
FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021
RETIREMENT FUNDS

GOVERNANCE

Standard No. RF.S.5.26

issued by NAMFISA under sections 410(6)(aa) and 265(l) 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) “chairperson” means a trustee elected or designated by trustees as the chairperson of the board of trustees in terms of the rules of the fund;
 - (c) “conflict of interest” means a situation which a trustee key person, auditor, valuator, fund administrator or any other service provider encounters, while rendering a financial service to the fund or its members, if that situation –
 - (i) impairs the objectivity of the trustee, key person, auditor, valuator, fund administrator or any other service provider in any aspect while serving on the board or rendering a service to the fund or the members of the fund; or
 - (ii) prevents the trustee, key person, auditor, valuator, fund administrator or any other service provider from serving on the board or rendering a service to the fund or its members in an unbiased and fair manner or from acting in the best interest of the fund or the members of the fund;
 - (d) “independent trustee” means a trustee that meets the requirements of Standard No. GEN.S.10.8 - The independence of directors, members of a board, trustees, custodians, auditors and valuers and any other person required to be independent under the Act; and
 - (e) “insured fund” means a fund which operates exclusively by means of policies of insurance issued by a person lawfully carrying on insurance business within the meaning 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) “NAMFISA”, as defined in section 1 of the Act;
 - (b) as defined in section 249 of the Act –
 - (i) board;

- (ii) defined contribution fund;
- (iii) employer;
- (iv) fund;
- (v) fund administrator;
- (vi) member;
- (vii) retirement benefits; and
- (viii) sponsor.

Applicability

2. This Standard applies to all funds registered in terms of Chapter 5 of the Act.

3. This Standard applies only to the extent that the subject matter dealt with in this Standard is not dealt with specifically in the Act or regulations made by the Minister or standards issued by NAMFISA.

PART 1: GOVERNANCE BY THE BOARD

Board's ethical leadership responsibility

4. The board must –
- (a) provide effective leadership based on an ethical foundation characterised by the ethical values of responsibility, accountability, fairness and transparency;
 - (b) ensure that the responsibilities of the board are consistent with the overriding objectives of the fund;
 - (c) retain ultimate responsibility for the performance, conduct and governance of the fund, even though certain functions are delegated or outsourced to external service providers and the board may not abdicate from any of its functions and responsibilities;
 - (d) be responsible for developing the fund's ethical standards and such standards must inform all fund practices, procedures, policies and conduct;
 - (e) consider the effect of its decisions on all key stakeholders, the most notable being the members of the fund; and
 - (f) ensure that the fund's ethics performance is assessed, monitored, reported and disclosed in the fund's annual financial statements.

Board composition

5. Subject to the provisions of the Act, every board must consider whether its size, diversity and demographics make it effective and diverse.

6. Diversity of the board includes, but is not limited to, academic qualifications, technical expertise, relevant industry knowledge, experience, age, race and gender.

7. Notwithstanding the appointing authority or body, the board:
 - (a) owes a primary duty of care to the fund and is not specifically accountable to, or required to, disclose any information to the appointing authority or body through whom they were appointed or elected as trustees; and
 - (b) must be sensitive in managing the diversity of the board effectively to ensure that any tension, fears, disagreements, influence, affiliations, special interest or any other consideration do not hinder decision-making and should ensure that these aspects are addressed in the code of conduct of the board.

8. The board must, collectively, have the necessary qualifications, knowledge, skills and expertise to oversee all functions performed by the board, and to the monitor delegates and service providers to whom such functions have been delegated, and to provide effective oversight and leadership direction of the fund's business to ensure it is conducted in a sound and prudent manner and for this purpose –

- (a) the board must collectively and individually have and continue to maintain, including through training, the necessary skills, knowledge and understanding of the fund's business to be able to fulfil their roles; and
- (b) while certain areas of expertise may lie in some, but not all, members, the collective board must have an adequate spread and level of relevant competencies and understanding as appropriate to the fund's business and the fulfilment of the board's duties in accordance with section 265 of the Act.

9. The board must have a reporting structure, which includes the chairperson and such other board members as deemed appropriate.

Board chairperson

10. The chairperson of the board must –
 - (a) proactively and impartially lead the board, without bias in favour of the sponsor, the employer or any service provider;
 - (b) proactively raise issues of concerns on behalf of the board with the sponsor, the employer, the administrator, other service providers or any other person; and
 - (c) ensure that the performance of the board as a whole, board committees and the principal officer is reviewed and evaluated on a regular basis, and must manage the performance of members of the board.

Orientation and training of trustees

11. New trustees must, at the expense of the fund, receive training on both the legislative, regulatory and governance principles in order to equip them to effectively carry out their functions as trustees.

12. The board must seek to enhance its knowledge, where relevant, via appropriate training and training programmes that meet the specific needs of both the fund and the individual trustees, as may be identified during the annual individual performance evaluation so as to enable trustees to make the maximum contribution possible.