

Breakdown – Public Comments June 2022

Chapter – 8 Administrators

| | Comment/Description of issue: | Proposed Amendment/Solution: | Accepted (Comments): | Rejected (Comments): |
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| ADM.S.8.1 - Manner and form of application for registration of a fund or society administrator | | | | |
| <i>ADM.S.8.1 Manner and form of application for registration</i> | The standard and Schedule 2 contain extensive requirements for information that must accompany the application for registration, even for existing fund administrators that have operated for a number of years. Examples of this are set out in the further comments below. | The Standard must differentiate between registration requirements for existing fund administrators in operation for a number of years and new applicants. Please refer to detailed comments on specific sections where this applies below. | | The information requested under Schedule 2 with regards to existing administrators may not be on record (i.e. Registrar’s records) with regards to All existing Administrators, given that Administrators did not fall under the regulatory/supervisory ambit of the Registrar. Thus, the need to ensure that all information is submitted. |
| clause 4 (e) | Clause 4(e) requires that the application for registration must be accompanied by any other documents that NAMFISA may require. This statement is very wide. At the time of submission, it will not be known to the applicant which additional documents NAMFISA may require. Clause 7 contains a similar provision whereby NAMFISA may seek additional information and/or documents as may be reasonably necessary for processing of the application for registration. | Delete the following phrase from clause 4(e): “or that NAMFISA may require”. | | Circumstances may change, in which case NAMFISA may require additional information for adequately assessing an application. |
| clause 4 (f) | The clause makes reference to “Authority” which is not defined in the FIM Act or subordinate legislation. | “Authority” to be defined; alternatively replace “Authority” in this clause with “NAMFISA”. | Agreed, “Authority” replaced with “NAMFISA”. | |
| clause 6 (2) | Clause 6(2) provides that any required information to complete the application must be provided within 7 working days from date of notification by NAMFISA, failing which, the application shall be rejected. Depending on the extent of the required information, 7 working days might not provide sufficient time to gather all the required information. | Replace 7 working days with 14 working days | Amended clause as follows: “...The required information must be provided within the period of seven days, or such other period stipulated or agreed to by NAMFISA, failing which the application shall be rejected.” | |
| clause 9 (1) | 1. “Company status report”: it is not clear what exactly is required or what this document should contain 2. Is the reference to medical aid funds correct or should it be all funds? 3. Declaration on all relationships or affiliations of the fund administrator with the fund’s employees are required. The purpose of these declarations is not clear where the employees are not employed at a level of decision-making. | 1. Define “Company status report” or clearly state which information is required 2. Replace “medical aid funds” with “funds” unless only applicable to medical aid funds 3. Delete “employees” | Amended by deletion of clause 9 | |
| clause 9 (2) | Why is submission of “corporate and group structures” required? What is the purposes of this submission of group structures? | Clarity on rationale is required | Amended by deletion of clause 9 | |

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| Clause 9(4) | Clause 9 (d) contains onerous information requirements. The purpose of these onerous requirements for existing fund administrators that are in operation for a number of years already is not clear. | The requirements of this clause must differentiate between existing fund administrators in operation for a number of years and new applicants. The Standard should stipulate the minimum information requirements for each. | | Declined: The information requested under 9 (d) with regards to existing administrators may not be on record (i.e. Registrar's records) with regards to All existing Administrators, given that Administrators did not fall under the regulatory/supervisory ambit of the Registrar. The Registrar needs to satisfy himself on the appropriateness and adequacy of the said systems and processes. |
| Schedule 2 form B Clause 6(2) | The company documents listed in section 6 (2) would typically have been submitted to BIPA already when applying for registration as a company. | Replace the information in section 6 (2) with "Original certified copy of BIPA registration certificate" | Amended as follows: "Proof of registration as a Namibian company with the Registrar of Companies (BIPA) (CM 1)." | |
| Schedule 2 form B Clause 6(3) | This is a duplication with (5) on page 156 | Eliminate duplication | Agreed: | |
| Schedule 2 form B Clause 6(6) | The purpose of submission of shareholders agreements is not clear. | Delete section 6 (6). | | To enable the Registrar to consider all interlinkages, connected persons and related parties between the Funds/Societies to be administered and the Fund/Society administrators |
| Schedule 2 form B Clause 6(7) | The purpose of submission of share certificates (valid and cancelled) is not clear. | Delete section 6 (7). | | To enable the Registrar to verify factual ownership |
| Schedule 2 form B Clause 6(8) | The proof of paid up share capital effected for example circa 1998 may no longer be available The purpose of submission of proof of paid-up share capital (applicant's bank statement) is not clear for existing fund administrators that have been operating for a number of years. | Will the issued share certificate and audited suffice for regulator's purposes in this regard? Amend section 6 (8) to differentiate between existing and new fund administrators. For existing fund administrators, change the requirement to submission of latest annual financial statements. | | The proposal to differentiate between New and existing administrators does not remedy the concern raised as it may be applicable to both entities in terms of the require information. What if the new administrators were established circa 1998 as well? |
| Schedule 2 form B Clause 6(9) | Where source of funds are required The purpose of submission of detailed information on sources of funds is not clear. It is also not clear what exactly is required for existing fund administrators. | Namfisa to please clarify whose source of funds are required in this regard Amend section 6 (9) to differentiate between existing and new fund administrators. For existing fund administrators, change the requirement to submission of latest annual financial statements. | | All entities applying to be registered as Fund Administrators are required to indicate how income /source of funds are generated. All sources of income for the Fund Administrators must be provided with supporting proof. This is also in line with FIA requirements. |
| Schedule 2 form B Clause 6(11) | It appears FIA now becomes applicable to medical aid fund administrators | Namfisa to confirm who is to be FIA'd – is it the medical aid fund administrator or the members thereof? Namfisa will have to amend the FIA accordingly | | Fund Administrators are accountable institutions under FIA and will therefore be required to comply with fitness and propriety requirements under FIA, as this is consistent with FIMA. |

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| | It is not clear what exactly is meant with the FIA compliance policy. The Financial Intelligence Act only makes reference to a Customer Acceptance policy | Section 6 (11) to be amended to clarify what exactly is required. Reference should be made to the legislation whereby a FIA compliance policy is required with consistent wording to ensure that it is clear. | | |
| Schedule 2 form B Clause 6(12) | It appears FIA now becomes applicable to medical aid fund administrators It is not clear what exactly is meant with the FIA compliance questionnaire. | The FIA compliance questionnaire to be completed is referenced by footnote(7) and there is no such footnote on page 157 of the standard, it may be incorrectly referenced as 7 but ought to be 3 - kindly clarify When will Namfisa provide us with the FIA compliance questionnaire? Section 6 (12) to be amended to clarify what exactly is required. Reference should be made to the legislation whereby a FIA compliance questionnaire is required with consistent wording to ensure that it is clear. | Should be footnote no. 3. | FIA questionnaire to be made available. |
| Schedule 2 section 6 (13) | The purpose of submission of business plan with at least a five-year cashflow projection is not clear for existing fund administrators that have been operating for a number of years. | Amend section 6 (13) to differentiate between existing and new fund administrators. For existing fund administrators, change the requirement to submission of latest annual financial statements. These would contain a statement of the auditors on the going concern of the entity. | | Declined Fund administrators will be supervised prospectively. Audited Annual Financial Statements (AFS) contain historic information. Although the information disclosed and presented in the AFS is useful, the business plan will also be examined to assess the Administrator's technical, economic and financial feasibility as new minimum requirements apply within the FIMA. |
| Schedule 2 section 6 (14) | The purpose of submission of the list of funds that the administrator intends to provide administration services to is not clear for existing fund administrators that have been operating for a number of years. NAMFISA would already have this information. | Amend section 6 (14) to differentiate between existing and new fund administrators. This requirement should only be applicable to new fund administrators and not to existing fund administrators. | Yes. (only applicable to new administrators) | |
| Schedule 2 section 6 (15) | The purpose of separately submitting a declaration of related party relationships is not clear for existing fund administrators that have been operating for a number of years as this information would be contained in the annual financial statements that are submitted to NAMFISA annually. | Amend section 6 (15) to differentiate between existing and new fund administrators. For existing fund administrators, change the requirement to submission of latest annual financial statements, which would contain disclosure of all related party transactions. | | Declined: If a related party disclosure is not specifically required by IAS 24 then the Registrar will not know about the existence of the related party relationship, hence a separate disclosure is required. |
| Schedule 2 section 6 (17) | The submission of address of principal officer is a duplication since this is also required as per section 3 (1) of this Schedule. | Delete section 6 (17). | Agreed | |

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| Schedule 2 section 6 (22) – 6 (28) | All these documents would be submitted as part of the fit and proper requirements. The requirement to attach these documents is therefore a duplication. | Delete sections 6 (22) to 6 (28). | | Declined Fitness and propriety of Fund Administrators will be assessed as part of this application, thus the documents listed under 6(22) to 6(28) are required to be submitted with the registration application. |
| | Footnote references do not seem to be correct. Footnote numbering is incorrect: 4Key persons are those individuals with the ability to control a regulated institution in terms of AML and/or those individuals holding more than 20% of the company's voting rights, or who hold senior management positions, e.g. CEO, etc. 5Senior Management include executives responsible for Finance, Administration, Claims, etc. | Footnote references to be corrected Correct numbering | Agreed. | |
| NAMAF | 8. An applicant must further specify the measures that the applicant shall take to discharge all its obligations, including contractual obligations and agreements with retirement funds, medical aid funds and friendly societies, and meet all of its liabilities. This standard deals with fund or society administrators and includes medical aid fund administrators. Clause 8 uses the word "and" in front of "friendly societies". This suggests that a fund administrator may be administering a variety of financial institutions such as retirement funds, medical aid funds and friendly societies. If this is the case, the administrator may only want to cease doing business as a fund administrator for medical aid funds, but wishes to continue being a fund administrator to retirement funds or friendly societies. The wording of Clause 8 could cause confusion and should be enhanced. Also, all legally enforceable agreements are contracts so the words "and agreements" are superfluous. | Amend Clause 8 as follows: An applicant must further specify the measures that the applicant shall take to discharge all its obligations, including contractual obligations towards any retirement fund, or medical aid fund or friendly society, as the case may be, and meet all of its liabilities. Wording enhanced for clarity purposes. | Agreed | |