

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**GENERAL****CODE OF CONDUCT****Standard No. GEN.S.10.9**

issued by NAMFISA under sections 410(2)(bbb), 410(4)(q) and 410(6)(u) 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) “fiduciary” means a financial institution or financial intermediary or a functionary of a financial institution or financial intermediary;
 - (c) “functionary” means a director, member of the board, principal officer, other officer and employee of a financial institution or financial intermediary; and
 - (d) “key person” means any person responsible for managing or overseeing, either alone or together with another responsible person, the activities of a financial institution or financial intermediary relating to the rendering of the financial services, and includes those individuals or other entities holding more than 20% of the financial institution or financial intermediary’s voting rights.
- (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) director;
 - (iv) entity;
 - (v) financial institution;
 - (vi) financial intermediary;
 - (vii) financial service;
 - (viii) NAMFISA;
 - (ix) principal officer;

- (x) valuator; and
- (b) as defined in section 168 of the Act -
 - (i) custodian; and
 - (ii) trustee.

Applicability

2. This Standard applies to all financial institutions and financial intermediaries registered under the Act.

General Requirements

3. (1) Every financial institution and financial intermediary must ensure that a policy on the Code of Conduct is in place, containing the elements described in clause 4(1) and is acknowledged and embraced by all board members, directors, principal officers, trustees, custodians, auditors, valutors, other key persons and employees.

(2) A financial intermediary who is an individual and who is not employed by a financial institution or another financial intermediary that is an entity, must ensure that he or she has a policy on the Code of Conduct in place, containing the elements described in clause 4(1) in so far as applicable and that such policy is followed by all employees.

Basic Elements

4. (1) The basic elements of the policy on the Code of Conduct are:
- (a) Code of Conduct Policy: this is a policy statement that defines ethical standards for conduct;
 - (b) Conflicts of Interest: the policy must include a definition of “conflicts of interest” and policy statement on:
 - (i) conflicts of interest;
 - (ii) actions that are required to be taken where conflicts of interest arise or are likely to arise, including disclosure and recusal; and
 - (iii) sanctions for breaches of the policy on the Code of Conduct involving conflicts of interest;
 - (c) Legal Compliance: this requires the board, directors, principal officer, other officers, trustees and all employees to abide by the Act and all other applicable laws, including rules, regulations and standards relevant to the financial institution or financial intermediary;
 - (d) Company or Individual Information and Assets: the Code of Conduct policy must include standards relating to the:
 - (i) disclosure of audited financial statements and other operational information to customers;
 - (ii) treatment of confidential information; and

- (iii) fiduciary responsibilities;
- (e) Workplace Practices: the policy on the Code of Conduct must provide for ethical behavior, reporting of dishonest, unethical or illegal activities, and compliance with the Code of Conduct and the Act and other applicable laws, including provisions regarding authorisation to enter into contracts on behalf of the financial institution or financial intermediary and sanctions for such actions taken without such authority;
- (f) Confidentiality: the policy on the Code of Conduct must provide for the maintenance of confidentiality with respect to all information regarding the financial institution or financial intermediary and all stakeholder information, and for oaths of confidentiality by members of the board and management as well as staff;
- (g) Reporting, Enforcement and Sanctions: the policy on the Code of Conduct must provide for recording and reporting breaches of the Act, other applicable laws, rules, regulations, standards or the policy on the Code of Conduct to NAMFISA, provide for procedures for enforcement of the policy on the Code of Conduct, including investigations and disciplinary action, and provide for clear, appropriate and proportional sanctions for such breaches; and
- (h) Appropriate sanctions: must be proportional to any breaches of the policy on the Code of Conduct and for the consistent application of such sanctions. The policy on the Code of Conduct must provide, at a minimum, the following:
 - (i) procedures for the enforcement of the policy on the Code of Conduct, including how investigations and disciplinary actions taken are defined or determined in order to ensure that submitted evidence based on investigations, and recommendations, are appropriate;
 - (ii) clear sanctions; and
 - (iii) oaths of confidentiality by members of the board and management as well as all staff.
- (2) Records of and reporting on breaches of the policy on the Code of Conduct and sanctions: As the elements of the policy on the Code of Conduct are concerned, it is expected that the board and management as well as all staff of a financial institution or financial intermediary and a financial intermediary who is an individual, shall exercise discretion in ensuring that the following principles are taken into account:
 - (a) act in good faith and in the best interest of the financial institution or financial intermediary and customers;
 - (b) act with prudence and reasonable care;
 - (c) act with skill, competence and diligence;
 - (d) maintain independence and objectivity by, among other actions, avoiding conflicts of interest, refraining from insider trading, and refusing any gift that could reasonably be expected or perceived to affect conduct;
 - (e) comply with the Act, all other applicable laws, rules, regulations, standards or other subordinate measures, and constitutive documents and the Codes of Conduct of the financial institution or financial intermediary;
 - (f) deal fairly, objectively, and impartially with all customers;

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- (g) take actions that are consistent with the established objectives of the financial institution or financial intermediary and the policies that support those objectives and to review on a regular basis the efficiency and effectiveness of the financial institution or financial intermediary in meeting its goals, including assessing the performance and actions of its financial service providers;
 - (h) maintain confidentiality of the financial institution or financial intermediary and stakeholder information; and
 - (i) communicate with stakeholders, NAMFISA and other supervisory authorities in a timely, accurate, and transparent manner.