

Breakdown – Industry Comments (April 2022 to May 2022)

Chapter – 7 Medical Aid Funds

STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
MAF.S.7.17 - Manner and form of application for cancellation or variation of registration of a medical aid fund				
Clause 2	<p>2. This Standard applies to all registered medical aid funds (hereinafter referred to as “applicants”) applying for cancellation of <u>its</u> registration or for the variation of the conditions subject to which registration was granted, pursuant to section 331 of the Act.</p> <p>Incorrect grammar.</p>	<p><u>Amend Clause 2 as follows:</u></p> <p>This Standard applies to all registered medical aid funds (hereinafter referred to as “applicants”) applying for cancellation of registration or for the variation of the conditions subject to which registration was granted, pursuant to section 331 of the Act.</p> <p>“Its” deleted from sentence.</p>	<p>Accepted – delete the suggested word. Amended</p>	
Clause 6	<p>6. The applicant must, before filing the notice in the newspapers in terms of section 331(3) of the Act and clause 4(c), notify NAMFISA of the proposed intention to cancel the registration or to vary the conditions for which it was registered.</p> <p>Clarification of clause 4(c) required.</p>	<p><u>Amend Clause 6 as follows:</u></p> <p>The applicant must, before filing the notice in the newspapers in terms of section 331(3) of the Act and clause 4(c) <u>of this Standard</u>, notify NAMFISA of the proposed intention to cancel the registration or to vary the conditions for which it was registered.</p> <p><u>Insert “of this Standard” for clarification.</u></p>	<p>Accepted – to make reference to 4(c) of this standard. Amended.</p>	
Clause 7	<p>7. The applicant may, after NAMFISA has considered all objections received due to the published notice <u>referred</u> to in section 331(3) of the Act and <u>clause 4(c)</u>, lodge an application with NAMFISA.</p>	<p><u>Amend Clause 7 as follows:</u></p> <p>The applicant may, after NAMFISA has considered all objections received due to the published notice <u>referred</u> to in section 331(3) of the Act and <u>clause 4(c) of this Standard</u>, lodge an application with NAMFISA.</p>	<p>Accepted to fix drafting issues. Amended.</p>	

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	Clarification of clause 4(c) required. Spelling error.	Insert “of this Standard” for clarification. Spelling error corrected.		
Clause 8	<p>8. An applicant must further specify the measures that the applicant shall take to discharge all its obligations, including contractual obligations and <u>broker agreements</u>, and meet all of its liabilities.</p> <p>The terminology, “broker agreements,” is not specific enough and is inconsistent with the Act, which uses the term “medical aid fund broker”. The term defined in FIMA in section 321 is “medical aid fund broker.” However, “contractual obligations” include all obligations in agreements, including medical aid fund broker agreements.</p>	<p><u>Amend Clause 8 as follows:</u></p> <p>An applicant must further specify the measures that the applicant shall take to discharge all its obligations, including contractual obligations, and meet all of its liabilities.</p> <p>Delete “and broker agreements”. Superfluous.</p>	Accepted to delete. Broker agreements as it forms part of contractual agreements; Amended.	
Clause 13	<p>13. An application for cancellation of registration or for variation of the conditions subject to which it was registered must be completed in hard copies, signed by the principal officer of the registered fund or a duly authorised representative of the applicant, and submitted manually and electronically to NAMFISA together with supporting documents.</p> <p>The Clause refers to “registered fund”. This standard applies to registered <u>medical aid</u> funds. Also, the term that must be used according to Clause 2 is “applicants”. Grammar can also be enhanced.</p>	<p><u>Amend Clause 13 as follows:</u></p> <p>An application for cancellation of registration or for variation of the conditions subject to which it was registered must be completed, signed by the principal officer of the <u>applicant</u> or a duly authorised representative of the applicant, and submitted in hard copy and electronically to NAMFISA together with supporting documents.</p> <p>Wording of Clause aligned with statutory provision. Grammar enhanced.</p>	Accepted – electronic submissions mandatory; Amended.	

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MAF.S.7.18 - Application for registration of a medical aid fund broker				
Clause 5(e)	<p>5. In addition to the application form/s referred to in clause 4, an application for registration must be accompanied by –</p> <p>(e) the requirements contained in Standards GEN.S.10.2 (fit and proper requirements) and GEN.S.10.8 (Independence requirements), and</p> <p>The applicant should be required to submit documentary evidence showing how the requirements contained in the Standards are met and not a (certified) copy of the requirements themselves.</p>	<p>Amend Subclause 5(e) as follows:</p> <p>(e) supporting documentary evidence that the applicant meets the requirements contained in Standards GEN.S.10.2 (fit and proper requirements) and GEN.S.10.8 (Independence requirements), and</p> <p>The words “supporting documentary evidence that the applicant meets” inserted before the words “the requirements”.</p>	Amended.	
Annexure B Item 11.B. Attachments Principal Officer and Board	<p>B. Principal officer and Board</p> <p>(i) Abridged or shortened CV</p> <p>(ii) Certified copies of Highest Educational Qualifications</p> <p>(iii) Affidavit and Fit and Proper Questionnaire signed in-front of Commissioner of Oath</p> <p>(iv) Certified Copy of ID/Valid Passport</p> <p>(v) Residence Permit or Work Permit (if not a Namibian citizen)</p>	<p>Amend Annexure B Item 11.B. by adding</p> <p>Subclause (vii):</p> <p>(vii) Police clearance certificate</p> <p>Aligned with requirements for individual brokers in Annexure A.</p>	Amended accordingly	

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	(vi) Income tax certificate Not aligned with requirements for individual brokers in Annexure A.			
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MAF.S.7.20 - Application for cancellation or variation of registration of a medical aid fund broker				
(2) Words and phrases defined in the Act have the same meaning in this Standard unless the context indicates otherwise, including without limitation, the following- (a) as defined in section 1 of the Act – (i) auditor; (ii) NAMFISA; (iii) principal officer; (iv) valuator;	<u>Amend Subclause 1(2) as follows:</u> Amend Subclause 1(2) as follows: (2) Words and phrases defined in the Act have the same meaning in this Standard unless the context indicates otherwise, including without limitation, the following- (a) as defined in section 1 of the Act – (i) auditor; (ii) board (iii) NAMFISA; (iv) principal officer; and (v) valuator; (b) as defined in section 321 of the Act – (i) fund; and (ii) medical aid fund broker. Include the definition of “board” as defined in section 1 of FIMA. Delete the definition of “board” as defined in section 321 of FIMA.		Amended.	

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<p>(b) as defined in section 321 of the Act – (i) board; (ii) fund; and (iii) medical aid fund broker.</p> <p>This Standard deals with medical aid fund brokers. The reference to “board” here is inappropriate as it refers to the definition of “board” with regard to section 321 of FIMA, which defines it as the board of trustees of a medical aid fund. “Board” as defined in section 1 of FIMA is more appropriate in the context of a medical aid fund broker.</p>				
<p>Clause 8</p>	<p>8. An applicant must further specify the measures that the applicant shall take to discharge all its obligations, including contractual</p>	<p><u>Amend Clause 8 as follows:</u> An applicant must further specify the measures that the applicant shall take to discharge all its obligations, including</p>	<p>Amended.</p>	

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	<p>obligations and broker agreements, and meet all of its liabilities.</p> <p>This Standard deals only with medical aid fund brokers, not other types of brokers. The defined term in section 321 of FIMA is “medical aid fund broker”. The statutory defined term should be used. However, “contractual obligations” include all obligations in agreements, including medical aid fund broker agreements.</p>	<p>contractual obligations, and meet all of its liabilities.</p> <p>Delete “and broker agreements”. Superfluous.</p>		
Schedule 2 Form B	<p>Form B</p> <p>Section 333 read with the definition of “entity” in section 1 of FIMA permits a medical aid fund broker to be structured as a close corporation. Close corporations, for example, have members and not directors or trustees. Form B must make provision for all types of entities, including close corporations. Furthermore, there is potential for confusion when filling out Part 4 of Form B: it is the details of the board of the medical aid fund broker, not the board of the medical aid fund, that must be supplied.</p>	<p>Amend Form B by making provision also for</p> <p>other entities such as close corporations. and</p> <p>Amend the heading of Part 4 of Form B</p> <p>Schedule 2 to read: “Details of Board of Medical Aid Fund Broker”</p>	Amended accordingly	
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MAF.S.7.21 - Governance of medical aid funds				
	MAF.S.7.21 should be reconsidered in its entirety. Instead of the detailed stipulations in this Standard, which includes selective principles and/or governance	Replace all the Clauses of this Standard with the following Clauses (supported by a section containing relevant definitions):		Declined – there is an attempt here to codify a Governance standard that speaks across all sectors. MAF’s are allowed to

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	<p>practices from the NamCode (often not enforceable), boards of medical aid funds should be required to, establish and maintain a system of corporate governance that is adequate, effective and consistent with the nature, complexities and risks inherent in the business of the medical aid funds industry, in general, and the activities, operations and business of a specific medical aid fund. This will create the necessary flexibility for medical aid funds, in particular, to comply with the NamCode as well as any other reputable (international) code/framework of corporate governance. This also eliminates the risk of a particular principle or practice entrenched in legislation losing recognition as the best practice for a specific governance area, whilst medical aid funds are forced to comply with it until the legislation is changed. Frequent changes of legislation will create an unnecessary burden (human resource and financial) on NAMFISA, which should be avoided. An inflexible approach, imposes an unnecessary compliance burden, especially on small medical aid funds, which not only has cost implications for these fund, but which will impact these funds' sustainability. This will not be in the interest of the beneficiaries of those funds and the medical fund industry, in general, in Namibia</p>	<p>(a) The board must establish and maintain a system of corporate governance that is adequate, effective and consistent with the nature, complexities and risks inherent in the business of the medical fund industry and the activities, operations and business of the relevant medical aid fund.</p> <p>(b) The system of corporate governance contemplated in Subclause (a) must consider applicable corporate governance codes in Namibia as well as appropriate other corporate governance frameworks.</p>		<p>subscribe to the NAMCODE and others. This standard sets out the minimum regulatory governance requirements. The provision is therefore consistent with NAMCODE. Without specific concerns outlined, it is difficult to understand which section of this provision is not implementable.</p>
Subclause 1(1)(b)	1. (1) In this Standard –(b) “chairperson” means a trustee elected or designated <u>by trustees</u> as the chairperson of the board of trustees in	<u>Amend Subclause 1(1)(b) as follows:</u>		Declined – please refer to section 321 of the Act. Section 321 has a definition for “fund”.

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	<p>terms of the rules of the <u>fund</u>; A chairperson of the board of trustees of a medical aid fund may ,for example, be appointed by the relevant appointing authority (e.g., employer group) in terms of the rules of the fund. The definition of “chairperson” should provide for such other possibilities as well.</p> <p>This Standard applies only to medical aid funds. The term “medical aid fund” should, therefore, be used throughout the Standard.</p>	<p>(b) “chairperson” means a trustee elected or designated as the chairperson of the board of trustees in terms of the rules of the <u>medical aid</u> fun.</p> <p>Delete “by trustees” and insert “medical aid” before “fund”. Aligned with the defined terms in FIMA and the de facto situation in the medical aid funds’ industry.</p>		
Subclause 1(1)(c)	<p>1. (1) In this Standard –</p> <p>(c) “conflict of interest” means a situation which the board, principal officer, employees or any other officers, auditor, valuator, fund administrator or any other service providers encounter, while rendering a financial service to the fund or its members if that situation –</p> <p>(i) impairs the objectivity of the board, principal officer, employees or any other officers, auditor, valuator, fund administrator or any other service providers in any aspect while serving on the board or rendering a financial service to the fund or the members of the fund; or</p> <p>employee or any other officers, auditor, valuator, fund administrator or any other board or rendering a financial service to the fund or its members in an unbiased and fair manner or from acting in the best interest of the fund or the members of the fund;</p> <p>This definition should also be considered with the definition of a</p>	<p><u>Amend Subclause 1(1)(c) as follows:</u></p> <p>(c) A conflict of interest, used in relation to members of the board of trustees and its committees, occurs when there is a direct or indirect conflict, in fact or in appearance, between the interests of such member and that of the medical aid fund. It applies to financial, economic and other interests in any opportunity from which the medical aid fund may benefit, as well as use of the property of the medical aid fund, including information. It also applies to the member's related parties holding such interests.</p> <p>A definition for a “related party” can also be included, should the definition above be accepted.</p> <p>Should this Clause be retained, amend the definition as proposed</p>		<p>Declined- medical aid fund brokers are not similar to agents and are two separate entities, and thus the factor of conflict of interest falls away.</p> <p>Definition must not be limited to trustees only, keep it as wide as possible.</p>

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	<p>“conflict of interest” contained in “Part 1: Preliminary” of the draft Standards published in December 2021, which provides as follows: “conflict of interest” means a situation which a financial institution or financial intermediary encounters, while rendering a financial service to a client, if that situation: (i) influences the objectivity of the financial institution or financial intermediary in any aspect of rendering the</p> <p>financial service to the client; or</p> <p>(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. Furthermore, this definition should be considered with the definitions of a “financial service,” a “financial product” and “financial advice”. A medical aid fund provides a financial service (as defined) to its members. Employees of a medical aid fund could provide a financial service to potential members of the medical aid fund as agents of that fund. Medical aid fund brokers will provide financial services to existing members and potential members of medical aid funds. Financial advice excludes factual advice provided as defined in section 1(2) of FIMA as well as advice provided by the board of trustees or any board member of a medical aid fund (which includes the Principal Officer) to the members of that fund, on health care benefits</p>	<p>as it is more appropriate for the medical aid fund industry.</p> <p>The definition of “conflict of interest” contained in “Part 1: Preliminary” of the draft Standards must also be reconsidered in the context of medical aid funds.</p>		

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	<p>enjoyed or to be enjoyed by those members and also advice by, amongst others, an auditor or actuary, where the advice is for tax purposes or ancillary to some other advice that is not financial advice. Trustees do not provide financial services to the medical aid fund.</p> <p>It should also be considered that a medical aid fund must act in the <i>collective interest</i> of all the members of the fund at all times.</p> <p>Furthermore, it should be recognised that employees of a medical aid fund who act as agents for the fund (to be registered as medical aid fund brokers in future) will by their nature be biased towards the interests of the relevant medical aid fund when selling membership of that fund to non-members of the fund. Independent medical aid fund brokers must, however, act in the best interest of their clients.</p> <p>Medical aid funds generally have Conflict of Interest Policies in place to manage conflict of interest situations affecting board and committee members and employees. Conflicts of interests of employees are also generally regulated by their employment contracts and other workplace policies.</p> <p>It should be noted that persons such as employees (excluding the Principal Officer), the administrator, the auditor, the valuator and service providers cannot serve on the board of trustees as contemplated in paragraph (i) of the</p>			

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	<p>definition of “conflict of interest” in the subclause under consideration.</p> <p>Therefore, the definition of “conflict of interest” in MAF.S.7.21 is neither clear nor aligned with the provisions of FIMA, other Standards in terms of FIMA and the practical realities of conducting the business of a medical aid fund. Sections 343 and 395(2) of FIMA regulate conflicts of interests on the board of trustees, which provisions suffice. Medical aid funds are best positioned to manage conflict of interest situations, which arise at the funds</p>			
Sub-clause 4(d)	<p>4. The Board must –</p> <p>(d) be responsible for developing the funds ethical standards and such standards must inform all fund practices, procedures, policies and conduct;</p> <p>The proposed wording of the Subclause is inappropriate and confusing. This is good practice and advisable for a board to do, but should not be legislated.</p> <p>Refer further to the proposal by - in the covering letter and above that the board’s responsibility should be to establish a suitable system of corporate governance for the medical aid fund. This would include the management of the ethics of the medical aid fund.</p>	<p>Delete Subclause 4(d).</p> <p>The provision is unnecessary in principle and in law. Alternatively, amend the wording of Subclause 4(d) as follows:</p> <p>(d) ensure the development of ethical standards for the fund.</p>		<p>Declined – this is to encourage this and from an entity point of view, it would be in your interest to put this into practice. The discretion with regards to ethical standards is left to the fund/board, and therefore not legislated.</p>
Sub-clause 4(e)	4. The Board must consider–the effect of its decisions on all key stakeholders,	Delete Subclause 4(e).		Declined- this is necessary to codify such

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	<p>the most notable being the members of the fund;</p> <p>The proposed wording of the Subclause is inappropriate. It is a recognised corporate governance standard that governing bodies (such as boards of trustees) should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time. This should not be legislated.</p> <p>Refer further to the proposal by in the covering letter and above that the board's responsibility should be to establish a suitable system of corporate governance for the medical aid fund.</p>	<p>The provision is unnecessary in principle and in law.</p>		<p>standards and to ensure further protection of clients in the case of entities that are not complying.</p>
Sub-clause 4(f)	<p>4. The Board must –</p> <p>(f) ensure that the fund's ethics performance is assessed, monitored, reported and disclosed in the fund's annual financial statements.</p> <p>The proposed wording of the Subclause is inappropriate. It is a recognised corporate governance standard. This should not be legislated. Refer also to the comments regarding disclosures at Clauses 44 to 52, 55 and 62 below.</p> <p>Refer to the proposal by n the covering letter and above regarding the board's responsibility to establish a suitable</p>	<p><u>Delete Subclause 4(f).</u></p> <p>The provision is inappropriate and unnecessary</p>		<p>Declined – we see no harm in requiring this and it becomes a good exercise for entities to report how they report on their ethics standard.</p> <p>Further, the Regulator wishes to regulate this space going forward and it becomes necessary to include this in the standard.</p>

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	system of corporate governance for the medical aid fund.			
Clauses 5 and 6	<p>5. Subject to the provisions of the Act, every board must consider whether its size, diversity and demographics make it effective and diverse.</p> <p>6. Diversity of the board includes but is not limited to academic qualifications, technical expertise, relevant industry knowledge, experience, age, race and gender.</p> <p>These clauses are not appropriate for medical aid funds due to the way that boards of trustees are elected and/or appointed. Generally, the members of the medical aid fund propose and elect their preferred candidates. At least half of Board members are elected by the members of the medical aid fund from among their number (section 340(3) of FIMA). There could also be employer groups who have the right to appoint their preferred candidates on the board. The medical aid fund cannot dictate to these groups as to whom to elect. The board has no control over who is elected or appointed unless the medical aid fund's rules permit the board to appoint a number of incumbents. The board can at best request that diversity should be considered in nominations and/or election and/or appointment of candidates. The board can, therefore, not ensure its own diversity.</p>			<p>Declined, it is necessary to have clauses 5 and 6 in order to assist in the nomination of board members and hence is becomes necessary to take into consideration these core principles.</p> <p>The board must be diverse.</p> <p>Board members will be subject to fit and proper requirements, even those elected by members of the fund.</p>
Clause 7	7. The board must collectively have the necessary functions performed by	Delete Clause 7.		Declined – there should still be a supervisory

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	<p>a fund, and to monitor delegates and advisors to whom such functions have been delegated.</p> <p>The proposed wording of the Subclause is inappropriate. It is a statement and not an enforceable provision. It is a recognised corporate governance standard that governing bodies must determine the expertise needed by them. It is also a duty of the board of trustees to obtain expert advice on matters where board members lack sufficient expertise (Section 344(1)(g) of FIMA). A board of trustees will typically procure the services of professional advisors to provide the capabilities and skills to support their functioning. Also, a medical aid fund board cannot dictate who should be elected/appointed to the board. Refer to the comments made in respect of Clauses 5 and 6 above.</p>	<p>This provision is unenforceable and as such unnecessary. The matter is adequately covered by section 344(1)(g) of FIMA.</p>		<p>function to monitor delegates and advisors.</p> <p>This is a clause that is necessary to fill in the gap where the board cannot dictate who is appointed on the board. Thus in an effort to ensure there is the appointment of well qualified and suitable appointments, the Board may fall back on this provision. Lastly, it is an attempt by NAMFISA to codify this for MAF's.</p>
<p>Clause 8</p>	<p>8. Notwithstanding the appointing authority or body, the board:</p> <p>(a) owes a primary duty of care to the fund and are not specifically accountable to or required to disclose any information to the appointing authority or body through whom they were appointed or elected as trustees; and</p> <p>(b) must be sensitive to managing the diversity of the board effectively to ensure that any tension, fears, disagreements, influence, affiliations, special interest, or any other</p>	<p><u>Replace Clause 8 with the following Clause:</u></p> <p>8. Notwithstanding the fact that trustees may be appointed by a person other than the members in terms of the rules of the medical aid fund, the board owes a fiduciary duty to the medical aid fund and is accountable to the members of the medical aid fund.</p> <p>Wording improved and aligned with legal position.</p>		<p>Declined – this provision provides or makes sure that there is independence in the decision making at the end of the day.</p> <p>Our wording is in order in this regard.</p> <p>Appointing authority will be any anyone who may appoint or elect board members. The rules of the fund will stipulate who can</p>

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	<p>consideration do not hinder decision-making and ensure that the above is addressed in the code of conduct of the board.</p> <p>There is no definition of “appointing authority or body”. Subclause 8(a): Trustees of medical aid funds must be independent. The wording does not ensure the independence of the board. Furthermore, the board is accountable to the membership and no other appointing authority. Information may only be disclosed to members and such other stakeholders as the board may determine or as otherwise required in terms of the law. Clause 8(b): Inappropriate in legislation. Not enforceable.</p>			<p>appoint a or elect board members.</p>
<p>Clause 9</p>	<p>9. The board of trustees must have the relevant minimum qualifications and expertise among them as necessary to provide effective oversight and leadership direction of the fund’s business to ensure it is conducted in a sound and prudent manner and for this purpose –</p> <p>(a) the board must collectively and individually have, and continue to maintain, including through training, the necessary skills, knowledge and understanding of the fund’s business to be able to fulfil their roles;</p> <p>(b) while certain areas of expertise may lie in some, but not all, members, the collective board must have an adequate spread and level of relevant competencies and understanding as appropriate to the fund’s business and</p>	<p><u>Delete Clause 9.</u></p> <p>This provision is inappropriate.</p>		<p>Declined- the Regulator wishes to regulate this function in the space where some entities are not putting this in practice.</p> <p>It is a necessary function to keep capacitating the Board and also allows the Fund to ensure that the Fund itself controls the members in ensuring that the trainings they make an effort to learn. The trainings must be in line with the skills they are lacking.</p>

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	<p>the fulfilment of the board's duties in accordance with section 344 of the Act.</p> <p>The proposed subclause is unnecessary and inappropriate. Only persons who are fit and proper may serve on the board. Section 340 of FIMA read with the fit and proper standards set out in GEN.S.10.2 address this matter sufficiently. Furthermore, it is a duty of the board of trustees to obtain expert advice on matters where board members lack sufficient expertise (Section344(1)(g) of FIMA). A board of trustees will typically procure the services of professional advisors to provide the capabilities and skills to support their functioning. Also, the Clause contains a reference in a footnote, which is incorrect.</p> <p>Furthermore, the propose wording contains statements, which are not enforceable provisions. Refer to the comments above at Clauses 5 and 6 on how the boards of medical aid funds are elected/appointed.</p> <p>It is a recognised corporate governance standard that governing board members should undergo training. This should not be legislated. Training obligations are generally included in Board Charters and Training Policies. Any legislated training will incur costs for the membership, which is not desirable. While the board should take certain</p>			<p>It is an empowering provision and should thus remain.</p> <p>Delete the footnote under clause 9. This provision also is not in conflict with the fit and proper provision, as that provision rather spells out the required minimum qualification.</p>

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	<p>measures to identify and address knowledge gaps within the board, which can include training and which can be funded to a limited extent by the medical aid fund, it should not be permitted to finance or support the higher or vocational education and training of board members or potential board members to suitably qualify them for their roles as trustees. The funds of a medical aid fund must be used strictly for the business of a medical aid fund as defined in FIMA.</p> <p>Refer further to the proposal by in the covering letter and above that the board's responsibility should be to establish a suitable system of corporate governance for the medical aid fund.</p>			
Clause 10	<p>10. The board of trustees must have a full reporting Structure – PLS FILL IN officer and such other board of trustees as deemed appropriate.</p> <p>Refer to the proposal by NAMAF in the covering letter and above that the board's responsibility should be to establish a suitable system of corporate governance for the medical aid fund. This would include an appropriate decision-making and reporting structure, i.e., levels of decision-making authority. Furthermore, the Principal Officer is accountable to the board, even though he/she is an ex officio member of the board in terms of FIMA.</p>	<p>Delete Clause 10.</p> <p>This provision is unnecessary and inappropriate.</p>		<p>Declined, this should already form part of the rules and in any case, it is necessary to regulate which committees are necessary in for the entities.</p> <p>The clause states that funds must have a reporting structure, and reference is made to the chairperson which should be the head of the institution (fund). The clause is in line with good governance practices.</p>

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Clause 11	<p>11. The board of trustees must be comprised of persons that are Namibian citizens or foreign persons who are ordinarily resident in Namibia.</p> <p>Enhance eligibility criteria.</p>	<p>Amend Clause 11 as follows: The board of trustees must be comprised of persons that are Namibian citizens or residence permits in Namibia. Delete “foreign persons who are ordinarily resident” and replace with “who are in possession of permanent residence permits”.</p>	Agreed – to rephrase.	
Clause 12	<p>12. The chairperson of the board must –</p> <p>(a) proactively and impartially lead the board, without bias in favour of any person, the employer, the administrator or any other service provider;</p> <p>(b) proactively raise issues of concerns, on behalf of the board or the fund, with any person, employer, the administrator or any other service providers; and</p> <p>(c) ensure that the performance of the board as a whole, board sub-committees and principal officer is reviewed and evaluated on a regular basis and to manage the performance of the board.</p> <p>The proposed wording contains statements, which are not enforceable provisions. This should not be legislated. The role of the chairman is generally included in a Board Charter. Furthermore, it is a recognised corporate governance standard that governing board members should manage the performance of the board</p>	<p>Delete Clause 12.</p> <p>Inappropriate and unnecessary.</p> <p>Clauses 31 to 33 adequately address issues related to performance. standard that governing board members should manage the performance of the board and its committees. Principal Officers’ performance is generally managed in terms of their employment/other contracts with the relevant medical aid fund. Remuneration policies may also contain requirements regarding their performance management. Clauses 31 to 33 adequately address this matter.</p> <p>Refer further to the proposal by NAMAf in the covering letter and above that the board’s responsibility should be to establish a suitable system of corporate governance for the medical aid fund.</p>		<p>Rejected – Good governance practices requires that the role of the board and its chairperson be stipulated.</p>

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	<p>and its committees. Principal Officers' performance is generally managed in terms of their employment/other contracts with the relevant medical aid fund. Remuneration policies may also contain requirements regarding their performance management. Clauses 31 to 33 adequately address this matter.</p> <p>Refer further to the proposal by NAMAFA in the covering letter and above that the board's responsibility should be to establish a suitable system of corporate governance for the medical aid fund.</p>			
<p>Clause 13, 14 and 15</p>	<p>13. New trustees must, at the expense of the fund, receive comprehensive training on both the legislative, regulatory and governance principles in order to equip them to effectively carry out their functions as trustees.</p> <p>14. The board must seek to enhance its knowledge, where relevant, via appropriate training programmes that meet the specific needs of both the fund and the individual trustees, as may be identified during the annual individual performance evaluation so as to enable the trustees to make the maximum contribution possible.</p> <p>15. Trustees must receive regular briefings on matters relevant to the business of the fund, changes in risks and laws applicable to the business of the fund, including accounting</p>	<p>Delete Clauses 13, 14 and 15.</p> <p>Inappropriate and unnecessary.</p> <p>Alternatively, replace Clauses 13, 14 and 15 with the following Clause: The board must ensure that new members of the board undergo appropriate induction training and that all members of the board receive regular and timeous briefings on matters relevant to the business of the medical aid fund.</p> <p>15. Trustees must receive regular briefings on matters relevant to the business of the fund, changes in risks and laws applicable to the business of the fund, including accounting standards and policies and the environment in which it operates.</p>	<p>Amended the clause by removal of the word "comprehensive" in clause 12 (now renumbered to clause 13).</p>	<p>Rejected – this is necessary to enforce through codification.</p>

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	<p>standards and policies and the environment in which it operates. The proposed wording contains statements, which are not enforceable provisions. It is a recognised corporate governance standard that new governing board members should undergo induction training and existing board members regular briefings and/or training on new developments or matters relevant to the medical aid fund.</p> <p>This should not be legislated. Any legislated training will incur costs for the membership, which is not desirable. Training obligations are generally included in Board Charters and Training and Development Policies. NAMFISA requires these policies to be submitted to it. This provides sufficient oversight of the matter.</p> <p>The board's performance evaluation assists to identify and address knowledge gaps within the board, which can be funded to a limited extent by the medical aid fund. It should, whoever, not be permitted to finance or support the higher or vocational education and training of existing or potential board members to suitably qualify them for membership of the board. The funds of a medical aid fund must be used strictly for the business of a medical aid fund as defined in FIMA.</p> <p>Refer further to the proposal by NAMAFA in the covering letter and above that the board's responsibility</p>	<p>The proposed wording contains statements, which are not enforceable provisions. It is a recognised corporate governance standard that new governing board members should undergo induction training and existing board members regular briefings and/or training on new developments or matters relevant to the medical aid fund. This should not be legislated. Any legislated training will incur costs for the membership, which is not desirable. Training obligations are generally included in Board Charters and Training and Development Policies. NAMFISA requires these policies to be submitted to it. This provides sufficient oversight of the matter.</p> <p>The board's performance evaluation assist to identify and address knowledge gaps within the board, which can be funded to a limited extent by the medical aid fund. It should, whoever, not be permitted to finance or support the higher or vocational education and training.</p> <p>of existing or potential board members to suitably</p> <p>qualify them for membership of the board. The funds of a medical aid fund must be used strictly for the business of a medical aid fund as defined in FIMA. Refer further to the proposal by NAMAFA in the covering</p>		

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	<p>should be to establish a suitable system of corporate governance for the medical aid fund.</p>	<p>letter and above that the board's responsibility should be to establish a suitable system of corporate governance for the medical aid fund.</p>		
<p>Clause 16</p>	<p>16. A member of the board, principal officer, employee or any other officers, auditor, valuator, administrator and any other service providers must report to the board any conflict of interest encountered during the performance of their duties.</p> <p>Refer to comments made at Subclause 1(1)(c) above in respect of conflicts of interest. Sections 343 and 395(2) of FIMA regulate conflicts of interests on the board of trustees, which suffice. The board of trustees is particularly empowered by section 395(2) to establish procedures for identifying and dealing with conflicts or potential conflicts of interest. This is generally done through a Conflict of Interest Policy. In addition, professionals such as auditors and valuers operate of existing or potential board members to suitably qualify them for membership of the board. The funds of a medical aid fund must be used strictly for the business of a medical aid fund as defined in FIMA.</p> <p>Refer further to the proposal by NAMAF in the covering letter and above that the board's responsibility should be to establish a suitable system of corporate governance for the medical aid fund.</p>	<p>Delete clause 16: Inappropriate and unnecessary</p> <p>under their own professional codes, which regulated conflicts of interest. Furthermore, it is good business practice to address conflicts of interest and potential conflicts of interest of service providers in their contracts with the medical aid fund. It should also be noted that corporate governance codes generally provide detailed recommendations on how to deal with conflicts of interest.</p>		<p>Rejected – the disclosure of interest is a good governance practice and needs to be codified to ensure that it is not selectively applied but across the entire industry consistently.</p>

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Clause 18	<p>18. The board must –</p> <p>(a) demonstrate their independence in the way they exercise any discretion and must not be influenced by inappropriate considerations;</p> <p>(b) always consider what is in the best interest of the fund and its beneficiaries;</p> <p>(c) ensure that appropriate controls exist to –</p> <p>(i) promote the independence and impartiality of the board;</p> <p>(ii) ensure the confidentiality of sensitive information pertaining to the fund and its beneficiaries, administrators and any other service providers; and</p> <p>(iii) prevent the improper use of privileged or confidential information.</p> <p>(d) ensure that the administrators or any other service provider do not interfere or unduly influence the management of the fund.</p> <p>Subclause (a): This is a statement and not an enforceable provision.</p> <p>Subclause (b): This aspect is sufficiently addressed by section 343(2)(a) of FIMA.</p> <p>Subclause (c): These aspects are to a large degree addressed by sections 343(2) and 344(1)(d) of FIMA. The provision regarding the protection of information can be strengthened.</p> <p>Subclause (d): The board of trustees is ultimately accountable to direct, control</p>	<p>Replace Clause 18 with the following Clause:</p> <p>18. The board must ensure that confidential and/or privileged information in the possession or under the control of the medical aid fund is protected and must only disclose such information as permitted in terms of the law or with the express consent of the relevant person.</p> <p>Provision related to the protection of information strengthened.</p>	Partially accept – only replace clause 18(c)(2).	

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	<p>and oversee the operations of the fund. Trustees have fiduciary responsibilities to the fund, which include avoiding conflicts of interest, exercise unfettered discretion, etc. This matter is, therefore, taken care of by the nature of the role and responsibilities of a trustee and the provisions of FIMA. Also, terms defined in FIMA must be used, i.e., “fund administrator” instead of “administrator” and “medical aid fund” instead of “fund”.</p>			
Clause 19	<p>19. The board must not abdicate their responsibility over the delegated functions.</p> <p>Enhance language used.</p>	<p><u>Amend Clause 19 as follows:</u></p> <p>The board must not abdicate its responsibility including in respect of delegated functions.</p>	<p>Agreed – to be amended accordingly. Amended.</p>	
Clause 25	<p>25. To ensure independence and reduce the risk of familiarity, no trustee may serve for more than two (2) consecutive terms.</p> <p>Two consecutive terms for trustees are deemed</p> <p>become acquainted with the business of a medical aid fund. Instead, 3 consecutive terms are proposed. The Principal Officer is an ex officio member of the board. Refer to section 339(1) of FIMA. It is accepted that the restriction on consecutive terms does not apply to the Principal Officer. It is nevertheless proposed to be clarified. (It should be noted that with reference to the wording of section 339(1) and the proposed wording of Clause 25, it should be noted that the terms “trustee” and “member of the</p>	<p>To ensure independence and reduce the risk of familiarity, no member of the board may serve for more than three (3) consecutive terms, excluding the Principal Officer.</p> <p>Consecutive terms proposed to be increased from 2 to 3 and recognition be given to the fact that the Principal Officer is typically an employee of the medical aid fund. Language enhanced for clarity.</p>	<p>Agreed – this term is not applicable to Ex Officio members.</p> <p>Allows capacity to build knowledge and capacity.</p> <p>Amended by limiting number of terms for board members to 3, and tenure for one term to 3 years.</p> <p>Also added a “cooling off” period of 3 years before the same trustee can be appointed/elected again (after serving 3 consecutive terms).</p>	

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	board” are used as synonyms in the medical aid fund industry.)			
Clause 26	<p>26. To ensure independence and reduce the risk of familiarity in respect of the auditor of the fund, the auditor must be appointed for a fixed period and the auditor may not serve for more than two (2) consecutive terms; and in the case the auditor is a firm of auditors, an audit partner may not be engaged for more than two (2) consecutive terms.</p> <p>The restriction on auditor terms is not supported. There are not enough independent and reputable auditors available in Namibia and or the rest of the South African Development Community (SADC) region who perform work for medical aid funds, to impose any restriction on their terms, albeit only consecutive terms. However, it is supported that audit partners must be rotated within an audit firm and that a particular audit partner may not serve for more than two consecutive terms at a time.</p>	<p><u>Amend Clause 26 as follows.</u></p> <p>To ensure independence and reduce the risk of familiarity in respect of the auditor of the medical aid fund, in the case the auditor is a firm of auditors, an audit partner may not be engaged for more than two (2) consecutive terms.</p> <p>Remove “the auditor must be appointed for a fixed period and the auditor may not serve for more than two (2) consecutive terms; and” Inappropriate in Namibia and/or SADC due to lack of skills.</p>	<p>Amended by limiting the term to 6 years for auditor. Also amended the clause so that partner rotation complies with requirements prescribed by the Code of Ethics issued by the International Ethics Standards Board for Accountants. Also added a “cooling off” period of 3 years before the same auditor can be appointed again.</p>	<p>This is noted, but in order to develop skills, there must be an opening in the market to allow this.</p>
Clause 27	<p>27. To ensure independence and reduce the risk of familiarity in respect of the valuator of the fund, the valuator be appointed for fixed period and a valuator may not serve for more than two (2) consecutive terms.</p> <p>There are not enough independent and reputable valuers available in Namibia to impose any restriction on their terms, albeit only consecutive terms. Furthermore, by limiting the time</p>	<p>Delete Clause 27 Inappropriate in Namibia.</p>	<p>Terms for valuers amended by limiting tenure to 9 years.</p> <p>Also added a “cooling off” period of 3 years before the same valuator can be appointed again.</p>	<p>The responsibility of appropriateness of valuation is the responsibility of entity and thus entity cannot be dependent on NAMFISA for assurance.</p>

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	<p>period to 2 consecutive terms, it prevents a medical aid fund from leveraging the experience and intimate knowledge gained by the appointed valuator on the unique claiming profiles of the fund as well as the long-term pricing impact on the fund. An established relationship with a valuator who has proven his/her ability to contribute towards the long-term sustainability of the fund is an exceptional benefit for the membership. In addition, the impact of the long-term pricing calculations of the valuator is annually closely reviewed by NAMFISA and, therefore, the quality of the actuarial work is scrutinised externally, which mitigates any perceived risk about long-term appointments of valutors.</p>			
Clause 28	<p>28. The board must consider occasional rotation of members and of the chairs of sub-committees or tenure limits to serve on a sub-committee, to avoid undue concentration of power and promote fresh perspectives.</p> <p>The board has ultimate accountability and potential liability, despite the appointment of sub-committees and the delegation of authority to such committees. The board may not abdicate its responsibility. The purpose of a sub-committee is to promote independent judgement on the board, assist with balance of power and assist with the effective discharge of the duties by</p>	<p><u>Delete Clause 28.</u></p> <p>Inappropriate to impose due to potential risk to be posed to the medical aid fund.</p>	<p>Clause amended as follows:</p> <p>“The board must establish an arrangement for periodic, staggered rotation of trustees and chairs of committees or tenure limits to serve on a committee by introducing members with new expertise and perspectives while retaining valuable knowledge, skills and experience and maintaining</p>	

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	<p>the board. Hence, the board must ensure that persons with appropriate skills and experience sit on and chair the sub-committees, a failure of which would expose the medical aid fund to significant risk that could result in a governance failure at the fund and as such substantial harm to the fund. In addition, there may not be sufficiently skilled persons available to facilitate the rotation as proposed.</p> <p>Due to the inherent potential personal liability that trustees could incur, there should be no external interference in their governance arrangements pertaining to the appointment of sub-committees.</p>		<p>continuity in order to avoid undue concentration of power and promote fresh perspectives.”</p>	
<p>Clause 29 and 30</p>	<p>29. The board must consider whether the structure and operations of the fund would benefit from the introduction of an internal audit function.</p> <p>30. Where the board decide to introduce an internal audit function, the board must ensure that –</p> <p>(a) there is an effective risk based internal audit function;</p> <p>(b) in the event that the internal audit function is outsourced, the board is ultimately responsible to oversee, manage, inform and take accountability for the effective functioning of the outsourced internal audit function;</p> <p>(c) the board must be ultimately responsible for the appointment, performance assessment of the head of internal audit;</p>	<p><u>Delete Clauses 29 and 30.</u></p> <p>Inappropriate, impractical and unenforceable</p>		<p>Declined, this is a consideration and the word “dismissal” is deleted.</p> <p>With risk based supervision, internal audit is considered an important control and provides the board with a level of assurance.</p>

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	<p>(d) internal audit must pursue a risk based approach to planning as opposed to a compliance based approach that is limited to evaluation of adherence to procedures; and</p> <p>(e) internal controls must be established not only over financial matters, but also operational, compliance and sustainability matters in order to manage risks facing the fund.</p> <p>The consideration of the implementation of an internal audit function, and specifically a risk-based internal audit function, is a recognised corporate governance standard in recognised corporate governance codes/frameworks. It is recommended that it not be legislated, but that recognised corporate governance codes and/or frameworks should be followed in this regard.</p> <p>Subclause 30(c): Medical aid funds may not be able to employ an internal auditor due to financial considerations. This requirement might, therefore, not be within the power of the board. It is as such inappropriate.</p> <p>Refer further to the proposal by NAMA in the covering letter and above that the board's responsibility should be to establish a suitable system of corporate governance for the medical aid fund.</p>			
Sub-clause 33(d)	3. Subject to the Act, the board must ensure that – (d) The board must appoint an independent trustee, if any, from within	Amend Subclause 33(d) as follows: (d) The evaluation of the chairperson must be led by at least 2 (two) trustees designated by the	Accepted – no independence for Board of Trustees required.	

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	<p>its ranks to lead the process of the evaluation of the chairperson's performance and in the event that the board does not have an independent non-executive trustee, the evaluation of the chairperson must be led by at least 2 (two) trustees designated by the board; and</p> <p>All trustees on the board of trustees of a medical aid fund, excluding the Principal Officer, are independent and non-executive.</p>	<p>board and who may not include the Principal Officer; and</p> <p>Wording enhanced in accordance with the de facto position of medical aid funds.</p>	<p>No independence requirements for BOT in MAFs Amended.</p>	
<p>Clauses 34,3 5 and 36</p>	<p>34. The board must be involved in the determination and approval of the long-term and short-term strategies of the fund and monitor implementation therewith by management or the service provider to whom management services have been outsourced, if any.</p> <p>35. Before approving the strategy, the board must ensure that the strategy is aligned with the Act and any relevant legislation, the purpose or object of the fund, the value drivers of the fund's business and the legitimate interests and expectations of the fund's stakeholders, especially the beneficiaries of the fund.</p> <p>36. The board must identify key performance and risk areas as well as the associated performance and risk indicators and measures and this would include areas such as finance, ethics, conduct, compliance and sustainability.</p>	<p><u>Delete Clauses 34, 35 and 36.</u></p> <p>Inappropriate to be included in legislation. Unenforceable.</p>		<p>Rejected – these clauses speak to controls to be in place and thus there is a need to ensure the enforcement thereof. Good corporate governance practices require strategy of an institution to be set by the highest decision making body, which is the board.</p>

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	<p>Clause 34: It is an accepted corporate governance principle that the main responsibility of governing boards is to determine strategy, i.e., give direction to the organisation (often after the management team has proposed a strategic direction). Furthermore, governing boards have a strong oversight responsibility, especially in medical aid funds where all board members are currently non-executive.</p> <p>Principal Officers are accountable to their boards. Refer also to section 343(1) of FIMA. The Principal Officer is charged with the management of outsourced service providers under the supervision of the board in terms of service level agreements approved by the board. This is not the function of the board.</p> <p>Clause 35: The board is compelled to comply with the law, including FIMA. Refer also to the comments in respect of stakeholders at Subclause 4(e) above. Furthermore, the alignment of a medical aid fund's strategy with its value drivers is a business imperative. It is not an enforceable legal provision.</p> <p>Clause 36: Risk management is also a recognised corporate governance principle and business imperative. The aforementioned aspects should, therefore, not be legislated. Refer further to the proposal by NAMAf that the board's responsibility should be to establish a suitable system of</p>			

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	corporate governance for the medical aid fund.			
Clause 37	37. The board must ensure that there are adequate internal controls in place to ensure that all persons and entities with operational and oversight responsibilities act in accordance with the objectives set out in rules of the fund, the Act and any other applicable law This matter is sufficiently covered by section 344(1)(d) of FIMA.	<p><u>Delete Clause 37</u></p> <p>Unnecessary. Addressed by section 344(1)(d) of FIMA.</p>		<p>Rejected – these clauses refer to controls to be in place and thus there is a need to ensure the enforcement thereof.</p> <p>Board knows that they must have internal control measures in places, should they be asked to show proof of when the time arises. There must be a system dealing with internal control.</p> <p>With risk based supervision, internal controls are considered an important level of assurance for the board.</p>
	<p>38. Internal controls must cover all basic organizational and administrative procedures; depending upon the scale and complexity of the fund, the internal controls must include performance assessment, compensation mechanisms, information systems and processes, risk and compliance management procedures.</p> <p>This matter is sufficiently covered by section 344(1)(d) of FIMA. The board must have the prerogative to determine how to run the business of the medical aid fund. The detailed prescriptions of what boards must consider impact on their fiduciary responsibility and may result in</p>	<p><u>Delete Clause 38.</u></p> <p>Unnecessary.</p> <p><u>Alternatively, amend Clause 38 as follows:</u> Internal controls must cover all basic organisational and administrative procedures; depending upon the scale and complexity of the fund, the internal controls must include performance assessment, <u>claims payment mechanisms</u>, information systems and processes, risk and compliance management procedures.</p>		

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	<p>interference by the regulator in the business operations of a fund, whilst the board carries fiduciary responsibilities and is ultimately accountable. This is not acceptable. Also, it is not clear what is meant by “compensation mechanisms.”</p>	<p>Replace “compensation mechanisms” with “claims payment mechanisms”.</p>		<p>Rejected – it encompasses more than just claims. This could also refer to board fees and other compensatory measures, any remuneration payments or other, in addition to paying claims.</p>
<p>Clauses 41 to 43</p>	<p>41. Where a board lacks sufficient expertise to make a fully informed decision and fulfil its responsibilities it may seek expert advice.</p> <p>42. The board must satisfy itself that any expert advice obtained is independently given, and where any person provides expert advice in respect of any person, the administrator or any other service provider, the board must satisfy itself that such advice is not compromised by the relationship of that person or his or her firm to any person, the administrator or any other service provider as the case may be.</p> <p>43. The board must assess and satisfy itself that any expert advice received is of quality and that it must verify that all its staff and service providers have adequate qualifications and experience. The board is not obliged to accept any advice but must consider the appropriateness of such advice.</p>	<p>41. Where a board lacks sufficient expertise to make a fully informed decision and fulfil its responsibilities Inappropriate and unenforceable.</p> <p>Addressed by section 344(1)(g) of FIMA.</p>		<p>Rejected – this is just an expansion of what is contained under section 344 of the Act. Section 344 does not address the quality and independence of the expert advice, as well as conflicts of interest related to such advice.</p>

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	<p>Clause 41: The board has a duty to obtain expert advice where it lacks sufficient expertise. This is sufficiently addressed in section 344(1)(g) of FIMA. Clauses 42 and 43: To legislate what boards should consider when obtaining professional advice is inappropriate in legislative provisions and unenforceable.</p>			
<p>Clause 44 - 52</p>	<p>44. Subject to the Act –</p> <p>(a) the board may assign oversight of the fund’s risk management function to an appropriate board sub-committee;</p> <p>(b) the board must ensure that the frameworks and processes in place to assist in anticipating these risks have the following characteristics –</p> <p>(i) insight - the ability to identify the cause of the risk, where there are multiple causes or root causes that are not immediately obvious;</p> <p>(ii) information - comprehensive information about all aspects of risks and risk sources, especially of financial risks;</p> <p>(iii) incentives - the ability to separate risk origination and risk ownership ensuring proper due diligence and accountability;</p> <p>(iv) instinct - the ability to avoid ‘following the herd’ when there are systemic and pervasive risks;</p> <p>(v) independence - the ability to view the fund independently from its environment; and</p> <p>(vi) interconnectivity - the ability to identify and understand how risks are related, especially when their relatedness might exacerbate the risk.</p>	<p>Delete Clauses 44 to 52.</p> <p>Inappropriate.</p> <p>Risk management is an internal business matter for a medical aid fund.</p>	<p>Amended frequency of review of risk management policy to once every two years.</p>	<p>This is consistent with the new Risk-based Supervision approach and would be beneficial to funds in terms of guidance provided.</p> <p>Rejection –</p> <p>S 45 –This serves as a guidance to industry and these are minimum standards and not exhaustive. The actual risk management responsibility is still with the fund.</p> <p>This comes with codifying governance provisions, so it becomes necessary to speak on and enhance this. We are not prescribing the types of controls, we are simply alerting the Fund to have said controls in place.</p>

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	<p>45. The board must have in place a risk management policy which must be reviewed regularly, but at least annually, and must include –</p> <ul style="list-style-type: none"> (a) the identification of risks facing the fund; (b) the assessment of the likelihood of each such risk on the fund; (c) the assessment of the impact of each such risk on the fund; (d) the process or controls necessary to reduce the impact of such risks; (e) the monitoring of the risk process or controls to ensure that they are appropriate; and (f) the communication to the beneficiaries and the stakeholders of the fund's risk management policy, including the identification of the key risks and the processes or controls in place to manage them. <p>46. The board must ensure that the fund considers and implements appropriate risk responses.</p> <p>47. The fund must identify and consider different ways that it can respond to the risks identified during the risk assessment process and these responses must be noted in a risk register.</p> <p>48. The fund must be able to demonstrate that the risk management process provides for the identification and exploitation of opportunities to improve its performance.</p> <p>49. The risks to be identified must not be limited to those which have a financial consequence, but must</p>			

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	<p>include risks which relate to the governance of the fund, and which may jeopardise the governance structure.</p> <p>50. The fund is not expected to micro-manage the functions delegated to service providers, but those functions must, when delegated, contain sufficient detail to ensure that the service provider understands what is expected by the board and provide for reasonable right of recourse in the event that there is any breach of the delegated functions by the service provider.</p> <p>51. The board must receive assurance regarding the effectiveness of the risk management process, for outsourced or delegated functions.</p> <p>52. The board must ensure that there are processes in place enabling complete, timely, relevant, accurate and accessible risk disclosure to stakeholders.</p> <p>These Clauses deal with risk management by boards of medical aid funds. Risk management is a recognised corporate governance principle and business imperative. These aspects should not be legislated. The provisions in section 395(2)(g) of FIMA providing that the trustees must establish internal risk management strategies and policies for the identification, measurement, monitoring and controlling of significant risks on an on-going basis, are sufficient. There is sufficient guidance available in recognised corporate governance codes and frameworks to guide boards sufficiently in respect of</p>			

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	<p>risk management (which includes determining risk tolerance levels, risk mitigation strategies and risk management policies and plans). This also applies to the principle of obtaining assurance by a board. Risk management must remain and internal business matter for medical aid funds. Furthermore, it is unnecessary to legislate that the risk management function may be delegated to a subcommittee. This is acknowledged in FIMA and corporate governance codes. Also, the board always retain its oversight function in respect of delegated functions. It may not abdicate its responsibility.</p> <p>Clause 45(f) requires that the risk policy, key risks as well as the processes to manage these risks are communicated to, amongst others, the beneficiaries and stakeholders of the fund. The trend in corporate governance codes and frameworks is that of transparency, which includes the communication of certain information to stakeholders of organisations.</p> <p>This matter is adequately addressed in applicable and reputable corporate governance codes and frameworks. It remains the prerogative of the board of a medical aid fund to decide which information to disclose and to whom based on the impact of such disclosure on the medical aid fund. This matter must, therefore, not be legislated as it could have detrimental and unintended</p>			

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	<p>consequences for medical aid funds, which operate in a very small industry. It could, for example, result in member losses (should members not understand the issue or it could be abused by competitors to the detriment of a fund) that could impact on the sustainability of the medical aid fund.</p> <p>Clause 50: Functions are not delegated to service providers. They perform certain services to medical aid funds and their beneficiaries under the direct management of the Principal Officer and in terms of written agreements approved by boards of trustees. Refer further to the proposal by NAMAf in the covering letter and above that the board's responsibility should be to establish a suitable system of corporate governance for the medical aid fund.</p>			
Clause 53 and 54	<p>53. The board must perform regular review of services, all costs associated with the operation of the fund</p> <p>54. The board must ensure that the costs and expenses of the fund are managed efficiently.</p> <p>The provisions include standard business requirements. These provisions are also too narrow. Financial management is sufficiently addressed in the duties of the board in section 344 and the provisions of section 348 of FIMA.</p>	<p>Delete Clauses 53 and 54.</p> <p>Unnecessary.</p> <p>Alternatively, replace Clauses 53 and 54 with the following Clause: The board must ensure that the resources of the medical aid fund, and the risks to which it is exposed, are managed effectively and efficiently and must avoid unnecessary, fruitless or wasteful expenditure by the medical aid fund.</p>		Rejected – it speaks to the same principles, no amendment thus necessary of original wording.

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Clause 55	<p>55. Subject to the Act, the board must ensure that –</p> <p>(a) trustees have unfettered access to all relevant information relating to the fund to enable them to make informed decisions;</p> <p>(b) all fund information is confidential and must not be released to any person unless such person has a lawful right to such information;</p> <p>(c) fund information such as its membership and investments belong to the fund and the board must ensure that where this information is held by a service provider, that the service provider will preserve its confidentiality and return the information to the fund when the relationship with the service provider is terminated;</p> <p>(d) the board must be the ultimate custodian of the corporate reputation and stakeholder relationships and the board must take account of and respond to the legitimate interests and expectations of stakeholders linked to the fund in its decision-making;</p> <p>(e) the board must ensure that stakeholder interests and expectations, even if not considered warranted or legitimate, must be dealt with and not ignored;</p> <p>(f) all communication from members, beneficiaries and other stakeholders must be responded to promptly by or on behalf of the board and with thoroughness and respect;</p> <p>(g) the board must communicate to stakeholders any ruling made against the fund by the appeal body, or</p>	<p>Delete Clause 55.</p> <p>Inappropriate. Unnecessary risk posed to the medical aid funds.</p>		<p>Rejected to all – clause 55(a) is necessary to be in place as certain Funds do not allow access or share the relevant information with the Trustees or the Regulator.</p> <p>Clause (d) – necessary clause, as the Board must respond to such and not place all responsibility on the PO or administrator</p>

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	<p>financial services adjudicator, court rulings against the fund, regulatory issues raised by NAMFISA and all deviations from fund rules.</p> <p>Subclause (a): Also, trustees must have access to all relevant information, however, subject to board policy. Subclause (b): The matter of confidentiality has been addressed in Clause 18 above.</p> <p>Subclause (c): Ownership of fund information matter speaks for itself. The matter of confidentiality has been addressed in Clause 18 above.</p> <p>Subclauses (d), (e) and (g): The proposed wording of the Subclauses is inappropriate. It is a recognised standard that governing bodies (such as boards of trustees) should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of <i>material</i> stakeholders in the best interests of the organisation over time.</p> <p>Subclause (f): The response to communications is an operational matter and does not belong in legislation. These aspects should not be legislated.</p> <p>Subclause (g): The trend in corporate governance codes and frameworks is further that of transparency, which includes the communication of certain information to stakeholders of organisations. This matter is adequately addressed in applicable and reputable</p>			

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	<p>corporate governance codes and frameworks. It remains the prerogative of the governing body to determine which information should be disclosed and to whom based on the impact of such disclosure on the organisation.</p> <p>This matter should, therefore, not be legislated as it could have detrimental and unintended consequences for medical aid funds, which operate in a very small industry. It could, for example, result in member losses (should members not understand the issue or it could be abused by competitors to the detriment of a fund) that could impact on the sustainability of the medical aid fund.</p> <p>Refer further to the proposal by NAMAFA in the covering letter and above that the board's responsibility should be to establish a suitable system of corporate governance for the medical aid fund.</p>			
Clause 62	<p>62. The board must disclose relevant information to all beneficiaries, sponsors, supervisory authorities, auditors and valuator in a clear, accurate and timely manner.</p> <p>This is an operational matter. However, the trend in corporate governance codes and frameworks is that of transparency, which includes the communication of appropriate information to identified (material) stakeholders of organisations. This</p>	<p>Delete Clause 62.</p> <p>Inappropriate. Operational matter. Unnecessary risk posed to medical aid funds.</p> <p>Alternatively, amend Clause 62 as follows: The board must disclose relevant information to all relevant <u>stakeholders, including</u> beneficiaries, supervisory authorities, auditors and valuers in a clear, accurate and timely manner.</p>		<p>Rejected – disclosure is a necessary requirement of good governance practices.</p> <p>Note also that governance codes are not legally enforceable, unless legislated.</p>

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	<p>matter is adequately addressed in applicable and reputable corporate governance codes and frameworks. It remains the prerogative of the governing body on what information to disclose and to whom based on the impact of such disclosure on the organisation. This matter should, therefore, not be legislated as it could have detrimental and unintended consequences for medical aid funds, which operate in a very small industry. It could, for example, result in member losses (should members not understand the issue or it could be abused by competitors to the detriment of a fund) that could impact on the sustainability of the medical aid fund. Also, the definition of “beneficiary” in section 321 of FIMA includes “members”.</p>	<p><u>Delete</u> “ persons notably members and” and “sponsors” and replace with “stakeholders, including”</p>		