

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES
REQUIREMENTS WITH RESPECT TO TRUSTEES AND CUSTODIANS OF A
COLLECTIVE INVESTMENT SCHEME****Standard No. CIS.S.4.7**

issued by NAMFISA under sections 190(2) and 410(5)(s) of the Financial Institutions and Markets Act, 2021

Definitions

1. (1) In this Standard -
 - (a) “Act” means the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021), and it must be read with the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
 - (b) “CIS” means a collective investment scheme as defined in section 168 of the Act; and
 - (c) “representative” means a representative appointed by a trustee or custodian of a CIS pursuant to section 189(6) of the Act.
- (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) “affiliate” as defined in section 1 of the Act; and
 - (b) as defined in section 168 of the Act –
 - (i) assets;
 - (ii) collective investment scheme;
 - (iii) custodian;
 - (iv) investor;
 - (v) manager; and
 - (vi) trustee.

Applicability

2. This Standard applies to a trustee, custodian or an independent representative appointed by a trustee or custodian under section 189(6) the Act, hereinafter referred to, collectively, as a trustee or custodian.

Capital and reserves

3. A trustee or custodian of a CIS must have, and maintain minimum capital and non-distributable reserves, together amounting to not less than N\$5,000,000.00 (five million Namibia dollar) at all times.

General financial and commercial standing

4. A trustee or custodian of a CIS must:
- (a) have adequate human, technical and financial resources to effectively and efficiently execute its duties and functions under the Act;
 - (b) maintain proper control systems, including systems for the safe-keeping and segregation of investor assets;
 - (c) be independent from the manager or an affiliate of the manager; and
 - (d) by reason of the nature of its business, be sufficiently experienced and equipped to perform its duties under the Act and to carry on its business activities in such a way that the performance of its duties or the conduct of its functions promote public confidence in financial markets.

Fitness and propriety

5. In addition to complying with the relevant fit and proper requirements as per Standard No. GEN.S.10.2 – Fit and Proper Requirements, the functionaries of a trustee or custodian of a CIS must:

- (a) be adequately experienced in the operation of a CIS;
 - (b) possess knowledge and understanding of a CIS and be able to operate the CIS efficiently and effectively;
 - (c) know the key regulatory requirements, including fiduciary duties in respect of investors, and comply with the requirements of the Act;
 - (d) be able to act independently and be independent in their decision-making in relation to investors; and
 - (e) apply sound business principles and ensure the financial soundness of the CIS.
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