

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**GENERAL
APPLICATION FOR AMALGAMATION OR TRANSFER OF ANY BUSINESS FROM
AND/OR TO A FINANCIAL INSTITUTION OR FINANCIAL INTERMEDIARY IN
TERMS OF SECTION 449 OF THE ACT****Standard No. GEN.S.10.28**

issued by NAMFISA under section 410(2)(c), read with section 449(1), 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), read with the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
 - (b) “amalgamation” means a transaction where two or more financial institutions and/or financial intermediaries combine to form one amalgamated financial institution or financial intermediary that retains all the assets and liabilities of the amalgamating financial institutions and/or financial intermediaries;
 - (c) “amalgamation agreement” means a written and signed agreement between two or more financial institutions and/or financial intermediaries that sets out the terms and conditions of the amalgamation;
 - (d) “NAMFISA ERS” means the Electronic Regulatory System which facilitates communication between NAMFISA and financial institutions or financial intermediaries;
 - (e) “parties to the amalgamation” means the financial institutions and/or financial intermediaries that combine to form one amalgamated financial institution or financial intermediary;
 - (f) “post transfer/amalgamation integration plan” means a strategic roadmap outlining the steps for the transfer of business or amalgamation, aiming to fully integrate the operations, systems, and cultures to achieve the intended synergies and benefits of the transfer of business or amalgamation;
 - (g) “transfer of business” means a transaction by which the whole or part of the assets, liabilities, rights, and/or obligations of a financial institution and/or financial intermediary are transferred to one or more financial institutions and/or financial intermediaries but excludes transactions involving changes in control of a financial institution and/or financial intermediary;
 - (h) “transfer agreement” means a written and signed agreement between two or more financial institutions and/or financial intermediaries that sets out the terms and conditions of the transfer of business;
 - (i) “transferee institution” means the financial institution or financial intermediary to which all or any portion of another financial institution and/or financial intermediary’s business is transferred;

- (j) “transferor institution” means the financial institution or financial intermediary which transfers all or any portion of its business to another financial institution and/or financial intermediary; and
- (k) “transferring clients” means the clients of the transferor institution whose financial products and their corresponding assets and liabilities are being transferred to the transferee institution and whose existing financial products will be provided by the transferee institution.

(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 as defined in section 1 of the Act –

- (a) beneficiary fund;
- (b) board;
- (c) client;
- (d) financial institution;
- (e) financial intermediary;
- (f) financial product;
- (g) NAMFISA;
- (h) retirement fund;
- (i) standards; and
- (j) valuator.

Applicability

2. This Standard applies to all financial institutions and financial intermediaries other than beneficiary funds, retirement funds and transactions contemplated in standard CIS.S.4.2.

Prohibited transfers and amalgamations

3. No transfer of all or any portion of business from a financial institution or financial intermediary to another financial institution or financial intermediary, or the amalgamation of any financial institutions and/or financial intermediaries with any other financial institutions or financial intermediaries may be made if –

- (a) either of the transferor institution or the transferee institution, or any of the parties to the amalgamation is –
 - (i) not in compliance with the Act, and such non-compliance may prejudice or negatively impact the rights of the transferring clients or the amount to be transferred, or the rights of the clients of the parties to the amalgamation; or
 - (ii) a party to a legal action in the course of adjudication, if such legal action may prejudice or negatively impact the rights of the transferring clients or the amount to be transferred, or the rights of the clients of the parties to the amalgamation;
- (b) the transferor institution and the transferee institution have not entered into a transfer agreement, or the parties to the amalgamation have not entered into an amalgamation agreement;
- (c) either of the transferor institution, the transferee institution or the parties to the amalgamation is in default of any obligation in terms of the transfer agreement or the amalgamation agreement; or

- (d) either of the transferor institution or the transferee institution, or any of the parties to the amalgamation will not satisfy the requirements for registration under the Act.

Approval of transfers and amalgamations

4. NAMFISA may consider and approve the proposed transfer of business or amalgamation if:

- (a) the transferor institution and the transferee institution, or the parties to the amalgamation have complied with the requirements in clauses 5, 6 and 12; and
- (b) NAMFISA is satisfied that the proposed transfer of business or amalgamation is in the interest of the clients of both the transferor institution and the transferee institution or the parties to the amalgamation.

Requirements for an application for amalgamation or transfer made in terms of section 449(1) of the Act

- 5. An application in terms of section 449(1) must consist of a duly completed application form, in the form of Schedule 1 or 2 to this Standard, duly signed by the principal officer or a duly authorised person.
- 6. In addition to the application form referred to in clause 5, an application for amalgamation or transfer of business must be accompanied by –
 - (a) the documents as required by section 449(1) of the Act;
 - (b) a copy of the notice referred to in section 449(3) of the Act;
 - (c) the following reports, if applicable, provided such reports are not older than six months:
 - (i) any statements by, or opinions of, an independent advisor or the valuator of the transferor institution or a transferee institution, or the parties to the amalgamation; and
 - (ii) the reports on which those statements or opinions are based;
 - (d) certified copies of the board resolutions from all involved transferor institutions and/or transferee institutions and/or parties to the amalgamation authorising –
 - (i) the transfer of business or amalgamation; and
 - (ii) the authorised person to submit the application for transfer of business or amalgamation;
 - (e) where applicable, any approval in terms of the Competition Act, 2003 (Act No. 2 of 2003), required for the transfer of business or amalgamation;
 - (f) where applicable, any approval in terms of the Companies Act, 2004 (Act No. 28 of 2004), required for the transfer of business or amalgamation; and
 - (g) where applicable, a certificate of good standing from the Namibia Revenue Agency.

7. The applicant must disclose all information as required in the Schedules and all parts must be duly completed.
8. Nothing shall prevent NAMFISA from seeking further or additional information or documents as may be reasonably necessary for processing of the application.
9. In instances where the application is deemed incomplete, NAMFISA must give the applicant the opportunity to provide the required information to complete the application. 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.
10. An application not complete in all respects and not conforming to the instructions specified in the Schedules may be rejected on the basis of being non-compliant with this Standard.
11. The applicant or its duly authorised representative may, if so required, be called to appear before NAMFISA in person for a representation in connection with the application.

Requirements for approval of transfers by NAMFISA

12. NAMFISA will not approve an application for transfer of all or any portion of business from a transferor institution to a transferee institution, or an application for amalgamation of financial institutions and/or financial intermediaries, unless satisfied that –
 - (a) a transfer agreement has been submitted to NAMFISA jointly by the transferor institution and the transferee institution, or an amalgamation agreement has been submitted to NAMFISA jointly by the parties to the amalgamation;
 - (b) the transfer agreement or amalgamation agreement adequately and appropriately addresses the reasonable and legitimate concerns of clients of either institutions or clients of the parties to the amalgamation and any other interested person, and that the clients and other interested persons have been given at least 30 days' notice prior to the effective day of the transfer or the amalgamation, of the pending transfer agreement or amalgamation agreement and of their right to make their concerns known to the NAMFISA and to the boards of the institutions or the boards of the parties to the amalgamation;
 - (c) the transfer agreement or amalgamation agreement complies with the Act, and in particular with Part 8 of Chapter 10 of the Act;
 - (d) the transfer agreement or amalgamation agreement –
 - (i) protects the accrued financial products of transferring clients or clients of the parties to the amalgamation including making provision for their reasonable expectations;
 - (ii) includes an analysis showing that clients of the transferor institution who are not transferring clients and the clients of the transferee institution, or that clients of the parties to the amalgamation are treated equitably and provides an analysis of the impacts of the transfer of business or the amalgamation on the financial position of both institutions or the parties to the amalgamation;
 - (iii) stipulates that the accrued financial products transferred are and will remain fully and irrevocably vested in the transferring clients during their association with the transferee institution;

- (iv) in the case where investments of the transferor institution are being transferred to the transferee institution rather than cash, or where investments of the parties to the amalgamation are being amalgamated rather than cash, specifies the methodology applied to determine the selection of those investments and an analysis of that methodology that supports its appropriateness to the circumstances of the transfer of business or amalgamation, which analysis must be based on a report by an independent advisor or a valuator;
- (v) includes a statement of costs associated with the transfer of business or amalgamation; and
- (e) a post transfer/amalgamation integration plan has been submitted to NAMFISA jointly by the transferor institution and the transferee institution, or by the parties to the amalgamation.

Submission

13. (1) An application in terms of clauses 5 and 6 must be submitted to NAMFISA electronically on the NAMFISA ERS.

(2) Where necessary and when so directed by NAMFISA, specified documentation or information must be submitted to NAMFISA manually.

SUPPORTING SCHEDULES

The following supporting schedules are attached to and form part of this Standard:

SCHEDULE 1: APPLICATION FORM FOR THE TRANSFER OF BUSINESS IN TERMS OF SECTION 449 OF THE ACT

SCHEDULE 2: APPLICATION FORM FOR THE AMALGAMATION IN TERMS OF SECTION 449 OF THE ACT

SCHEDULE 1 (to Standard GEN.S.10.28)**APPLICATION FORM FOR THE TRANSFER OF BUSINESS IN TERMS OF SECTION 449 OF THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**

I/We, _____ (name of transferor institution) and _____ (name of transferee institution), do hereby apply for the transfer of business in terms of section 449 of the Financial Institutions and Markets Act, 2021.

PART A – GENERAL**PLEASE COMPLETE THE FORM IN FULL****1. Transferor institution information:**

1.1 Name of the financial institution/intermediary: _____

1.2 Type of the institution: _____

1.3 Registration number of institution: _____

1.4 Is the institution ceasing to exist? _____

1.5 Valuator Name (if any): _____

2. Transferee institution information:

2.1 Name of the financial institution/intermediary: _____

2.2 Type of the institution: _____

2.3 Registration number of the institution: _____

2.4 Valuator Name (if any): _____

3. Details of the Principal Officers and Chairpersons of the Boards of the Transferor and Transferee institutions:**3.1 Principal Officer and Chairperson of the Board - Transferor institution:**

DETAILS	PRINCIPAL OFFICER	CHAIRPERSON
Full Name		
Identity Number		
Nationality		

3.2 Principal Officer and Chairperson of the Board - Transferee institution:

DETAILS	PRINCIPAL OFFICER	CHAIRPERSON
Full Name		
Identity Number		
Nationality		

4. Details on clients and amounts to be transferred

Description	Amount to be transferred (N\$)	Number of clients to be transferred
Clients		
Reserves (if any)		
Total		

5. Does the Transferor Institution meet the financial soundness requirements of the Act? (if applicable): _____

6. Date of the last statutory valuation of Transferor Institution (if applicable): _____

SIGNED FOR THE TRANSFEROR INSTITUTION:

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Principal Officer/authorised person (signature)

Date

SIGNED FOR THE TRANSFEREE INSTITUTION:

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Principal Officer/authorised person (signature)

Date

PART B – CLIENTS AND OTHER INTERESTED PERSONS OBJECTING TO THE TRANSFER OF BUSINESS

Kindly attach the list of clients/other interested persons objecting to the transfer of business and provide reasons.

PART C: REQUIRED DOCUMENTS FOR THE TRANSFER APPLICATION	
<i>Kindly confirm the attachment of documents by marking the appropriate box with an "X"</i>	
Required document	Attached
Transfer agreement under which the proposed transfer of business is to take place	
Annual financial statements in respect of the business of each of the financial institutions/intermediaries concerned	
Report on which the proposed transfer of business was founded	
Copy of notices referred to in section 449(3) of the Act	

List of clients and other interested persons objecting to the transfer of business	
In terms of clause 8(c)(i), any statements by, or opinions of, an independent advisor or the valuator of the transferor institution or a transferee institution	
In terms of clause 8(c)(ii), the reports on which those statements or opinions are based	
In terms of clause 8(d)(i), certified copies of the board resolutions from all involved financial institutions and/or financial intermediaries authorising the transfer of business	
In terms of clause 8(d)(ii), certified copies of the board resolutions from all involved financial institutions and/or financial intermediaries authorising the authorised person to submit the application for transfer of business	
In terms of clause 6(e), any approval in terms of the Competition Act, 2003 (Act No. 2 of 2003), required for the transfer of business (if applicable)	
In terms of clause 6(f), a certificate of good standing from the Namibia Revenue Agency (if applicable)	
In terms of clause 12(e), a post transfer integration plan	

SCHEDULE 2 (to Standard GEN.S.10.28)

APPLICATION FORM FOR THE AMALGAMATION IN TERMS OF SECTION 449 OF THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

I/We,

_____ (name of party 1 to amalgamation) and
 _____ (name of party 2 to amalgamation) and
 _____ (name of party 3 to amalgamation) and
 _____ (name of party 4 to amalgamation) and

do hereby apply for the amalgamation of business in terms of section 449 of the Financial Institutions and Markets Act, 2021.

PART A – GENERAL

PLEASE COMPLETE THE FORM IN FULL

1. Information of Party 1 to the amalgamation

1.1 Name of the financial institution/intermediary: _____

1.2 Type of the institution: _____

1.3 Registration number of institution: _____

1.4 Is the institution ceasing to exist? _____

1.5 Valuator Name (if any): _____

2. Information of Party 2 to the amalgamation:

a. Name of the financial institution/intermediary: _____

b. Type of the institution: _____

c. Registration number of the institution: _____

d. Valuator Name (if any): _____

3. Information of Party 3 to the amalgamation:

- a. Name of the financial institution/intermediary: _____
- b. Type of the institution: _____
- c. Registration number of the institution: _____
- d. Valuator Name (if any): _____

4. Information of Party 4 to the amalgamation:

- a. Name of the financial institution/intermediary: _____
- b. Type of the institution: _____
- c. Registration number of the institution: _____
- d. Valuator Name (if any): _____

5. Details of the Principal Officers and Chairpersons of the Board of the parties to the amalgamation:**5.1 Principal Officer and Chairperson of the Board – Party 1 to the Amalgamation:**

DETAILS	PRINCIPAL OFFICER	CHAIRPERSON
Full Name		
Identity Number		
Nationality		

5.2 Principal Officer and Chairperson of the Board – Party 2 to the Amalgamation:

DETAILS	PRINCIPAL OFFICER	CHAIRPERSON
Full Name		
Identity Number		
Nationality		

5.3 Principal Officer and Chairperson of the Board – Party 3 to the Amalgamation:

DETAILS	PRINCIPAL OFFICER	CHAIRPERSON
Full Name		
Identity Number		
Nationality		

5.4 Principal Officer and Chairperson of the Board – Party 4 to the Amalgamation:

DETAILS	PRINCIPAL OFFICER	CHAIRPERSON
Full Name		
Identity Number		
Nationality		

6. Details on clients and amounts affected by the proposed amalgamation:

Description	Amount to be affected by the proposed amalgamation (N\$)	Number of clients to be affected by the proposed amalgamation
Clients		
Reserves (if any)		
Total		

6.1 Financial soundness and date of last statutory valuation of Party 1 to the Amalgamation (if applicable): _____

6.2 Financial soundness and date of last statutory valuation of Party 2 to the Amalgamation (if applicable): _____

6.3 Financial soundness and date of last statutory valuation of Party 3 to the Amalgamation (if applicable): _____

6.4 Financial soundness and date of last statutory valuation of Party 4 to the Amalgamation (if applicable): _____

SIGNED FOR PARTY 1 TO THE AMALGAMATION:

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Principal Officer/authorised person (signature)

Date

SIGNED FOR PARTY 2 TO THE AMALGAMATION:

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Principal Officer/authorised person (signature)

Date

SIGNED FOR PARTY 3 TO THE AMALGAMATION:

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Principal Officer/authorised person (signature)

Date

SIGNED FOR PARTY 4 TO THE AMALGAMATION:

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Principal Officer/authorised person (signature)

Date

PART B – CLIENTS AND OTHER INTERESTED PERSONS OBJECTING TO THE AMALGAMATION
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Kindly attach the list of clients/other interested persons objecting to the amalgamation and provide reasons.

PART C: REQUIRED DOCUMENTS FOR THE AMALGAMATION APPLICATION	
<i>Kindly confirm the attachment of documents by marking the appropriate box with an "X"</i>	
Required document	Attached
Amalgamation agreement under which the proposed amalgamation is to take place, including documents listed under clause 11	
Annual financial statements in respect of the business of each of the financial institutions/intermediaries concerned	
Report on which the proposed amalgamation was founded	
Copy of notices referred to in section 449(3) of the Act	
List of clients and other interested persons objecting to the amalgamation	
In terms of clause 8(c)(i), any statements by, or opinions of, an independent advisor or the valuator of the parties to the amalgamation	
In terms of clause 8(c)(ii), the reports on which those statements or opinions are based	
In terms of clause 8(d)(i), certified copies of the board resolutions from all involved parties to the amalgamation authorising the amalgamation	
In terms of clause 8(c)(i), certified copies of the board resolutions from all involved parties to the amalgamation authorising the authorised person to submit the application for amalgamation	
In terms of clause 6(e), any approval in terms of the Competition Act, 2003 (Act No. 2 of 2003), required for the amalgamation (if applicable).	
In terms of clause 6(f), a certificate of good standing from the Namibia Revenue Agency (if applicable).	
In terms of clause 12(e), a post amalgamation integration plan.	