

Enquiries: Benjamin Ashikoto

19 February 2020

Ref No: 25/7/7/107

Mr. Trevor Colmer
The Managing Director
Elite Consulting Namibia
Erioloba Unit 1
9 Hugo Hahn Street, Klein Windhoek
Windhoek
Namibia

BY HAND

Dear Mr. Colmer,

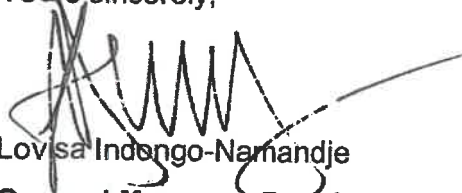
**RE: RETIREMENT FUND FOR LOCAL AUTHORITIES AND UTILITY SERVICES IN
NAMIBIA: REGISTRATION OF RULE AMENDMENT NO. 6**

We refer to your application received by this office on 1 October 2019 for the approval of Rule Amendment No.6 to the Master Rules of the Retirement Fund For Local Authorities and Utility Services in Namibia, in accordance with the Pension Funds Act, 1956 (Act No. 24 of 1956), Regulations and Directives passed.

In terms of Section 12 of the Pension Funds Act, the Authority hereby informs the Fund that the application for Rule Amendment No. 6 to the Master Rules of the Retirement Fund for Local Authorities and Utility Services in Namibia has been approved. Attached please find the endorsed Rule Amendment.

Kindly contact Benjamin Ashikoto on telephone number (061) 290 5014 or e-mail bashikoto@namfisa.com.na, should you have any further queries in this regard.

Yours sincerely,



Lovisa Indongo-Namandje

**General Manager: Pension Funds & Friendly Societies
FOR THE REGISTRAR OF PENSION FUNDS**



**RETIREMENT FUND FOR LOCAL AUTHORITIES AND
UTILITY SERVICES IN NAMIBIA**

Amendment No. 6

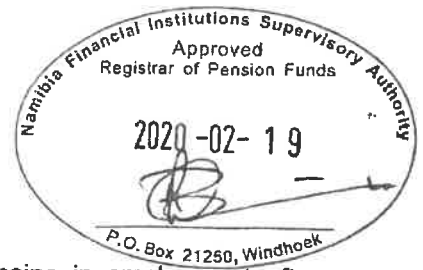
The Trustees of the Retirement Fund for Local Authorities and Utility Services in Namibia resolved at Windhoek on 20 September 2019 that with effect from 1 October 2019 the Rules of the Retirement Fund for Local Authorities and Utility Services in Namibia shall be amended for the reasons set out below:

- (1) *To provide that the Normal Retirement Age for Members who remain in employment after reaching the age of 60 years is age 65 years;*
- (2) *To address NAMFISA'S concern that the period of six months before legal action is taken against a participating Employer whose contributions are in arrears is too long and to provide further details with regard to the action to be taken against a defaulting Employer, including the requirement that the affected Members are notified of the non-payment of contributions;*
- (3) *To clarify the banking institution used to deposit contributions by the Employer by defining the term "Financial Institution";*
- (4) *To set out the Fit and Proper Requirements in the Rules and to provide that candidates for election or appointment as members of the Board must satisfy the Fit and Proper Requirements and that a member of the Board who fails to satisfy the Fit and Proper Requirements at any time shall cease to hold office;*
- (5) *To enable the Board to suspend a Trustee who is under investigation for fraud, theft, dishonesty or other misconduct until the outcome of the case against him is resolved;*
- (6) *To provide that as long as there are enough Trustees to form a quorum among the Board of Trustees, a temporary vacancy does not invalidate the decisions taken by the Board of Trustees during the period before the vacancy is filled;*

by:

- (i) *adding the following definitions to Rule 2:*

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"Category A Member" shall mean a Member who remains in employment after reaching the age of 60 years; provided that the Participating Employer has notified the Fund in writing prior to the date on which the Member reaches age 60 years that such Member is to be regarded as a Category A Member.

"Financial Institution" shall mean a banking institution which is established in accordance with the Banking Institutions Act, 1998 (Act No. 2 of 1998, as amended) into which contributions are deposited by Employers for the purpose of compliance with Section 13A of the Pension Funds Act.

"Fit and Proper Requirements" shall mean the Fit and Proper Requirements to be elected or appointed as a member of the Board or as the Principal Officer, as set out in Rule 12.9.

(ii) *replacing the definition "Normal Retirement Age" in Rule 2 with the following:*

"Normal Retirement Age" shall mean:

- (a) in the case of a Category A Member, the age of 65 years; or
- (b) in the case of any other Member, the age of 60 years.

(iii) *replacing the definition "Normal Retirement Date" in Rule 2 with the following:*

"Normal Retirement Date" shall mean:

- (a) in the case of a Category A Member, the last day of the month in which such Member reaches the age of 65 years; or
- (b) in the case of any other Member, the last day of the month in which such Member reaches the age of 60 years.

(iv) *replacing Rule 4.3.2 with the following:*

4.3.2 If the contributions are not paid to the Fund as required in terms of the Act, the Employer shall be required to pay late payment interest on any outstanding contributions at the greater of the prime-lending rate charged by the Financial Institution used by the Fund and the interest rate reflected in the last audited financial statements reflecting the growth of the Fund.

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(v) replacing Rule 4.3.3 (b) with the following:



4.3.3 (b) the Principal Officer shall:

- (i) report non-compliance to the Registrar of Pension Funds;
- (ii) within 30 days of the expiry of the period specified in Rule 4.3.1, inform the Members of the defaulting Employer's failure to pay contributions;
- (iii) issue three letters of demand to the defaulting Employer within three months of the expiry of the period specified in Rule 4.3.1 in accordance with the following:
 - (aa) the first letter shall notify the defaulting Employer that contributions are in arrears and shall request payment of arrear contributions and normal contributions within 30 days;
 - (bb) the second letter shall notify the defaulting Employer that contributions are in arrears and shall request payment of arrear contributions and normal contributions within 14 days;
 - (cc) the third letter shall notify the defaulting Employer that contributions are in arrears and shall request payment of arrear contributions and normal contributions within 7 days;
 - (dd) each letter issued in terms of (aa), (bb) and (cc) above shall also warn the defaulting Employer that the Fund will take legal action against him and advise the defaulting Employer of the cost of such legal action;

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- (iv) if contributions are still in arrear ~~at the end of the~~ three months period referred to in (ii) above, the Principal Officer shall inform the defaulting Employer that the Fund will take legal action against him;

(vi) *replacing Rule 4.3.3 (d) with the following:*

4.3.3(d) after the expiry of the period of three months and if the legal action bears no results, the Executive Committee may at any time recommend to the Board that the participation in the Fund of the defaulting Employer concerned be terminated in which case, subject to the provisions of Rule 4.3.3 (e):

- (i) the Board may terminate the Employer's participation in the Fund after giving one month's notice to the Employer concerned;
- (ii) subject to (i) above, the Board will agree that the defaulting Employer concerned be given a final opportunity to effect payment of all arrears plus interest thereon within a further period of one month failing which the participation of such employer in the Fund shall be deemed to have been terminated in terms of Rule 10.6;

(vii) *adding Rule 4.3.3 (e) to Rule 4.3.3:*

4.3.3(e) Notwithstanding any other provisions of this Rule, the total process of terminating the participation of a defaulting Employer after the date on which he ceases to contribute to the Fund must not take longer than 4 months.

(viii) *adding Rule 12.1.5 to Rule 12.1:*

12.1.5 Notwithstanding any other provisions of the Rules, the Board shall be competent to act despite a temporary vacancy among the Board members, provided that the composition of the Board complies with the



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quorum requirements set out in Rule 12.3.5.

(ix) *replacing Rule 12.2.1 with the following:*

12.2.1 In order to qualify for election or appointment as a member of the Board or his alternate, a candidate must satisfy the Board that he complies with the Fit and Proper Requirements. In addition, none of the following persons shall qualify for election or appointment as a member of the Board or his alternate and if a member of the Board at any time fails to satisfy the Fit and Proper Requirement or falls into any category specified from (a) to (e) below he shall cease to hold office:

- (a) a minor;
- (b) any person convicted by a competent court of theft, fraud, forgery or any other similar offence;
- (c) any person convicted by a competent court of corruption as defined in the Anti-Corruption Act 2003 (Act 3 of 2003);
- (d) any person discharged by a competent court from any office of trust on account of misconduct;
- (e) any person who has been sentenced to a prison term without the option of a fine.

(x) *replacing Rule 12.2.3 with the following:*

12.2.3 Any Member of the Board or his alternate shall cease to hold office if:

- (a) he resigns from the Board; or
- (b) he becomes disqualified in terms of Rule 12.2.1;
- (c) he becomes mentally or physically incapable of acting; or
- (d) his term of office expires in terms of Rule 12.2.2; or



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- (e) in the case of a Member representative, he ceases to be a Member of the Fund, or an official of a representative union; or
- (f) in the case of an Employer representative who is:
 - (i) a Councillor, he ceases to serve as a Councillor on a participating local authority council; or
 - (ii) a Senior Executive, he ceases to act in the capacity of a director or equivalent position of a commercialised venture, a joint business venture or a regional electricity distributor.
- (g) he has been found guilty of transgressing the Code of Ethics of the Fund and has been asked to resign as a Trustee.

It is specifically provided further that the Board shall have the right to suspend any member of the Board who is being investigated for fraud, theft, dishonesty or any other misconduct or criminal offence, until the outcome of the case against such member of the Board is known.

(ix) *adding Rule 12.9 to Rule 12:*

12.9 Fit and Proper Requirements

To satisfy the Fit and Proper Requirements, any candidate for election or appointment as a Trustee or appointment as Principal Officer should not:

- (a) due to an act of dishonesty, negligence, incompetence or mismanagement:
 - (i) have been found guilty of such an act by any professional financial services industry body (in Namibia or elsewhere):
 - (ii) on account of such an act, have been denied membership of any professional body referred to in (i);

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- (iii) have been found guilty of such an act by any regulatory or supervisory body (in Namibia or elsewhere) or had an authorisation to carry on business which was refused, suspended or withdrawn on account of such an act;

- (b) have been disqualified or prohibited by any court of law (in Namibia or elsewhere) from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective of whether such disqualification has been lifted or not;

- (c) have been involved with a corporation which has been censured, disciplined or refused membership or registration by a stock exchange, futures exchange, or other market or regulatory authority;

- (d) have had any judgement (including a finding of fraud, misrepresentation or dishonesty) given against him in Namibia or elsewhere or have any proceeding now pending against him which might lead to such a judgement;

- (e) have been a controlling shareholder, director of a company or member of a close corporation at the time it was placed under judicial management or in provisional or final liquidation;

- (f) have been the subject of any investigation or disciplinary proceedings by any regulatory authority (in Namibia or elsewhere) or exchange, professional body or government body or agency for which he has been found guilty;

- (g) have been declared insolvent and not been rehabilitated;

- (h) have been a principal officer, member, director or CEO of any business or company which has failed, where that failure has been occasioned entirely or in part by deficiencies in competence, diligence, honesty, fairness or ethical behaviour in the management of such business or company.

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Certified that the above resolution has been adopted in accordance with the provisions of the Rules of the Fund.

Chairperson of Trustees

Trustee

Principal Officer

Certified that the above amendments are financially sound.

STEPHEN WALKER

Actuary to the Fund

Signature

BBusSc FIA FASSA FSAN

Qualifications

July 2019

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