
**FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021
RETIREMENT FUNDS**

**MATTERS TO BE INCLUDED IN A CODE OF CONDUCT TO BE ADOPTED BY THE
FUND**

Standard No. R.F.S.5.20

issued by NAMFISA under section 410(6)(u) of the Financial Institutions and Markets Act, 2021

Definitions

1. (1) In this Standard “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.

(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) NAMFISA;
 - (ii) principal officer;
- (b) as defined in section 249 of the Act:
 - (i) board;
 - (ii) fund;
 - (iii) retirement fund; and
 - (iv) rules.

Code of conduct

2. The following requirements must be stipulated in the code of conduct of the board of a fund and must be included in the rules of the fund in compliance with section 261(6)(b) of the Act:

- (a) Duty of Attendance of meetings - the code of conduct must include a minimum attendance requirement which, if not met, is sanctionable;
- (b) Duty of Active Engagement - Board members must be actively engaged in board activities and not merely passive vote-casters at meetings. This means not only attending meetings but also withholding their vote on any issue until they are satisfied that their vote is based on their own personal critical examination of the issue and then voting on the basis of their appraisal of the facts. They must be or become knowledgeable concerning the fund rules, its objectives and operations, the roles played by service providers, the provisions of Chapter 5 of the Act and must be intimately familiar with the code of conduct and its interpretation;

- (c) Duty of Prudence - Board members must discharge their responsibilities with skill, diligence and prudence having regard for the fact that the management, conservation and growth of the assets and investments of the fund is in their hands. Board members must carefully test and challenge the advice of service providers to ensure that the fund is not unduly exposed to risk of loss and that its rate of return expectations is reasonable and appropriate to the objectives and nature of the fund;
- (d) Duty to Protect the Fund - Board members must ensure that the fund is operated and maintained subject to adequate and appropriate measures to identify and control risks, whether they are investment risks, administrative risks, insolvency risks or financial risks (e.g., estimation of costs or liquidity requirements etc.);
- (e) Duty of Avoidance and Fair Dealing - Board members must avoid conflicts of interest (and if unavoidable, adequately manage such conflicts), avoid accepting gifts or inducements from any source related to the fund in any way, to ensure that members and beneficiaries maintain their confidence in the governance of the fund and that its governance is transparent and free of any questionable conduct issues. Board members must ensure that all transactions involving the fund and its governance, maintenance, investment and administrative operations are based on sound corporate governance principles and are at arm's length of board members, fund employees and members and beneficiaries of the fund;
- (f) Duty of Independence - Board members must exercise discipline in terms of rigorously exercising independence of thought and analysis when considering the business of the board. This means, in general, seeking information that is needed to ensure that matters are carefully examined, and critically inspecting that information to ensure it meets various tests, e.g., completeness, consistency and reasonableness. Board members must resist the tendency to uncritically accept the views and opinions of other board members and of representatives of service providers;
- (g) Duty of Efficiency - Board members must incur only those reasonable expenses necessary to ensure their preparation for, attendance at and effective participation in meetings of the board or of members and beneficiaries. Board members must ensure that meeting expenses are reasonable and have regard for their duty to protect the fund against excessive expenditures. Board members must ensure that the bases for the expense charges of service providers are reasonable, and that the actual charges are subject to appropriate verification and audit;
- (h) Duty to Monitor Performance - Board members must monitor the investment and administrative performance of the fund. Board members must review and analyse reports and ensure that all questions that arise therefrom receive attention and are resolved to the satisfaction of the board member or members concerned;
- (i) Duty to Hold Service Providers Accountable - Board members must satisfy themselves to the greatest possible extent that the counsel of, work performed and reporting by service providers are reasonable and based on the highest professional or industry standards. To that end, they must study all reports submitted by service providers, ensure that they are given the opportunity to meet with service providers and, as necessary in the circumstances, challenge items or matters that are unclear or that seem questionable or unreasonable; and
- (j) Duty of Compliance - Board members must ensure that the fund meets the requirements of all applicable legislation, regulations and standards and that it is operated in accordance with its rules. The board must satisfy itself that all parties

involved in the maintenance and administrative or investment operations of the fund comply with a code of conduct that the board considers sufficient and appropriate. The board must instruct all such parties to report to it all misconduct or non-compliance with fund rules or administrative standards or guidelines.

- 3.** This Standard must be read in conjunction with Standard No. GEN.S.10.9 – Code of Conduct.