i> - <i>is not a significant provider of financial capital or ongoing funding to the business;</i> 		<p>The suggestion is rejected because the “test” criteria does not for purposes of measuring the directors independence suffice. Directors should not be allowed to serve on the board for life even when or just because they pass, the supposedly independence “tests” set by own entity as the familiarity test is increased with the length of time served.</p> <p>The standard defines the meaning of independence specifically to be applicable which includes among other factors, the capacity in which they serve on the board i.e. executive or non executive, how long they serve, relationships etc.</p>

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		<p>- does not directly or indirectly hold a material equity position in the business;</p> <p>- does not receive remuneration, such as through a share-based incentive scheme, that is contingent on the performance of the business;</p> <p>- is not a significant or ongoing professional adviser to, or auditor of, the business; or</p> <p>- is not related to any person who falls within any of the above criteria.</p> <p>Where a non-executive director has served on the board for more than nine years, the Board should annually evaluate their continued independence.”</p> <p>This takes into account the reality of business and the ability to keep tenured and good directors on the board.</p> <p>The aforementioned recommended change would then directly change clause 10(2).</p>		
Clauses 10(2) and 10(4)	Clauses 10(2) and 10(4) are problematic. In the absence of a definition of related party, directors can potentially not serve on boards		The definition for related party has been inserted as follows. A party is related to	The standard does not prohibit directors of holding companies from sitting on subsidiaries but under this standard they will not be

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	across companies. This is not an ideal outcome because in reality, if one looks at a director, they are often able to do a far better job if they sit on more than one board in the group as they understand the interplay between the entities. Less can be hidden from the NEDs.		another entity or person if the party is - (a)an affiliate of, or an associate of, the entity or person; (b)in a joint venture with the entity or person; (c)a member of the senior management personnel of the entity or person; or (d)considered to be controlled by the entity or person, pursuant to section 3 of the Act	constitute part of 1/3 independent directors requirement under section 394 and 10 of FIMA nor seen as independent to avoid or reduce the risk of familiarity that may result in conflicting interest.
General	No provision is made for the applicability of this Standard to Corporate Insurance Brokers and Corporate Insurance Agents or is it not the intention of the Regulator to regulate the board composition of these entities?		The intention is that financial institutions that are public entities adhere to the requirements in this standard. Section 394 of FIM would be applicable in this regard.	
Definitions 1(1)(b)	<p>“conflict of interest” means a situation in which a key person, director or member of the board encounters, while rendering a financial service to a client, if that situation-</p> <p>(i) impairs the objectivity of the financial institution or financial intermediary in any aspect of rendering the financial service to the client; or</p>	<p>A director and a member of the board is the same thing.</p> <p>1.We recommend deleting “member of the board”.</p> <p>2.Please also clarify under what circumstance would a director be seen as “rendering a financial service”?</p>	<p>1.Deleted the word “member of the board”.</p> <p>2.A director would be deemed non-independent if while rendering financial services i.e. during day to day operations of running an insurance company as a representative of such insurer is not objectives but biased and unfair.</p>	

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	(ii) prevents the financial institution or financial intermediary from rendering the financial service to the client in an unbiased and fair manner or from acting in the best interest of the client.			
Definitions 1(1) (b) and (d)	Whole	<p>Refers to 'key persons' and then again 'senior managers' – however, there is no consistency in the terminology used and there are also no definitions provided. It is worth noting that throughout the remainder of the Standard, the term used is 'senior manager'.</p> <p>Kindly chose one of the phrases and then define it and use consistently throughout all Standards.</p> <p>Add definition: "senior manager" means—</p> <p>(a) the chief executive officer or the person who is in charge of an insurer; or (b) a person, other than a director or a head of a control function – (i) who makes or participates in making decisions that - (aa) affect the whole or a substantial part of the business of an insurer or (bb) have</p>	<p>The term "key person" has been redefined to carry the meaning as defined in GEN.10.2.</p> <p>Inserted the meaning of the terms senior management under clause 1 definitions.</p>	

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		<p>the capacity to significantly affect the financial standing of an insurer (ii) who oversees the enforcement of policies and the implementation of strategies approved, or adopted, by the board of directors, and “senior management” has a corresponding meaning</p> <p>Take note that this definition has been borrowed from section 1 of the South African Insurance Act, 2017 (Act. No 18 of 2017). Take further note that section 1 of the South African Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) defines a control function as: (a) The risk management function; (b) the compliance function; (c) the internal audit function; and (d) the actuarial function.</p>		
Definitions 1(1)(d)	(d) “Independent Auditor” means the auditor appointed under section 17 of the Act who is not currently employed, has not been employed by the <u>insurer or insurer</u> in any capacity for past 6 years and is not related to the insurer or reinsurer, its affiliates, associates, its senior managers or its service providers	Second “insurer” to read “reinsurer”. Please remove duplication	Amended accordingly.	
Definitions 1(1)(e)(f)(g) and 6	(e) “Independent Director” means a director who – (i) has no direct or indirect interest in the registered insurer or reinsurer or in	Both paragraph 1(1)(e) & 6 attempt to define what an “Independent Director” is.	Inserted the definition of “senior managers” under clause 1 definitions.	The term independence under clause 1(1)9 e) defines the term independent director while clause 6 expands further on criteria/ requirements independence and

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	<p>any related party to a registered insurer or reinsurer; and (ii) is not a representative of a shareholder who has ability to control or significantly influence management or the board of a registered insurer or reinsurer;</p> <p>AND</p> <p>6. Independent director means a director who –</p> <p>(a) has not been employed by the insurer or reinsurer in any executive capacity within the preceding five (5) years;</p> <p>(b) is not associated to an adviser or consultant to the insurer or reinsurer or a member of the insurer or reinsurer’s senior management or a significant customer or supplier of the insurer/reinsurer or an association or related party or an any entity that receives significant contributions from the insurer/reinsurer; or within the preceding five (5) years, has not had any business relationship with the insurer/reinsurer (other than service as a director) for which the insurer/reinsurer has been required to make disclosure;</p> <p>(c) has no personal service contract(s) with the insurer/reinsurer, or a member</p>	<p>We recommend one comprehensive “Independence Test” (definition) in Paragraph 1, as suggested on page 1 of this document, as opposed to trying to cater for every situation that could impair independence.</p>		<p>same cannot be condensed under definitions.</p>

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	<p>of the insurer or reinsurer’s senior management;</p> <p>(d) is not employed by a public listed company or an unlisted company at which an executive officer of the insurer or reinsurer serves as a director;</p> <p>(e) is not a member of the immediate family of any person described above; or</p> <p>(f) has not had any of the relationships described above with any affiliate of the insurer or reinsurer.</p>			
<p>Definitions 1(e) R/W Section 6 & 7</p> <p>General</p>	<p>General</p>	<p>There appears to be definitions and criterions for what constitutes an ‘Independent Director’ in all these sections. This appears to be repetitive.</p> <p>We suggest that the criteria set out at section 6 and 7 be incorporated into the Definitions section for consistency and ease of reading.</p>		<p>clause 6 sets out the criteria and not just providing a pure definition of the term.</p> <p>Clause 7 is additional and has no time limit attached, while clause 1 is simply defining the term, The criteria should not be included under definitions</p>
<p>6(b)</p>	<p>Independent director means a director who –</p> <p>is not associated to an adviser or consultant to the insurer or reinsurer or a member of the insurer or reinsurer’s senior management or a significant customer or supplier of</p>	<p>Again, we recommend one comprehensive “Independence Test” definition in Paragraph 1, as suggested on page 1 of this document, as opposed to trying to cater for every situation that could impair independence.</p>	<p>The standard is clear in that it lays out the criteria that must be met based on several factors and brings in consistency and uniformity on how it should be applied.</p>	

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	<p>the insurer/reinsurer or an association or related party or an any entity that receives significant contributions from the insurer/reinsurer; or within the preceding five</p>	<p>Further, “significant customer or supplier” is not defined. No definition is provided in section 1 for what would be considered a ‘significant supplier or customer’.</p> <p>We suggest that ‘significant customer or supplier’ be defined. Example, a supplier of material business with a % of cost of supply more than for example 5% of the gross revenue in a financial year.</p> <p>AND</p> <p>A customer of an insurer or reinsurer that would reasonably be expected to account for more than 5% (the threshold is just an example) of the gross revenue of the insurance or reinsurance company in a given financial year.</p>	<p>removed the word "significance" and replaced with material which means a customer or supplier whose dealing are big enough to influence or impact business operations. The level of how material a customer or supplier is to an insurer will be determined on a case by case basis under any given circumstances.</p>	
<p>Section 8 R/W Section 10(4)&(5)</p>	<p>A director who is regarded as an independent director of a holding or related party shall not be deemed or considered independent on the subsidiary within the group.</p>	<p>The current practice in the market is to have directors serving on the boards of more than one entity within an insurance/financial service group of companies, and still be considered as an independent director for both such entities. Given skills constraints, exasperated by the potential conflicts of interest, the</p>		<p>The standard does not prohibit directors of holding companies from sitting on subsidiaries but rather speaks to their independence. It is therefore understood that conflict of interest would arise if a director serves on both boards because one cannot make</p>

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		<p>pool for potential appropriately skilled independent directors is very limited.</p> <p>We propose that NAMFISA relook at this provision and allow for independent directors sitting on more than one board in a group of company to be considered independent, perhaps subject to a limitation as to the number of boards they are allowed to sit on?</p>		<p>decisions that contradict each other whilst serving on the different boards.</p>
9 R/W 18	<p>To ensure independence, no director shall serve for a consecutive period of more than 6 years.</p> <p>In Section 18 it is also stated that the term of service for board member shall be limited to 6 years</p>	<p>The term “consecutive “is not defined. If there is a month gap between the end of one term and the commencement of another, will this be compliant?</p> <p>2.The section seems to apply to all directors (be it executive or non-executive directors).</p> <p>Please clarify whether the limitation in tenure also applies to executive directors (i.e CEO).</p> <p>Moreover, the limitation of tenure (6 years) does not align with existing best practice corporate governance e.g. King IV and the Namcode does not make such prescriptions for</p>	<p>1.Yes, ordinary meaning of consecutive - following each other continuously, so yes they would be compliant. If you serve for 9 years, you must be recused for 3 years before reappointment.</p>	<p>2.the tenure limitation only applies to non-executives</p> <p>Even though the wording suggests this, the CEO’s tenure is not tied to the appointment and or dismantling of a Board. The clause wording has been revised to apply to non-executives only.</p>

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		<p>public interest entities. The Namcode recommends a term of at least 9 years and provides as follows:</p> <p><i>“Any term beyond nine years (e.g., three-year terms) for an independent non-executive director should be subject to a particularly rigorous review by the board, of not only the performance of the director, but also the factors that may impair his independence at that time. The review should also take into account the need for refreshing the board.</i></p> <p><i>Independent non-executive directors may serve longer than nine years if, after an independence assessment by the board, there are no relationships or circumstances likely to affect, or appearing to affect, the director’s judgement. The assessment should show that the independent director’s independence of character and judgment is not in any way affected or impaired by the length of service.”</i></p> <p>Possibly overly restrictive and detrimental to business continuity.</p>		<p>Please see section 394 for guidance in this regard.</p> <p>Section 467 FIMA deals with issues related to transition</p>

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		<p>We suggest alignment with codes of good practice, in line with the proposed definition of an “independent non-executive director” on page 1 of this document.</p> <p>Furthermore, how will the six years be counted in practice for current directors? From the date they were employed or from the date FIMA commences, considering the rule that legislation should not apply retrospectively.</p>		
10(5)	<p>The following instance may render the director not to be independent-</p> <p>(5) Where a director serves on more than one board within a group.</p>	<p>The requirement is unnecessarily restrictive considering the limited number of suitably skilled persons who can serve in the envisaged capacity on boards in Namibia.</p> <p>Our recommendation is to allow persons to serve as Independent directors on multiple boards within a group, perhaps subject to a limitation as to the number of boards they are allowed to sit on?</p>		<p>The standard does not prohibit directors of holding companies from sitting on subsidiaries but under this standard they will not constitute part of 1/3 independent directors requirement under section 394 and 10 of FIMA nor seen as independent to avoid or reduce the risk of familiarity that may result in conflicting interest.</p>
11	<p>An “independent Auditor” shall be engaged for a maximum duration of six (6) years beyond which he/they are no longer considered independent.</p>	<p>Please clarify what type of audit rotation is meant by this section to avoid confusion (auditor/partner vs firm level). Consider aligning rotation requirements and the maximum</p>		<p>Clause 11 has been replaced by clause 9 to provide for tenure of both auditor natural person and firm appointment and also subjecting the rotation of partner</p>

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		<p>duration with international standards on auditing and global best practice. Skill constraints should also be considered.</p> <p>If the intention is to target the partner, we propose the use of the term "Engagement partner" instead of "Independent auditor" in line with International standards on auditing, IFAC; to avoid confusion (auditor vs firm level).</p>		<p>thereof to the PAAB code of ethics as recommended by ICAN. The maximum 6 year service tenure and the waiting period of 3 years before reappointment is prescribed. NAMCODE does not give guidance in terms of term of service.</p>
12	<p>Board Composition- Pursuant to section 394 every registered insurer and reinsurer must have full reporting structures that the board of directors must be comprised of, such as chairman, principal officer, directors etc.</p>	<p>"..Full reporting structure.." not defined.</p> <p>Please define term</p>		<p>It is not necessary to define the term as clause 11 clearly gives example of what that structure refers to and what should it be comprised of in relation to. The term should therefore be read in the context of the statement it is used. Note however that the term Principal officer is defined under clause 1(3) definitions in the standard.</p>
13	<p>No board shall only be comprised of foreign executive directors (principal officers, chief financial officers, chief operational officers etc.). Every board of a registered insurer and reinsurer</p>	<p>It is important to align this to good corporate governance (i.e. Namcode) practices, which normally would only require that "The board should comprise a balance of power,</p>	<p>That is the correct interpretation thereof.</p>	

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	<p>should balance the board with Namibian executives.</p>	<p>with a majority of non-executive directors”.</p> <p>Our understanding is that overall board balance is addressed in Section 10 (3) of the main Act.</p> <p>Further, based on section 10(1)(c) of FIMA (Chapter 2: Insurance), we understand “foreign executive director” to be directors that are neither Namibian citizens nor resident in Namibia. Can NAMFISA clarify?</p> <p>NAMFISA must further clarify on what is meant by the term “balance” in this section to ensure that industry applies it consistently.</p> <p>To avoid confusion on the meaning of the word balance and foreign executive director, we suggested the amendment below:</p> <p>No board shall only be comprised of foreign executive directors (principal officers, chief financial officers, chief operational officers etc.) and must have at least one (1) Namibian executive director. Foreign executive director are directors that are neither Namibian citizens nor resident in Namibia.</p>		<p>The section clearly indicates that of the total executive directors, 50% must be Namibian.</p> <p>Additionally, the clause clarifies the scope of section 10 by including in the specific reference to “executives”. This is to ensure that there is balance between executives Namibians and foreign executives where applicable.</p>

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14	<p>Board Composition- Senior management of the registered insurer or reinsurer, with responsibilities relating to the business in Namibia, must be a Namibian citizen residing in Namibia or foreigner ordinarily resident in Namibia.”</p>	<p>The fact that senior management must be Namibian citizens residing in Namibia might be impractical for many companies. Moreover, “Senior management” is not defined in this standard nor is it defined in the enabling Act. We again suggest that NAMFISA define the term as suggested below.</p> <p>Add definition: “senior manager” means—</p> <p>(a) the chief executive officer or the person who is in charge of an insurer; or</p> <p>(b) a person, other than a director or a head of a control function –</p> <p>(i) who makes or participates in making decisions that - (aa) affect the whole or a substantial part of the business of an insurer or (bb) have the capacity to significantly affect the financial standing of an insurer</p> <p>(ii) who oversees the enforcement of policies and the implementation of strategies approved, or adopted, by the board of directors, and “senior management” has a corresponding meaning</p> <p>Take note that this definition has been borrowed from section 1 of the South African Insurance Act, 2017 (Act. No 18 of 2017).Take further</p>	<p>The clause has been deleted. The term senior management is however defined under clause 1.</p>	

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		<p>note that section 1 of the South African Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) defines a control function as: (a) The risk management function; (b) the compliance function; (c) the internal audit function; and (d) the actuarial function.</p>		
15	<p>The board of a registered insurer/reinsurer should have a minimum number of five (5) board members who have relevant minimum qualifications and expertise¹ among them as necessary to provide effective leadership direction and oversight of the insurer or reinsurer’s business to ensure it is conducted in a sound and prudent manner.</p>	<p>The minimum number of Board members should not be prescribed as entities /companies differ and the figure should be based on the complexity of the entity.</p> <p>We suggest removal of minimum number of five (5) board members.</p>		<p>Section 10 in the FIM Act prescribes the minimum number of 5, thus it is mandatory and the standard cannot change the provision in FIMA.</p>
16	<p>Board Committees- “Pursuant to section 398 of the Act, the registered insurer or reinsurer’s Board should set up the committees necessary for the performance of the following functions but not limited to – (1) Investment; (2) risk management; (3) asset management; (4) policyholders protection; (5) ethics; and (6) nomination and remuneration.”</p>	<p>NAMFISA should clarify which group committees will suffice?</p> <p>Having all these committees may not make sense especially for smaller companies from a proportionality perspective (See King IV concept of proportionality) - Cost vs benefit. Best practice should be followed.</p> <p>We suggest the rewording of this section to accommodate companies that are much smaller with resources constraints.</p> <p>Alternately this may be reworded to make it clear that the committees set</p>	<p>The list under clause 16 spells out the minimum groups of committees that will suffice, and are function based as recommended, therefore the proportionality principle accounted for.</p>	

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		<p>up in accordance with S398 fulfill the following functions in terms of their mandates: (1) <i>Investment</i>; (2) <i>risk management</i>; (3) <i>asset management</i>; (4) <i>policyholders protection</i>; (5) <i>ethics</i>; and (6) <i>nomination and remuneration</i>.</p> <p><i>This means that NAMFISA looks rather at ensuring that the functions above are achieved rather than separate committees being set up for each function.</i></p> <p>In addition to this, is the expectation that each Insurer / Reinsurer should set up independent board sub-committees or will board sub-committee at a Group Level suffice for the purposes hereof. Please clarify</p>		<p>The functions must be carried out on the entity level and not group level.</p>
17	<p>(1) The board shall put in place specific list of the mandatory minimum policies, board structures and board committees that financial entities are required to have in place, so as to enforce compliance.</p> <p>(2) The policies shall comprise of the following but not limited to –</p> <p>(a) investment management policies; (b) risk underwriting policy; and (C)reinsurance policy.</p>	<p>We proposed that the mandatory minimum policies be properly documented and reflected in the standard to avoid inconsistencies with complying with the minimum regulatory expectations.</p>	<p>The mandatory minimum policies are set out in clause 17. Corrected clause 17(1) to reflect as such, “The policies shall comprise of the following minimum policies, but shall not be limited to only these policies”...</p>	

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			The minimum policies must be in place, but the rest will be entity specific and cannot be set out in the standard.	
18 R/W 9	The term of service for board member shall be limited to 6 years.	<p>NAMFISA should ensure the term of 6 years is aligned with global best practice. The NAMCODE recommends a term of at least 9 years. King IV states that <i>“The governing body should establish arrangements for periodic, staggered rotation of its members so as to invigorate its capabilities by introducing members with new expertise and perspectives while retaining valuable knowledge, skills and experience and maintaining continuity.”</i></p> <p>We suggest a change in the tenure in line with international best practice, in line with the proposed definition of an “independent non-executive director” on page 1 of this document.</p>		The tenure has been amended from 6 to 9 year period as recommended, we have considered the best practice and other jurisdiction.
19	The board must make sure that the filling of interim vacancies should be done by the Board of Directors or the members at an AGM, and if the next AGM is far for the person with the next	<p>This section appears to be incomplete – it only addresses the issue of vacancies to the board.</p> <p>Proposed that the provisions of NAMCODE as it relates to the Rules</p>	Clause has been removed , this will be resolved by the provisions of the Companies Act	

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	most votes to be elected, particularly with insurers/reinsurers.	and Functions of the board, be incorporated into the Standard		
20	The board should have powers to delegate written authority to the sub-committees and management of the registered insurer or reinsurer. The board shall however not abdicate their responsibility.	Proposed that the provisions of NAMCODE that relate to the establishment of a framework for the delegation of authority (C2-17) should be incorporated into the standards.		Proposal is noted, however, the Board may come up with its own suitable methodology in carrying this out. NAMCODE is also not law and hence this should be incorporated in FIMA.
24	The Board should consider occasional rotation of members and of the chairs of sub- committees, or tenure limits to serve on a sub-committee, as this can help to avoid undue concentration of power and promote fresh perspectives.	We propose that clear expectations surrounding the rotation of board member should be prescribed – similarly as those prescribed for the external auditors.		Amended the clause so that entities should establish and implement this in accordance with their business mandate or principles. Note that Reference to 18.13 NAMCODE also recommends rotation.
General Comment	No provision is made for the applicability of the Standard to Corporate Insurance Brokers and Corporate Insurance Agents or is it not the intention of the Regulator to regulate the board composition of these entities?			They are not considered public entities and thus this standard will not apply to them. Applicable section is 394 of the FIM Act.
	That the standard be aligned to the provisions of the NAMCODE Chapter 2			NAMCODE is not law and thus directory at best. Further, there is an intention to codify a standard across all sectors for purposes of uniformity.
Clause 1(b)	Use of the term director or member not correct. The concepts are mere synonyms of each other	Reference should merely be made to the term ' <i>director</i> '	Deleted the reference accordingly.	

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Clause 3		1. Chronologically list the General Standards that need to be read with INS.S.2.19 2. General Standard 10.3 – Governance not part of the published Standards	1. Amended 2. Deleted reference to GEN.S.10. 3 as it is no longer applicable	
Clause 5(1)	What is the intention of the Regulator to prescribe the minimum number of directors? Would this not create unnecessary hindrance in doing business	It is proposed that the provision of independence be more to the provisions aligned of NAMCODE, in particular C2-18.9, which stipulates the factors to be taken into consideration when determining the number of directors.	Clause 5 has been deleted as it is no longer necessary. Section 10 and 394 of FIMA will apply. It should also be noted that the draft clauses considered not only NAMCODE principles but also the best governance practices and benchmarked with practices from other jurisdictions globally and around the regions	
Clause 6		Proposed that the determination of independence be aligned to the provisions of NAMCODE (see C2-18.6 of NAMCODE)		The NAMCODE may serve as good point of reference, but essentially it is a guiding document and not law. This makes enforcement difficult.
Clause 6(b)	What would constituted being a <i>'significant customer or supplier'</i> ?		Significance" is replaced with material which means a customer or supplier whose dealing are big enough to influence or impact business operations. The level of how material a customer or	

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			supplier is to an insurer will be determined on a case by case basis under any given circumstances.	
Clause 8 read with Clause 10(5)				<p>No comment provided, however the provisions dealt with the independence of directors sitting on group and subsidiary boards consecutively.</p> <p>The standard does not prohibit directors of holding companies from sitting on subsidiaries but under this standard they will not be seen as independent</p> <p>Conflict of interest would arise if one board member serves on both boards because one cannot make decisions that contradict each other whilst serving on the different boards. Note that; clause 10 is deleted as clause 8 sufficiently covers the matter.</p>
Clause 9	Would the provisions of this clause also apply to Executive Directors? Under the provisions of the NAMCODE, there is no specific limitation other than after 9 years, following which rigorous review of potential impairments of independence.	Would propose that the provisions of independence and board tenure as provided for under NamCode C2-18 be adopted to ensure alignment with best practice. Alternatively, the any proposed limitation of tenure should be limited to Independent Directors only. Executive Directors not subject to limitations		<p>The NAMCODE may serve as good point of reference, but essentially it is a guiding document and not law. This makes enforcement difficult.</p> <p>The tenure for non-executive directors is now proposed to be increased to 9 years with a cooling off period of 3 years. In our view there is a direct link between objectivity and length of service due</p>

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				to familiarity risk. Tenure only applicable to non-executive directors
Clause 10(2)	Nothing contained in clause 9 that allowed for extension of tenure beyond 6 years			There is no extension of a service term for a director who has served on the board for a consecutive term of 9 years. The clause however allows with a cooling off period of 3 years.
Clause 10(4)	Concept of related party not defined – only related party transactions		The definition for related party has been inserted as follows. A party is related to another entity or person if the party is - (a)an affiliate of, or an associate of, the entity or person; (b)in a joint venture with the entity or person; (c)a member of the senior management personnel of the entity or person; or (d)considered to be controlled by the entity or person, pursuant to section 3 of the Ac	
Clause 11		Proposed that the Regulator adopts an approach regarding the Appointment, Duties and Responsibilities of Independent Auditors ('BID-10')	Section 401 of FIMA deals with appointment, duties and responsibilities of auditors. Clause 11 deals with auditors'	

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			tenure and its relation to independence.	
Clause 13	What would be regarded as a balance? (i.e. percentage)	Proposed that the composition of the Board be aligned to the provisions of Chapter 2 of NAMCODE	The term “balance” has reference to the composition requirements of the Board of directors as mentioned in section 10(c) of the Act and used in that respect. However, Clause 13 has been deleted	
Clause 15	Reference to board composition repetitive			The clause clarifies the composition.
Clause 12	What is meant by the term ‘full reporting structures’ – concept unclear?	Proposed that the reporting structures as listed in the standard (i.e. Chairperson, principal officer) be clearly defined to avoid ambiguity that might arise out of using the term etc.		It is not necessary to define the term as clause 11 clearly gives example of what that structure refers to and what should it be comprised of in relation to. The term should therefore be read in the context of the statement it is used. Note however that the term Principal officer is defined under clause 1(3) definitions in the standard.
Clause 16	Is the expectation that each Insurer / Reinsurer should set up independent board sub-committees or will board sub-committee at a Group Level be sufficient for purposes hereof.		The sub-committees must be present at an entity level for purposes of regulation as the each entity is a legal entity by it's on. Additionally NAMFISA may not have oversight of unlicensed group or related entities.	

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Clause 17		Proposed that the mandatory minimum policies be properly documented and reflected in the standard to avoid inconsistencies in meeting the minimum regulatory expectations.		These are the minimum policies the insurers should have. It can, however, be more at the discretion of the regulated entity.
Clause 18	See comments under clause 9	Would propose that the provisions of independence and board tenure as provided for under NamCode C2-18 be adopted to ensure alignment with best practice. Alternatively, the any proposed limitation of tenure should be limited to Independent Directors only. Executive Directors not subject to limitations	The limitation in tenure applies to the Non-executive directors and the clause has been amended accordingly.	
Clause 19	Appears to be incomplete – only addresses the issue of vacancies to the board	Proposed that the provisions of NAMCODE as it relates to the Rules and Functions of the board be incorporated into the Standard	Clause has been removed , this will be resolved by the provisions of the Companies Act	
Clause 20		Proposed that the provisions of NAMCODE as it relates to the	.	Proposal is noted, however, the Board may come up with its own

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		establishment of a framework for the delegation of authority (C2-17) be incorporated into the standards		suitable methodology in carrying this out, as we want to apply a more principle based and not rule based supervisory approach alone.
Clause 24	What constitutes ' <i>occasional rotation</i> '	Proposed that clear expectations surrounding the rotation of board member be prescribed – similarly as those prescribed for the external auditors.		Amended the clause so that entities should establish and implement this in accordance with their business mandate or principles. Note that Reference to 18.13, recommends rotation.
INS.S.2.19 General Comment	No provision is made for the applicability of the Standard to Corporate Insurance Brokers and Corporate Insurance Agents or is it not the intention of the Regulator to regulate the board composition of these entities?			This is dealt with under section 394 of the Act as they are not considered public entities and the standard would thus not be applicable to them.
	That the standard be aligned to the provisions of the NAMCODE Chapter 2			NAMCODE is not law and thus directory at best. Further, there is an intention to codify a standard across all sectors for purposes of uniformity.
Clause 3		<ol style="list-style-type: none"> 1. Chronologically list the General Standards that need to be read with INS.S.2.19 2. General Standard 10.3 – Governance not part of the published Standards 	Amended Deleted reference to standard 10.3 throughout the standard.	
Clause 5(1)	What is the intention of the Regulator to prescribe the minimum number of directors? Would this not create unnecessary hindrance in doing business	It is proposed that the provision of independence be more aligned to the provisions of NAMCODE, in particular C2-18.9, which stipulates the factors to be taken into		The minimum number of directors is prescribed in the FIM Act, thus mandatory and not discretionary. However, clause 5 has been deleted as it is no longer

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		consideration when determining the number of directors.		necessary. Section 10 and 394 of FIMA will apply
Clause 6		Proposed that the determination of independence be aligned to the provisions of NAMCODE (see C2-18.6 of NAMCODE)		The NAMCODE may serve as good point of reference, but essentially it is a guiding document and not law. This makes enforcement difficult.
Clause 6(b)	What would constitute being a <i>'significant customer or supplier'</i> ?		Removed the word "significance" and replaced with "material" which means a customer or supplier whose dealing are big enough to influence or impact business operations. The level of how material a customer or supplier is to an insurer will be determined on a case by case basis under any given circumstances	
Clause 9	Would the provisions of this clause also apply to Executive Directors? Under the provisions of the NAMCODE, there is no specific limitation other than after 9 years, following which rigorous review of potential impairments of independence.	Would propose that the provisions of independence and board tenure as provided for under NamCode C2-18 be adopted to ensure alignment with best practice. Alternatively, the any proposed limitation of tenure should be limited to Independent Directors only. Executive Directors not subject to limitations	The limitation in tenure applies to the Non-executive directors and the clause has been amended accordingly.	

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
Clause 10(2)	Nothing contained in clause 9 that allowed for extension of tenure beyond 6 years		Clause 18 has made provision for cooling off period of 3 year after and increased tenure to 9 years for non-executive director. Exemption only allowable under section 393 of FIMA.	
Clause 10(4)	Concept of related party not defined – only related party transactions		The definition for related party has been inserted as follows. A party is related to another entity or person if the party is - (a)an affiliate of, or an associate of, the entity or person; (b)in a joint venture with the entity or person; (c)a member of the senior management personnel of the entity or person; or (d)considered to be controlled by the entity or person, pursuant to section 3 of the Act	
Clause 11		Proposed that the Regulator adopts an approach regarding the Appointment, Duties and Responsibilities of Independent Auditors ('BID-10')	Section 401 of FIMA deals with appointment, duties and responsibilities of auditors. Clause 11 deals with auditors' tenure and its relation to independence.	

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
Clause 12	What is meant by the term 'full reporting structures' – concept unclear?	Proposed that the reporting structures as listed in the standard (i.e. Chairperson, principal officer) be clearly defined to avoid ambiguity that might arise out of using the term etc.		It is not necessary to define the term as clause 11 clearly gives example of what that structure refers to and what should it be comprised of in relation to. The term should therefore be read in the context of the statement it is used. Note however that the term Principal officer is defined under clause 1(3) definitions in the standard.
Clause 13	What would be regarded as a balance? (i.e. percentage)	Proposed that the composition of the Board be aligned to the provisions of Chapter 2 of NAMCODE	The term balance has reference to the composition requirements of the Board of directors as mentioned in section 10(c) of the Act. Clause 13 has however been deleted.	
Clause 15	Reference to board composition repetitive		Amended by deleting the first line of sentence.	
	What is the frequency of the training and development expectations of the Regulator? While the provisions of the clause are aligned to the expectations under NAMCODE, the expectation regarding frequency is lacking		Clause 22 provides for training and development as per the identified needs and gaps.	
Clause 16	Is the expectation that each Insurer / Reinsurer should set up independent board sub-committees or will board sub-committee at a Group Level be sufficient for purposes hereof.		Yes, the sub-committees must be present at an entity level for purposes of regulation. NAMFISA does not have oversight of other group or related	

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
			entities that are not licensed by it.	
Clause 17		Proposed that the mandatory minimum policies be properly documented and reflected in the standard to avoid inconsistencies in meeting the minimum regulatory expectations.		The Clause sets minimum policy list expected by the Regulator. However, it is the discretion of the entity to add more than on the list.
Clause 18	See comments under clause 9	Would propose that the provisions of independence and board tenure as provided for under NamCode C2-18 be adopted to ensure alignment with best practice. Alternatively, the any proposed limitation of tenure should be limited to Independent Directors only. Executive Directors not subject to limitations	The limitation in tenure applies to the Non-executive directors and the clause has been amended accordingly.	
Clause 19	Appears to be incomplete – only addresses the issue of vacancies to the board	Proposed that the provisions of NAMCODE as it relates to the Rules and Functions of the board be incorporated into the Standard	Clause has been removed , this will be resolved by the provisions of the Companies Act	
Clause 20		Proposed that the provisions of NAMCODE as it relates to the establishment of a framework for the delegation of authority (C2-17) be incorporated into the standards	The entity has to ensure there must be a delegation of authority in place already.	
Clause 24	What constitutes ‘occasional rotation’	Proposed that clear expectations surrounding the rotation of board member be prescribed – similarly as those prescribed for the external auditors.		Amended the clause so that entities should establish and implement this in accordance with their business mandate or

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
				principles. Note that Reference to 18.13, recommends rotation.
Standard INS.S.2.19 Clause 5	What is the purpose of drawing distinction between having 5 board members or more than 5, and why does the amount of independent nonexecutive board members change to majority if more than 5?	Clarity sought on rationale.	<p>It was to clarify the following:</p> <p>The independence requirement for there to be a 1/3 does not change, also the minimum is set in terms of FIM. Please also see section 394</p> <p>The majority should be non-executives in the case that it is more than 5. However, clause 5 has been deleted as it is no longer necessary. Section 10 and 394 of FIMA will apply</p>	
Standard INS.S.2.19 Clause 6(b)	The requirements for independence are too broad for the Namibian market and given the size of some insurers. "is not associated to an adviser or consultant to the insurer or reinsurer or a member of the insurer or reinsurer's senior management or a significant customer or supplier of the insurer/reinsurer or an association or related party or an any entity that receives significant contributions from the insurer/reinsurer; or within the preceding five (5) years, has not had any business relationship with the	Remove requirement		<p>The push to develop suitably qualified board members must start now and this cannot be a limitation in sourcing of new and more suitably qualified applicants.</p> <p>The standard has tried to be specific, for example set a criteria for independence and defines the term as opposed to just requiring independence and not setting the parameters, therefore it is not broad.</p>

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
	insurer/reinsurer (other than service as a director) for which the insurer/reinsurer has been required to make disclosure;”			
Standard INS.S.2.19 Clause 6(c)	Are independent directors prohibited from providing services to insurers where they act as board members? Are their businesses/firms also prohibited? “has no personal service contract(s) with the insurer/reinsurer, or a member of the insurer or reinsurer’s senior management;” The Standard relating to related Party transactions allows for such dealings provided that a conflict of interest is disclosed. The prohibition in this clause therefore seem to be in contradiction with the Standard pertaining to Related Party Transactions.	Clarity sought	The clause does not prohibit directors from providing services to an insurer, but when they do so there independence is impaired or compromised and will fail to meet the independence criteria set under this standard, whether disclosed or not. The requirement to disclose one interest does not remove the fact that your objectivity is compromised	
Standard INS.S.2.19 Clause 6(f)	This provision makes the concern noted under 6(b) much greater given the size and footprint of the Group. Also in contradiction with the Standard pertaining to Related Party Transactions which only require relationships with affiliates to be declared as a potential conflict of interest.		The clause does not prohibit a director from conducting business, it simply disqualifies such a related party when a position of independent director for purposes of this standard because of the affiliation and familiarity created.	
Standard INS.S.2.19 Clauses 6 and 8	Having independent board members, which are different for all companies in a group is extremely inefficient and not	Exemption should be provided to independent directors that serve on the board of more than one		The standard does not prohibit directors of holding companies from sitting on subsidiaries but

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	desirable. For continuity and expertise and to meet the fit and proper requirement, this requirement would be difficult to comply with. The definition of "independent director" needs to be less stringent.	subsidiary under the same holding company		under this standard they will not be seen as independent Conflict of interest would arise if one board member serves on both boards because one cannot make decisions that contradict each other whilst serving on the different boards.
Standard INS.S.19 Clause 8 and Clause 10 (4) and clause 10 (5)	It is very useful to have directors of the subsidiaries as directors of the holding company as they then have knowledge of what is going on in the subsidiary companies and can then advise the other directors on these matters.	Removal of clause 8 and clauses 10(4) and 10(5). The other requirements would mean that the directors would still be independent of the different companies in the group.		The standard does not prohibit directors of holding companies from sitting on subsidiaries but under this standard they will not constitute part of 1/3 independent directors requirement under section 394 and 10 of FIMA nor seen as independent to avoid or reduce the risk of familiarity that may result in conflicting interest. Note; clause 10 is deleted as clause 8 sufficiently covers the matter.
Standard INS.S.19 Clause 8 and Clause 10 (4) and clause 10 (5)	Similarly due to a shortage of skills, many of our directors sit on boards of other entities within the broader group in different jurisdictions. They are independent of management but are able to bring their industry knowledge and bearing to assist all the different entities.	Removal of clause 8 and clauses 10(4) and 10(5). The other requirements would mean that the directors would still be independent of the different companies in the group.		The standard does not prohibit directors of holding companies from sitting on subsidiaries but under this standard they will not constitute part of 1/3 independent directors requirement under section 394 and 10 of FIMA nor seen as independent to avoid or reduce the risk of familiarity that may result in conflicting interest.

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				Note; clause 10 is deleted as clause 8 sufficiently covers the matter.
Standard INS.S.2.19 Clause 9	No distinction made whether this paragraph refers to all directors or only independent directors.	Reword: To ensure independence, no independent director shall serve for a consecutive period of more than 6 years.	The clause has been amended accordingly, for the limitation in tenure to apply to the Non-executive directors.	
Standard INS.S.2.19 Clause 13	What does “balance” mean. This clause is contradictory to clause 5 who dictates the make up of the board of directors already.	Clarification is sought.	The term “balance” has reference to the composition requirements of the Board of directors as mentioned in section 10(c) of the Act and used in that respect. However, Clause 13 has been deleted	
Standard INS.S.2.19 Clause 14	What is the definition of “Senior Management”?	Clarification is sought.	Inserted definition of “senior managers “ under clause 1(1)(e) definitions.	
Standard INS.S.2.19 Clause 16	It should in the discretion of the board of the insurer to decide which committees it requires and this should not be dictated.	Amend to make this a recommendation as required.		Section 398 FIMA already makes provision for entities to establish more committees in addition to audit committee. The clause therefore lists minimum committees that an insurer needs in place and the functions must be carried out by the entity, whether or not this is done by a committee or by nominated persons. The insurer can have more committees as per their need in addition to the list

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Standard INS.S.2.19 Clause 18	Is the term limited for all directors or only independent directors? This will be a concern where the PO/Executive have been a board member for 6 years and is forced to step down. Is this in addition to clause 9 and clause 10.2. It seems contradictory.	Amend to refer to independent directors. Clarification is sought. Alignment with Namcode (9 years)	The limitation in tenure applies to the Non-executive directors and the clause has been amended accordingly.	
Section 5(1)	This Section requires the board of a registered insurer to consist of a minimum of 5 directors of which a third shall be independent nonexecutive directors. In addition, it sets out what independence entails in detail as well as additional requirements for such appointments, including a limitation on the period of appointment	Consider if any deviation applications can be made where a board's composition differs from the stipulations in the standards		The requirement is set in terms of section 10 of FIMA, but please see the exemption requirement in terms of section 53 of the Namfisa Act and section 393 FIMA where applicable.
Section 6(c)	Personal Service Contract - does this exclude where a director has a policy with insurer?	Kindly provide clarity around Personal Service Contracts.	The service contract, means a contract a person enters into to provide services of any kind to a registered insurer, i.e contract to provide IT solutions. It generally would exclude insurance policies or financial product that a director may hold as an ordinary customer.	
Section 14	There is no definition for "senior management "noted in the Act or Standards.	Include a definition of "Senior Management" to avoid any misinterpretation.	The term has been defined under clause 1(1)(e) of the standard.	
Section 16	In terms of section 6 of the Standard, a registered insurer's Board should set up the committees necessary for the	We suggest that it would be prudent to elaborate on the composition and responsibilities of these	It is expected that this exercise must be done by the Board who should	

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	performance of the following functions but not limited to – (1) Investment; (2) risk management; (3) asset management; (4) policyholders protection; (5) ethics; and (6) nomination and remuneration. There are no further elaboration in this specific Standard on the composition or responsibilities of these committees.	committees. Adequate time will be required for changes to committees and policies to be implemented. Please elaborate on anticipated timelines	draw up the requirements suited to the entity. Added clause 22 that provides further details in terms of on what the terms of reference, compositions, objectives, purpose etc.	
Section 18	In terms of section 9 of INS S.2.19, the requirement is that no director shall serve for a consecutive period of more than 6 years and in terms section 18 the term of a board member cannot exceed 6 years. There is no mention of the calculation of the 6 years in Section 18, any cooling-off periods or reappointment of directors.	Kindly clarify whether a cooling-off period will apply after 6 years of being a director or if no director may be appointed after serving on the board for a 6 year period. Will the computation of the six years include the years that are prior to the effective date of this standard?	Amended to include a cooling off period of 3 years to apply after a non-executive director has served the maximum consecutive term which is increased from 6 to 9 years.	
Standard No. INS.S.2.19 at 5(1) (a) and (b)	Directors of which 1/3rd must be independent and non-executive, but if more 5 then the majority needs to be independent and non-executive	It is proposed that the regulator provide clarity as to the rationale behind the proposed drafting and further it is proposed that irrespective of the number of directors comprising the board the ratio of 1/3rd be applied for purposes of consistency?	The clause has been deleted as it is no longer necessary. Section 10 and s394 of FIMA will apply Yes 1/3 requirement will apply in terms of section 394	
Standard No. INS.2.19 at 9	no Director may serve for longer than 6 years	It is proposed that this restriction should apply only to non-executive Directors. Executive directors are employees proper and in certain instances are deemed to have contracts of employment.	Yes, the restriction applies to non-executives, the tenure is increased to a 9 years with a 3 year cooling off period.	

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		Therefore, the provision ought not to refer to all Directors.		
Standard No. INS.2.19 at 10 (5)	You are not independent if serving on more than 1 Board within a group.	Namfisa to confirm whether or not exemption can be sought in this regard or whether or not in the case of smaller entities the apply or explain principle of the NamCode will suffice.		Refer to section 53 of the Namfisa Act which talks to applications for exemptions and the circumstances thereof, additionally section 393 may provide for exceptions to some requirements but not all. Note further the standard does not prohibit directors of holding companies from sitting on subsidiaries but under this standard they will not be seen as independent
Standard No. INS.2.19 at 14	indicate that Senior management of the registered insurer or reinsurer, with responsibilities relating to the business in Namibia, must be a Namibian citizen residing in Namibia or foreigner ordinarily resident in Namibia	In the event where the company has a registered office in South Africa and a Manager is needed to manage the office in South Africa, can Namfisa provide clarity.	This entity will not be in our regulatory sphere. Entity should comply with the prudential requirements of the authority in SA.	
Standard No. INS.2.19 at 18	The term of service for board members shall be limited to 6 years fails to take into account the executive directors of insurers	It is proposed that this provision exclude executive directors	The tenure of service is amended to 9 years and applies to non-executives. Reference to be corrected throughout the document.	
INS.S.2.19	Definition of Independence Means the absence of interest, position, association or relationship, which, when judged from a perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making.	In practice, the key question to be answered considering this definition would be whether or not, a director has an interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third	Comment is noted. The standard sets forth the requirements that director's independence is based on for purposes on this standard and that includes the factors	

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		party, is likely to influence unduly or cause bias in decision-making in the best interests of the company.	relating to interest, position, and associations as mentioned etc. .	
	Clause 9 To ensure independence, no director shall serve for a consecutive period of more than 6 years.	<p>The introduction of a sub-minimum of nonexecutive directors already introduces the level of independence and objectivity that is required on a Board. We therefore seek clarity on the intention of imposing a time frame of 6 years.</p> <p>Research shows that the over-emphasis of requirements relating to independence may lead to the under-valuation of industry skill and experience. Further, the continued appointment of a director who is experienced in the matter of a company's business may be more useful and have a far greater positive impact on the company's sustainability than a newcomer who may be appointed solely to comply with a regulatory requirement. Research and best practice support this view</p> <p>Additionally, there is a shortage of qualified candidates in the industry specifically with regards to finding people with financial and non-life insurance knowledge, skills, and experience.</p> <p>There are often conflicts of interest, as all other non-life insurers must</p>	The clause has been amended accordingly for the limitation in tenure to apply to the Non-executive directors only, Additionally, the tenure for non-executive directors is changed to 9 years with a cooling off period of 3 years.	

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		<p>meet the same criteria and the directors serve on boards of competing non-life insurers.</p> <p>For the reasons above, we propose that the requirement of a 6-year tenure for a director be removed.</p>		
	<p>Grammatical</p> <ul style="list-style-type: none"> • Clause 6(b), typo. “or an any entity” • Clause 17(1), there is an “a” missing in the sentence. • Clause 18, “s” missing at the end of members. • Clause 1(c), spacing error , “Non-executive director”. • Clause 1(c), missing dashes in day to day (day-to-day) • Clause 1(d), repetition of the word “insurer”. 	Recommended corrections.	Correction done.	
INS.S.2.19 Definitions 1 (1) (c)	<p>“Non- Executive Director” means an individual not involved in the day to day management of the insurer or reinsurer and is not a salaried employee of an insurer and reinsurer or its subsidiaries.</p>	Reword, this section refers to “an” insurer. Change the word “an” in the sentence to “the”	The words are inserted accordingly.	
INS.S.2.19 Independence 5 (1) (a) & (b)	<p>(1) The board of a registered insurer or reinsurer shall pursuant to section 10(1) (c) (ii) –</p> <p>(a) consist of a minimum of 5 directors of which a third shall be independent non-executive directors; and</p> <p>(b) where the board comprises of more than 5 directors, the majority shall be non-executive directors.</p>	Maybe include in the last sentence “shall be independent non-executive directors?”	The words are inserted accordingly.	

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INS S 2-19 (9) & (11)	<p>To ensure independence, no director shall serve for a consecutive period of more than 5 years.</p> <p>An independent Auditor shall be engaged for a maximum duration of six (6) years beyond which he/they are no longer considered independent.</p>	<p>The limitation of 6 years is rather short in nature, considering the small pool of skilled and experienced auditors and directors to choose from, continuity and historic knowledge on the board, and the status of the independent state of mind rather than the time of service, acknowledged by modern codes of good corporate governance in relation to the concept of independence, especially in consideration of a risk, rather than a rules based approached endorsed by the FIMA.</p> <p>Furthermore, this imposes this restriction on "all" directors. This will therefore include the Managing Director. This may pose a significant challenge for institutions to find executive officers also serving as (managing) directors on boards</p>		<p>The NAMCODE may serve as good point of reference, but essentially it is a guiding document and not law. This makes enforcement difficult.</p> <p>The tenure for non-executive directors is changed to 9 years with a cooling off period of 3 years. In our view there is a direct link between objectivity and length of service due to familiarity risk.</p> <p>Auditors' tenure has been amended to 6 years with a 3 year cooling off period.</p>
INS S 2-19 (10)(5)	10. The following instance may render the director not to be independent: (5) Where a director serves on more than one board within a group	Please review this as in many instances an independent director serves on more than one board within a Group due to the knowledge and experience within a certain industry.		The standard does not prohibit directors of holding companies from sitting on subsidiaries but under this standard they will not constitute part of 1/3 independent directors requirement under section 394 and 10 of FIMA nor seen as independent to avoid or reduce the risk of familiarity that may result in conflicting interest.

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
INS.S.2-19 Key Person (1,(b))	Include definition of what would constitute a person to qualify as a key person	For the avoidance of doubt and to provide certainty, kindly include a definition for the term "key person"	Definition amended refer to clause 1(1)(b).	.
INS S 2-19 (19)	The board must make sure that the filling of interim vacancies should be done by the Board of Directors or the members at an AGM, and if the next AGM is far for the person with the next most votes to be elected, particularly with insurers/reinsurers.	The comment is vague. Please clarify what the intention of this is.	Clause has been removed , this will be resolved by the provisions of the Companies Act	
GEN. S. 10-18 (4) Functionary	Include definition of what a functionary is	A definition of this term used to be included in the draft 2015-version of this standard. The definition has also not been included in the FIMA itself. As such, kindly include a definition again in the standard itself, or direct the industry to where the term "functionary" is now defined for purposes of the interpretation of the FIMA.	The word has been defined under clause 1 of GEN.S.10.18 to mean a director, member of the board, principal officer, other officer and employee of a financial institution or financial intermediary;	
INS.S.2.19 Clause 5 (1) (b) page 3	5 (1)(b) If more than 5 members, majority must be Non-exec The distinction between Non-exec and Independent seems to get lost here.	5 (1)(b) If more than 5 members, majority must be independent Non-exec	Clause 5 has been deleted as it is no longer necessary. Section 10 and 394 of FIMA will apply.	
INS.S.2.19 Clause 18 page 5	The term of service for board member shall be limited to 6 years. Question: With this Std, is the 6 years from date of commencement of the Act or from date of appointment most recent appointment or date of first appointment to the board?		The tenure of service period for non-executive directors has been amended from 6 to 9 years Existing agreements will be dealt with in terms of section 467, that means, appointments made	

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			before FIMA for a certain period continues for the remaining period into FIMA but new appointments post will have to comply with new provisions.	
Annexure	Clarify expiry date	What will period for certificate be?	Expires on 31 March of each year or such other period as prescribed by Namfisa. (section 59(7) FIMA.	
INS.S.2.20 FORM OF REGISTRATION CERTIFICATE FOR AN INSURANCE BROKER				
INS.S.2.20	Grammar Remove punctuation after section 59(3) in last sentence on Page 8.	Recommended corrections.	Amended all editorial and gramma errors	
INS.S 2.13 8. The Lloyd's representative must submit to NAMFISA, annually, in accordance with clause 12 - (a) a return in the form of Schedule 2 Annex to this Standard, showing the assets specified in Schedule 1 that	Section 8 refers to a review by the auditor. The relevant schedule is however called the "form of the audited annual return." In auditing standards, an audit and a review are two distinct engagements. We recommend that the name of the Schedule be aligned with the wording in the section.	Schedule 2 Form of audited reviewed annual return pursuant to clause 8 (b) of Standard No. INS.S. 2.13.	Deleted wording to only reflect correct process – "reviewed". Removed all reference to the word "audit "in the document. "Form of reviewed annual return pursuant to clause 8 (b) of Standard No. INS.S. 2.13."	

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<p>are held by Lloyd's; and (b) after the end of each calendar year, a return in the form of Schedule 2 to this Standard, reviewed by an auditor, in respect of the trust account as at the last day of the immediately preceding year, including the assets specified in Schedule 1 that are held by Lloyds as of that date. Schedule 2 Form of audited annual return pursuant to clause 8 (b) of Standard No. INS.S. 2.13</p>				
<p>10. (c) the latest available International Standard on Assurance</p>	<p>Reports on Controls at a Service Organization required for Lloyd's insurance transactions are usually done No. 3402, Assurance Report on Controls at a Service Organization in</p>	<p>Reports on Controls at a Service Organization required for Lloyd's insurance transactions are usually done by Lloyd's auditors and not the auditors of the Lloyds representatives. At this point, there</p>	<p>Deleted the clause as the Lloyds transaction processing is not done in Namibia and because before each premium is placed in the Lloyds</p>	

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Engagements (ISAE)	respect of Lloyd's insurance transaction processing services.	<p>are no Lloyds insurance transaction processing services in Namibia.</p> <p>We would like to highlight that these reports are not currently being issued by Namibian auditors for the above-mentioned reason. The reports issued by the Lloyds auditor can however be obtained by the Lloyds representative in Namibia and provided to NAMFISA. It is important to note that the reports are often issued with limitations on distribution. The Lloyds representative would therefore need to obtain permission from the Lloyds auditors to provide these reports to NAMFISA.</p>	<p>market, it is subject to Namfisa Approval.</p> <p>Also deleted of clause 10(b).</p>	
INS.S.2.19 Section 9. To ensure independence of director shall serve for a consecutive period of more than 6 years.	<p>Two codes of corporate governance are in use in Namibia. These are the King code and the NAMCODE ("the codes").</p> <p>The King code is internationally recognised as the best practice for corporate governance and the NAMCODE was drafted based on the King code and adapted for Namibian legislation.</p> <p>Because of the complexity of independence risks in corporate governance structures, providing tenure for directors, trustees, etc. is unlikely to sufficiently mitigate the risk.</p> <p>Extract from the NAMCODE: "An independent director should be</p>	<p>To ensure independence, the composition of the Board of Trustees should comply with the requirements of the code of corporate governance prescribed by the Namibian Stock Exchange for listed entities. No director shall serve for a consecutive period of more than 6 years.</p>		<p>The NAMCODE may serve as good point of reference, but essentially it is a guiding document and not law. This makes enforcement difficult.</p> <p>The tenure is now proposed to be increased to 9 years for non-executive directors with a cooling off period of 3 years. In our view there is a direct link between objectivity and length of service due to familiarity risk.</p>

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	<p>independent in character and judgement and there should be no relationships or circumstances which are likely to affect or could appear to affect this independence.</p> <p>Independence is the absence of undue influence and bias which can be affected by the intensity of the relationship between the director and the company rather than any particular fact such as length of service or age.”</p> <p>Another important consideration when discussing tenure and other independence considerations is continuity.</p> <p>Extract from the NAMCODE: “A balance should be sought between continuity in board membership, subject to performance and eligibility for re-election as well as considerations of independence and the sourcing of new ideas through introducing new board members.”</p> <p>To balance continuity, independence, and eligibility while creating room for new directors and new ideas, the codes provide for a certain portion of directors to be non-executive and a certain portion of those non-executive directors to be independent. In this way, you ensure that the board as a whole makes decisions free from conflicts of interest without impacting continuity and qualification.</p> <p>Simply creating a limit on the number of consecutive years any director or</p>			

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	<p>trustee can serve creates an issue with continuity and eligibility, without appropriately mitigating the independence risk.</p> <p>BID 1 requires that non-executive directors of banks serve for no longer than 10 years. Note that this only applies to non-executive directors. In addition, the BID provides for a “cooling off” period after which that person may be reappointed. The BID goes further to prescribe the minimum number of directors who should be independent, a minimum number of directors who should be non-executive, and that the chairperson of the Board be an independent non-executive director. These requirements take into account factors such as continuity and ensuring the board is suitably qualified.</p> <p>We recommend referring to the NAMCODE or King Code for the composition of the board of trustees rather than specifying independence requirements within the standards themselves. In this way, the standards issued by NAMFISA remain relevant and world-class.</p> <p>See section 18 of the NAMCODE for detail on how the board should be constituted to mitigate independence risks while taking all other factors into consideration.</p>			

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<p>Section 11 An independent Auditor shall be engaged for a maximum duration of six (5) years beyond which he/they are no longer considered independent.</p>	<p>Auditor rotation as a form of safeguard against independence risks has been extensively researched and debated globally as it is a very complex issue. Two factors are key to the discussion: 1. Whether to require rotation of the audit firm, or the assigned audit engagement partner, and 2. The duration that would be considered to create an independence risk.</p> <p>In Namibia, the PAAB, and ICAN each endorse and are bound by the IESBA International Code of Ethics for Professional Accountants (previously known as the IFAC Code of Ethics) (the “Code”), and therefore all accountants and auditors registered with the PAAB are required to comply with the Code, including provisions related to audit partner rotation. The Code deals with the question of audit rotation and long association as part of its consideration of auditor independence and requires that for the audits of Public Interest Entities (PIEs) the audit partner, the engagement quality control reviewer (EQCR) and any other key audit partner may not serve for longer than 7 cumulative years and must serve a “cooling off” period during which that person does not act in that capacity for the audit client. (5 consecutive years for the audit partner, 3 consecutive years for the EQCR, and</p>	<p>An independent Auditor shall comply with the partner rotation requirements prescribed by the Code of Ethics issued by the International Ethics Standards Board for Accountants. shall be engaged for a maximum duration of six (6) beyond which he/ they are no longer considered independent.</p>		<p>Clause 11 has been replaced by clause 9 to provide for tenure of both auditor natural person and firm appointment and also subjecting the rotation of partner thereof to the PAAB code of ethics as recommended by ICAN. The maximum 6 year service tenure and the waiting period of 3 years before reappointment is prescribed..</p>

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	<p>2 consecutive years for any other key audit partner in which they may not be involved in any aspect of the client previously served).</p> <p>The Code does not mandate audit firm rotation, but only audit partner rotation. This approach or variations thereof is followed in various jurisdictions and we note that, although the Public Company Accounting Oversight Board (PCAOB) of the USA does not formally subscribe to the Code, practitioners regulated by the PCAOB are subject to mandatory partner (but not firm) rotation.</p> <p>We recommend that the standards be aligned to international standards in terms of duration and to whom the rotation applies.</p> <p>For further information, please find attached a position paper issued by ICAN in January 2020.</p>			