



NOTICE TO ALL PENSION FUND ORGANISATIONS

(Inclusive of Pension, Provident, Retirement, Preservation and Retirement Annuity Funds)

AND TO ALL SERVICE PROVIDERS IN THE PENSION FUND INDUSTRY

The Pension Funds Act (24 of 1956) defines a pension fund organisation to mean "any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members or former members, or any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for the dependants of such persons upon the death of those persons."

Namfisa recently commenced with the capturing of available data on pension funds in digital format as part of the process of building a comprehensive database. An assessment of this data indicates the existence of substantial risk brought about by pension fund organisations not complying with statutory obligations.

In order to mitigate this risk, Namfisa has commenced with a process of capacity building to firstly ensure full statutory compliance, put in place proper early warning systems, and ultimately roll out a prudential supervisory regime.

As part of the process to achieve statutory compliance, ALL PENSION FUND ORGANISATIONS are hereby provided an indemnity period until **31 MARCH 2008** to fully comply with the Pension Funds Act (24 of 1956) and Regulations thereto. In terms of the indemnity period, Namfisa undertakes not to impose statutory penalties on any fund for the late filing of any return. Apart from the indemnity from paying penalties, Namfisa does not indemnify any fund or organisation or person involved in the management or administration of any fund against civil or criminal liability for any actions or omissions by such funds, organisations or administrators as may transpire from these returns.

Without derogating from the generality of the obligations conferred upon pension fund organisations to comply with the Act and Regulations, the following requirements must be complied with before the deadline of **31 MARCH 2008**.

1. Registration

Any association of persons having the objects of a "pension fund organisation" as defined by the Act must be registered with Namfisa. Provisional registrations are only valid for a period of five years and the persons managing the fund must ensure that provisional registration does not lapse without the fund having applied for an extension of such provisional registration or for final registration.

2. Registered Office

Any change to a fund's registered address must be done by way of an amendment to the rules of that fund as per the processes described in the fund's rules, the Act, and Regulation 23 and 24. It is prudent to keep Namfisa updated with the postal address of the fund at all times.

3. The person managing the fund

Any application for registration of a fund must be accompanied by particulars of the name and address of the person managing the affairs of the fund. It cannot be assumed that the principal officer is also the same person managing the affairs of the fund, although it could be the same person. **Namfisa should be kept updated with these particulars at all times.** In terms of the definition of "person managing the business of the fund" in terms of the Regulations to the Act, such persons shall include a committee of management, board of trustees or like body administering the fund.

4. Principal Officer

Every pension fund organisation must appoint a principal officer and at all times keep Namfisa updated with the name and contact details of such principal officer.

5. Valuator

Every fund that is not exempted from complying with section 16 shall apply to Namfisa for approval of its initial valuator as well as every time a new valuator needs to be appointed.

6. Auditors

Every fund, which is not exempted from complying with section 9, shall apply to Namfisa for approval of its initial auditor and apply again for the approval of all subsequent auditors. Where auditors who practice in partnership have been approved, a change in the composition of such partners does not require a re-application for the approval of such an audit firm.

7. Statutory returns

Every non-exempted locally registered fund must provide the Registrar with audited financial statements annually within six months of its year-end. The financial returns must be in the form as set out by Regulation, amplified by ICAN CIRCULAR 1/2006.

Every non-exempted fund must provide the Registrar with a valuator's report, prepared by the approved valuator, within a year after the end of every three year cycle.

Most funds registered with Namfisa as foreign funds were registered as such with the condition that the Registrar is triennially provided with a valuator's report pertaining to the Namibian members. It is advised that Namibian members of foreign funds also contact their respective foreign funds to ensure that they are complying with this requirement where necessary.

8. Exempted funds. Also referred to as "underwritten funds"

Exempted funds are requested to provide the Registrar with information regarding the members, assets, contributions, and benefits paid by such funds on an annual basis. Such a request is made in terms of Section 24 of the Act and must be complied with within 30 days after receipt of such request. It is the duty of the person managing the affairs of the insured fund to inform the Registrar should there be any change in the insurance arrangement regarding such a fund, i.e. change of insurer, material change to, or cancellation of the insurance agreement etc. as the exemption of such funds were initially based on the original certificate of insurance.

9. Rules & Special Rules

No rules or special rules or amendment to any rules or special rules will be of any force or effect before such rules or special rules or amendment thereto is approved by the Registrar. The application for approval of any amendment to rules or special rules must reach the registrar within **one month** after a resolution for such amendment was passed.

10. Defaulting participating employers

It is the statutory duty of every person managing the affairs of a fund, or such a person that has contractually undertaken to comply with such a duty, to inform the Registrar, **WITHIN TWO MONTHS**, of any principal employer or participating employer that fails to pay over to the fund any contribution, i.e. employer and employee contributions, or part thereof, to the fund, or the administrator within **SEVEN days after the end of each month**. Namfisa is very concerned that this requirement is being widely ignored, especially in the case of umbrella funds, exposing the unknowing members of these funds to substantial risk of suffering losses. Namfisa is of the opinion that an employer that does not pay over contributions has prima facie committed a crime of fraud, alternatively theft.

11. Loans to members

Pension fund organisations may only make loans to, or grant security in favour of members where such a loan or security pertains to a housing loan and then only under certain curtailed circumstances. Non-compliance with the relevant legislation in this regard not only puts the financial sustainability of a fund at risk, but also places at risk a member's ability to enjoy full retirement benefits upon retirement. Persons managing pension fund organisations must ensure they fully comprehend the restrictions applicable to granting loans and guarantees to members as same will be fully investigated as from 2008.

Members of exempted pension fund organisations are hereby reminded that they have the right to inspect, free of charge, the rules of their fund.

In the case of non-exempted funds, members may inspect, free of charge, the rules, the latest balance sheet, the latest revenue account and the latest valuator's report of their fund.

The indemnity period will run from 15 October 2007 and no late returns before such date will be indemnified. Similarly, the provisions of all relevant legislation pertaining to pension fund organisations will consistently be applied after 31 March 2008.

In anticipation of establishing a skilled and experienced investigative team that will conduct both routine on-site inspections as well as ad hoc inspections dictated by an early warning system that is being introduced, all pension fund organisations and stakeholders in the pension funds industry are urged to make use of this indemnity period to ensure full compliance with the relevant legislation.

THE REGISTRAR OF PENSION FUNDS

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