GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N$242.40 WINDHOEK - 1 October 2021 No. 7645

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No. 207 Promulgation of Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 207 2021

PROMULGATION OF ACT
OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 2 of 2021: Financial Institutions and Markets Act, 2021.

Act No. 2, 2021 FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

ACT

To consolidate and harmonise the laws regulating financial institutions, financial intermediaries and financial markets in Namibia; and to provide for incidental matters.

(Signed by the President on 11 June 2021)

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BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:-

CHAPTER 1
PRELIMINARY

General definitions

1. (1) In this Act, unless the context indicates otherwise or the expression is specifically defined in another Chapter of this Act -

"actuary" means a person who is a fellow of an actuarial society, institute or faculty specified in the standards;

"Adjudicator" means the Financial Services Adjudicator as defined in section 1 of the Financial Services Adjudicator Act, 2019 (Act No. of 2019), and includes a Deputy Adjudicator and an *ad-hoc* Adjudicator as defined in that section;

"advisory committee" means the advisory committee established under section 20 of the NAMFISA Act;

"affiliate", in relation to a company or other entity, means -

(a) a subsidiary of that company or other entity;

(b) the holding company of that company or other entity; or

(c) another company or other entity that has the same holding company as that company or other entity;

"Appeal Board" means the appeal board established by section 39 of the NAMFISA Act;

"articles" means the articles of association of a company as defined in section 1 of the Companies Act;

"associate"

(a) in relation to an individual means -

(i) the spouse of that individual;

(ii) the child, parent, stepchild, stepparent or sibling of the individual and the spouse of any that individual;

(iii) another person who has entered into an agreement or arrangement with that individual relating to the acquisition, holding or disposal of, or the exercise of voting rights in respect of, shares or other ownership interests in an entity;

(iv) a corporate body or other juristic person or unincorporated entity controlled, directly or indirectly, by, or the affairs or part of the affairs of which are managed or administered by, or at the direction or instructions of, that individual or any person referred to in subparagraph (i) or (ii); and

(v) a trust controlled by that individual; and

(b) in relation to a corporate body, other juristic person or other unincorporated entity means -

(i) any entity which is controlled, directly or indirectly, by, or the affairs or part of the affairs of which are managed or administered by, or at the direction or instructions of, that corporate body, juristic person or unincorporated entity;

(ii) any entity -

(aa) which controls, directly or indirectly, that corporate body, juristic person or unincorporated entity;

(bb) which manages or administers the affairs or part of the affairs of that corporate body, juristic person or entity; or

(cc) on whose directions or instructions the affairs or part of the affairs of that corporate body, juristic person or entity are managed or administered; or

(iii) a participating employer, where the corporate body, juristic person or unincorporated entity is a retirement fund;

"auditor" means a person registered as an accountant and auditor under section 23 of the Public Accountants and Auditors Act, and who has been admitted as a member of the Institute of Chartered Accountants of Namibia referred to in that Act;

"Bank of Namibia" means the Bank of Namibia established under the Bank of Namibia Act, 2021 (Act No. 1 of 2021);

"banking institution" means a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);

"beneficiary fund" means a beneficiary fund as defined in section 249;

"board" means the board of directors of a corporate body and, unless the context indicates otherwise, the board of trustees of a retirement fund, the board of trustees of

a friendly society, the board of trustees of a medical aid fund and any similar body of persons in relation to any such fund or any other entity;

"building society" means a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 2 of 1986);

"central securities depository" means a central securities depository as defined in section 78;

"client" means a specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service;

"close corporation" means a corporation incorporated under the Close Corporations Act, 1988 (Act No. 26 of 1988);

"collective investment scheme" means a collective investment scheme as defined in section 168;

"Companies Act" means the Companies Act, 2004 (Act No. 28 of 2004);

"company" means a corporate body incorporated under the Companies Act, and includes a public company;

"corporate body" means an incorporated body wherever or however incorporated, and includes a company and a close corporation;

"court" means any court or courts of Namibia having jurisdiction in the particular matter or in the particular circumstances;

"director" means a natural person who -

(a) in relation to a corporate body, occupies the position of director, by whatever name called, of the corporate body, and "board of directors" or "directors" refers to the directors as a body; or

(b) in relation to any juristic person or other unincorporated entity, occupies a position that is the same or similar to that of a person referred to in paragraph (a);

"document" or "record" includes books, accounts and any information stored or recorded electronically, digitally, photographically, magnetically, mechanically, optically or in any other form;

"entity" means a corporate body, any other juristic person, a trust, partnership, fund, association, joint venture and any other unincorporated organisation, the government of any country or any subdivision of that government or country;

"exchange" means an exchange as defined in section 78;

"fee" means an appropriate fee determined by NAMFISA under section 415 or under section 33 of the NAMFISA Act;

"financial advice" means any financial advice as described in subsection (2);

"financial crime" means any of the following:

(a) an offence that involves theft, fraud, forgery or uttering a forged document, perjury or an offence under the Anti-Corruption Act, 2003 (Act No. 8 of 2003);

(b) crimes relating to market abuse provided for in Part 9 of Chapter 3;

(c) financing, facilitating or being involved in financing or facilitating an offence relating to a financial institution;

(d) dealing with the proceeds of an offence, whether or not related to a financial institution;

(e) an offence under the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);

(f) the funding of, or any offence relating to the funding of, terrorism under the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014); or

(g) any offence under the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

"financial institution" means -

(a) a registered beneficiary fund;

(b) a registered central securities depository;

(c) a collective investment scheme of a registered manager;

(d) a registered exchange;

(e) a registered friendly society;

(f) a registered insurer;

(g) a registered medical aid fund;

(h) a registered reinsurer;

(i) a registered retirement fund;

(j) a registered securities clearing house; and

(k) any person or entity declared by the Minister by a notice under subsection (5) (a) to be a financial institution;

"financial intermediary" means a person who receives compensation, directly or indirectly, for providing a financial service, and -

(a) for the purposes of Chapter 2 on Insurance and as defined in section 53 includes -

(i) an insurance agent, including a corporate insurance agent;

(ii) an insurance broker, including a corporate insurance broker;

(b) for the purposes of Chapter 3 on Financial Markets and as defined in section 78 includes -

(i) an authorised user of an exchange;

(ii) an authorised representative of an authorised user;

(iii) a nominee of an authorised user;

(iv) a stockbroker;

(v) an investment manager;

(vi) a linked investment service provider;

(vii) a portfolio manager of an investment manager;

(viii) a portfolio manager of a linked investment service provider;

(ix) a securities advisor;

(x) an authorised advisor of a securities advisor;

(xi) a securities dealer;

(xii) an authorised representative of a securities dealer;

(xiii) a participant;

(xiv) a nominee of a participant;

(xv) a securities rating agency;

(c) for the purposes of Chapter 4 on Collective Investment Schemes and as defined in section 168 includes -

(i) a manager of a collective investment scheme;

(ii) an authorised representative of a manager;

(iii) a designated representative of an authorised representative;

(iv) a nominee company;

(v) a trustee or custodian;

(d) for the purposes of Chapter 5 on Retirement Funds, includes a fund administrator;

(e) for the purposes of Chapter 6 on Friendly Societies, includes a society administrator and an individual or entity that controls the affairs of a friendly society;

(f) for the purposes of Chapter 7 on Medical Aid Funds includes -

(i) a fund administrator;

(ii) a medical aid fund broker as defined in section 321; and

(g) includes a person or entity declared by the Minister by notice under subsection (5)(b) to be a financial intermediary;

"financial product" means -

(a) a policy issued by an insurer or a reinsurer pursuant to Chapter 2;

(b) a benefit provided by -

(i) a retirement fund or a beneficiary fund pursuant to Chapter 5;

(ii) a friendly society pursuant to Chapter 6; or

(iii) a medical aid fund to the members of the medical aid fund by virtue of membership pursuant to Chapter 7;

(c) a security, derivative instrument, money market instrument or other instrument referred to in Chapter 3;

(d) a participatory interest in a collective investment scheme;

(e) a foreign currency denominated investment instrument;

(f) any other product essentially similar in nature and character to a financial product referred to in paragraphs (a) to (e);

(g) any product combining two or more of the financial products referred to in paragraphs (a) to (f); or

(h) any product issued by a foreign entity and marketed in Namibia, which in nature and character is essentially similar or corresponding to a financial product referred to in paragraphs (a) to (g);

"financial service" means -

(a) the service of providing a financial product or financial advice; or

(b) a service determined by NAMFISA after consultation with the advisory committee by notice under subsection (4)(a) to be a financial service;

but does not include -

(i) the collection or accounting by a banking institution of premiums or other moneys payable by a client to a financial institution or financial intermediary in respect of a financial service, where the banking institution acts merely as a conduit between a client and the financial institution or financial intermediary; or

(ii) any other service exempted from the provisions of this Act by NAMFISA, by notice under subsection (4)(b);

"financial services law" means -

(a) this Act;

(b) the Public Accountants' and Auditors' Act;

(c) the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

(d) the Financial Services Adjudicator Act, 2019 (Act No. of 2019);

(e) the Microlending Act, 2018 (Act No. 7 of 2018);

(f) the NAMFISA Act;

(g) a law that declares itself to be a financial services law for the purposes of this Act; or

(h) a law declared by the Minister by notice under subsection (5)(c) to be a financial services law,

and includes regulations, standards, and other subordinate measures made or issued under any of those laws;

"financial year", in relation to a financial institution or financial intermediary, means each period not exceeding 12 months, at the end of which the annual financial statements of the financial institution or financial intermediary are prepared in accordance with the standards;

"foreign entity" means an entity incorporated or formed under the laws of a country other than Namibia;

"friendly society" means a friendly society as defined in section 284;

"fund administrator", in relation to -

(a) a retirement fund, means a fund administrator as defined in section 363; and

(b) a medical aid fund, means a fund administrator as defined in section 363;

"generally accepted accounting practice" means the accounting frameworks adopted by the Institute of Chartered Accountants of Namibia referred to in section 1 of the Public Accountants' and Auditors' Act;

"High Court" means the High Court of Namibia referred to in Article 78(1)(b) of the Namibian Constitution or any judge of that court;

"holding company" means a holding company as described in section 1(6) of the Companies Act;

"Income Tax Act" means the Income Tax Act, 1981 (Act No. 24 of 1981);

"industry association" means a voluntary organisation representing the interests of a group of similar financial institutions or financial intermediaries;

"Insolvency Act" means the Insolvency Act, 1936 (Act No. 24 of 1936);

"inspector" means a person appointed as an inspector under section 419;

"insurer" means an insurer as defined in section 4;

"International Auditing Standards" mean the most recent version of the International Standards on Auditing published by the International Auditing Standards Board, as adopted by the Institute of Chartered Accountants of Namibia referred to in section 1 of the Public Accountants' and Auditors' Act;

"legal practitioner" means a legal practitioner, including a candidate legal practitioner, referred to in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

"medical aid fund" means a medical aid fund as defined in section 321;

"memorandum" means a memorandum as defined in section 1 of the Companies Act;

"Minister" means the Minister responsible for finance;

"NAMFISA" means the Namibia Financial Institutions Supervisory Authority referred to in section 2 of the NAMFISA Act;

"NAMFISA Act" means the Namibia Financial Institutions Supervisory Authority Act, 2021 (Act No. 3 of 2021);

"objects of NAMFISA" means the objects of NAMFISA set out in section 3 of the NAMFISA Act;

"officer", in relation to -

(a) a corporate body, means any natural person who is designated as an officer by the board of directors of that corporate body; and

(b) any other juristic person or other unincorporated entity, means any natural person who is designated as an officer by the board, members or owners of the entity,

and includes -

(i) the members of the board, the principal officer, the person responsible for compliance and the person responsible for finance and investment; and

(ii) any other natural person designated as an officer by NAMFISA by written directive issued to the corporate body or other juristic person, or other unincorporated entity, or a group or class of natural persons designated as officers by NAMFISA by notice under subsection (4)(c);

"permanent resident" means a person who is in possession of a permanent residence permit issued to him or her in terms of section 26 of the Immigration Control Act, 1993 (Act No. 7 of 1993);

"prescribed" means prescribed by the Minister under this Act;

"principal office" means -

(a) in the case of an entity that is a financial institution or financial intermediary, the main place of business of that entity;

(b) in the case of an individual financial intermediary who is employed by a financial institution or by another financial intermediary, the main place of business of that financial institution or other financial intermediary; and

(c) in the case of an individual financial intermediary who is not employed by a financial institution or by another financial intermediary, the main place of business of that individual;

"principal officer" means the officer of a financial institution, financial intermediary or of the manager of a collective investment scheme appointed as principal officer who -

(a) must be -

(i) the chief executive officer of the financial institution, financial intermediary or of the manager of a collective investment scheme and have the duties and the functions of a chief executive officer; or

(ii) the officer having the duties and functions normally exercised by a chief executive officer; and

(b) must be the officer who is responsible for reporting to the board of directors, board of trustees or other board on behalf of the management of the financial institution, financial intermediary or manager of a collective investment scheme,

and in the case of a financial intermediary that is a natural person, that person is deemed to be the principal officer of that financial intermediary;

"Public Accountants' and Auditors' Act" means the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951);

"public company" means a public company referred to in section 20 of the Companies Act;

"registered" means registered under this Act;

"regulations" means regulations made by the Minister under this Act;

"reinsurer" means a reinsurer as defined in section 4;

"retirement fund" means a retirement fund as defined in section 249;

"securities clearing house" means a securities clearing house as defined in section 78;

"self-regulatory organisation" means a self-regulatory organisation as defined in section 78 or a representative self-regulatory organisation referred to in section 432;

"society administrator" means a society administrator as defined in section 363;

"spouse" means -

(a) a partner in a marriage solemnised in terms of the law of Namibia or of any foreign country;

(b) a common law partner in a union recognised in common law as a life-time cohabitation arrangement;

(c) a partner in a customary union according to customary law or custom;

(d) a partner in a union recognised as a marriage under the tenets of any religion; or

(e) a partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

"standards" means the standards issued by NAMFISA under this Act;

"statutory manager" means a person appointed as a statutory manager for a financial institution under section 443;

"subsidiary" means a subsidiary of another company as described in section 1(3) of the Companies Act;

"this Act" includes -

(a) regulations made, or other subordinate measures made or issued by the Minister, under this Act; and

(b) standards and other subordinate measures issued by NAMFISA under this Act;

"Trust Moneys Protection Act" means the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934);

"trust property" means any corporeal or incorporeal movable or immovable asset invested, held, kept in safe custody, controlled, administered or alienated by any person on behalf of another person;

"undesirable practice", in relation to any practice or manner of conducting business of a financial institution or financial intermediary or the provision of a financial service, means a practice determined under section 407 to be an undesirable practice in relation to that financial institution, financial intermediary or financial service;

"valuator" means an actuary or an expert who is a member of a category of professions or persons specified in the standards, appointed or retained as a valuator by a financial institution or financial intermediary or required by NAMFISA to make a valuation report with respect to a financial institution or financial intermediary; and

"wholly owned subsidiary" means a wholly owned subsidiary or another company as described in section 1(7) the Companies Act.

(2) Subject to subsection (3), for purposes of this Act, financial advice includes -

(a) any recommendation, guidance, projection or proposal relating to a financial product furnished by any means or medium, to any person who is a client, potential client, or group of clients or potential clients, whether or not specifically sought by that person or group, and irrespective of whether or not such advice results in a transaction being effected -

(i) in respect of buying, selling, handling or exchanging a security;

(ii) in respect of purchasing any other financial product;

(iii) in respect of investing in any financial product; or

(iv) in respect of the variation of any term or condition applying to a financial product or the replacement of a financial product or the termination of any purchase of or investment in a financial product;

(b) insurance advice as defined in section 4; and

(c) securities advice as defined in section 78.

(3) Despite subsection (2), financial advice does not include -

(a) factual information given merely -

(i) on the procedure for entering into a transaction in respect of a financial product;

(ii) in relation to a description of a financial product;

(iii) in answer to routine administrative enquiries;

(iv) in the form of objective information about a particular financial product including information regarding the tax treatment of a particular financial product;

(v) by the display or distribution of promotional material; or

(vi) by way of an analysis or report on a financial product without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the financial product is appropriate to the particular investment objectives, financial situation or particular needs of a client; or

(b) advice given by -

(i) the board or any board member of a retirement fund or by a friendly society to the members of the fund or society on benefits enjoyed or to be enjoyed by those members;

(ii) the board of trustees or any board member of a medical aid fund to the members of the medical aid fund, on health care benefits enjoyed or to be enjoyed by those members;

(iii) a member of a professional association, including without limitation, a legal practitioner or an auditor or actuary, where the advice is for tax purposes or ancillary to some other advice that is not financial advice; or

(c) any other advisory activity exempted from the provisions of this Act by NAMFISA, by notice under subsection (4)(d).

(4) NAMFISA may, for the purposes of -

(a) paragraph (b) of the definition of "financial service", after consultation with the advisory committee, by notice in the *Gazette* determine any service to be a financial service;

(b) subparagraph (ii) of the definition of "financial service", by notice in the *Gazette* exempt any service from the application of the provisions of this Act;

(c) subparagraph (ii) of the definition of "officer", by notice in the *Gazette* designate a group or class of natural persons as officers; and

(d) subsection (3)(c), by notice in the *Gazette*, exempt any advisory activity from the application of the provisions of this Act.

(5) The Minister may, for the purposes of -

(a) paragraph (k) of the definition of "financial institution", by notice in the *Gazette* declare any person or entity to be a financial institution;

(b) paragraph (g) of the definition of "financial intermediary", by notice in the *Gazette* declare any person or entity to be a financial intermediary; and

(c) paragraph (h) of the definition of "financial services law", by notice in the *Gazette* declare any law to be a financial services law.

(6) NAMFISA may issue standards, guidelines, bulletins, rules, directives or other subordinate measures or take any other measures that NAMFISA is authorised or has been authorised to issue or take under this Act or the NAMFISA Act in order to give effect to any action that NAMFISA has taken under subsection (4) or the Minister has taken under subsection (5).

(7) The Minister may make regulations, issue other subordinate legislation or measures or take other measures that the Minister is authorised to issue or take under this Act or the NAMFISA Act in order to give effect to any action that NAMFISA has taken under subsection (4) or the Minister has taken under subsection (5).

Objects of Act

2. The objects of this Act are to foster -

(a) the financial soundness of financial institutions and financial intermediaries;

(b) the stability of the financial institutions and markets sector;

(c) the highest standards of conduct of business by financial institutions and financial intermediaries;

(d) the fairness, efficiency and orderliness of the financial institutions and markets sector;

(e) the protection of consumers of financial services;

(f) the promotion of public awareness and understanding of financial institutions and financial intermediaries; and

(g) the reduction and deterrence of financial crime.

Control over corporate bodies

3. (1) For the purposes of this Act, each of the following is considered as having control over a corporate body or other entity -

(a) in the case of a corporate body -

(i) a person that has the power to appoint a director or member of the board of directors;

(ii) a person whose consent is needed for the appointment of a director or member of the board of directors;

(iii) a person that, either alone or with one or more associates, holds 20% or more of the voting rights attached to shares or other securities in the corporate body; and

(iv) a person that, either alone or with one or more associates, has the power to control 20% or more of the voting rights attached to shares or other securities in the corporate body; and

(b) in the case of an entity that is not a corporate body, a person who is in a position to control or influence in essentially the same measure as a person referred to in paragraph (a), the business or financial operations of the entity.

(2) For the purposes of this Act, a person referred to in any provision of subsection(1)(a) who is considered as having control over a corporate body is also considered as having control over any subsidiary of that corporate body.

(3) Where a corporate body is a financial institution, for the purposes of subsection (1)(a)(iii) or (iv), the Minister may by notice in the *Gazette* determine a lower percentage than 20%, to apply either generally or to a class of financial institutions.

(4) NAMFISA may in a particular case determine that a person does or does not control a financial institution, subject to such terms and conditions as may be specified in such determination.

(5) NAMFISA may not make a determination that a person controls a financial institution pursuant to subsection (4) unless -

(a) the person has been given notice of the proposed determination and a reasonable opportunity to make representations to NAMFISA on the matter; and

(b) NAMFISA is satisfied that the person is in a position to control or influence the business or financial operations of the financial institution in essentially the same measure as a person referred to in subsection (1)(a).

CHAPTER 2
INSURANCE

PART 1
GENERAL

Definitions for this Chapter

4. (1) In this Chapter, unless the context indicates otherwise -

"actuarial basis", in relation to a policy, means the underlying actuarial rules, specifications and formulae, approved by the valuator of the registered insurer or reinsurer, in terms of which a policy operates and is executed as contemplated by this Act;

"capital adequacy requirement" means an amount which a registered insurer or reinsurer is required to have continuously in accordance with the requirements of the standards;

"class of insurance" means a class or classes of insurance described in section 8, and a reference in this Act to a particular class of insurance is a reference to the insurance of risks falling within that particular class determined in accordance with section 8;

"domestic policy" means a policy issued in Namibia and which is payable in Namibia in the currency of Namibia, and, in the case of a long-term policy, includes a policy which was issued -

(a) on or after March 21, 1990 but before July 1, 1998, other than such a policy in respect of which the policyholder has in writing requested the registered insurer concerned that it must not be made payable in Namibia in the currency of Namibia; or

(b) before March 21, 1990 and which the policyholder has not requested that the policy be made payable outside Namibia in a currency other than that of Namibia or the policyholder has specifically made the policy to be payable in Namibia in Namibian currency;

"due date", in relation to -

(a) a premium, means-

(i) in the case of a new policy, the inception date of the policy;

(ii) in the case of an existing policy which has been renewed, the renewal date of the policy; and

(iii) in the case of any extension of, or other change to, an existing policy, the inception date of such extension or other change; and

(b) an instalment of a premium, means the commencement date of the period in respect of which the instalment is payable;

"foreign insurer" means a foreign entity that is authorised by or under the laws of a country other than Namibia to carry on the business of insurance in that country or in another country;

"foreign reinsurer" means a foreign reinsurer that is authorised by or under the laws of a country other than Namibia to carry on reinsurance business in that country or in another country;

"gap insurance" means gap insurance as defined in the regulations;

"insurance" means long-term insurance or short-term insurance, and includes micro-insurance;

"insurance advice" means any recommendation, guidance, projection or proposal on insurance furnished by any means or medium, to any person who is a client, potential client or policyholder or group of clients, potential clients or policyholders, whether or not specifically sought by that person or group, and irrespective of whether or not such advice results in a transaction being effected in respect of insurance but does not include -

(a) factual information given merely -

(i) on the procedure for entering into a transaction in respect of insurance;

(ii) in relation to the description of an insurance product;

(iii) in answer to routine administrative enquiries;

(iv) in the form of objective information about a particular insurance product, including information regarding the tax treatment of a particular insurance product;

(v) by the display or distribution of promotional material; or

(vi) by way of an analysis or report on insurance without any express or implied recommendation, guidance or proposal that any particular transaction in respect of insurance is appropriate to the particular insurance or investment objectives, financial situation or particular needs of a client;

(b) advice given by a member of a professional association, including without limitation, a legal practitioner or an auditor or actuary, where the advice is for tax purposes or ancillary to some other advice that is not insurance advice; or

(c) any other advisory activity exempted from the provisions of this Chapter by NAMFISA by notice under subsection (2);

"insurance intermediary" means an insurance agent or an insurance broker as defined in section 53;

"insurer" means a person carrying on the business of insurance or reinsurance;

"long-term insurance" means insurance of a class or classes described in section 8 as long-term insurance;

"Long-term Insurance Act" means the Long-term Insurance Act, 1998 (Act No. 5 of 1998);

"micro-insurance" means micro-insurance as defined in the regulations;

"participating policy" means a policy issued by a registered insurer or reinsurer that entitles its holder to participate in the profits of the registered insurer or reinsurer;

"participating policyholder" means the holder of a participating policy;

"policy" means a document that is a written contract of insurance or reinsurance and includes a certificate of coverage, interim receipt renewal receipt or any other document evidencing a contract of insurance;

"policy benefits" means one or more sums of money, services or other benefits under a policy and includes an annuity;

"policyholder" means the person who enters into a domestic policy with an insurer or reinsurer;

"premium" means the consideration given or to be given in return for an undertaking to provide insurance;

"registered insurer" means an insurer that is a company registered under section 11 to carry on long-term insurance or short-term insurance, and for the purposes of Part 6, includes Lloyd's as defined in section 42;

"registered insurance intermediary" means a registered insurance agent or a registered insurance or reinsurance broker as defined in section 53;

"reinsurance" means the business of insuring an insurer, reinsurer or medical aid fund in respect of the contractual obligations of that insurer, reinsurer or medical aid fund;

"reinsurer" means a person carrying on the business of reinsurance;

"registered reinsurer" means a reinsurer that is a company registered under section 11 to carry on long-term reinsurance or short-term reinsurance, and that is limited by its certificate of registration to reinsurance, and for the purposes of Part 6, includes Lloyd's as defined in section 42;

"short-term insurance" means insurance of a class or classes described in section 8 as short-term insurance; and

"Short-term Insurance Act" means the Short-Term Insurance Act, 1998 (Act No. 4 of 1998).

(2) NAMFISA may, for the purposes of paragraph (c) of the definition of insurance advice, by notice in the *Gazette*, exempt any advisory activity from the application of the provisions of this Chapter.

Prohibitions

5. (1) A person may not carry on the business of insurance or reinsurance in Namibia, unless that person -

(a) is registered pursuant to section 11 or deemed to be registered pursuant to section 12, and carries on the class or classes of insurance indicated in its certificate of registration as an insurer or reinsurer; and

(b) carries on that business in accordance with this Act.

(2) Despite subsection (1), NAMFISA may, if satisfied that no registered insurer or reinsurer is able, in any particular case, to provide policy benefits under a policy on equitable terms, grant an exemption to any foreign insurer or foreign reinsurer to issue a policy payable in Namibia in the currency of Namibia that provides those policy benefits.

(3) NAMFISA may set out terms and conditions in the standards with respect to foreign insurers or foreign reinsurers referred to in subsection (2).

(4) Subsection (1) does not apply to the activities of -

(a) a retirement fund registered under Chapter 5, if and in so far as it acts in accordance with that Chapter;

(b) a friendly society registered under Chapter 6 or exempted under that Chapter from the requirement to be so registered, if and in so far as it enters into long-term policies in respect of which -

(i) the total value of the policy benefits, other than an annuity, to be provided; or

(ii) the total amount of the premium in return for which an annuity is to be provided,

does not exceed the prescribed maximum amount; or

(c) a medical aid fund registered under Chapter 7, if and in so far as it acts in accordance with that Chapter.

(5) For the purposes of subsection (1), a person, in the absence of evidence to the contrary, is regarded as carrying on the business of insurance or reinsurance in Namibia, if that person performs in Namibia -

(a) any act the object or result of which is that another person enters into or varies a policy in which that first-mentioned person undertakes to provide policy benefits; or

(b) in relation to a policy referred to in paragraph (a), any act directed towards -

(i) maintaining, servicing, surrendering, or otherwise dealing with, or providing a loan in respect of, or on the security of, such policy;

(ii) collecting or accounting for premiums payable under such policy; or

(iii) receiving, submitting, settling, assisting or otherwise dealing with the settlement of a claim under such policy.

(6) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Restrictions on use of certain designations

6. (1) A person, other than a registered insurer, a registered reinsurer, a registered insurance intermediary or a Lloyd's broker, Lloyd's intermediary, Lloyd's representative or Lloyd's underwriter may not carry on business under any name or description which includes any of the following words or a literal translation, derivative or abbreviation of any such words -

(a) "assurer", "assurance", "insure", "insurer", "insurance", "Lloyd's", "underwriter" or "underwriting"; or

(b) "advisor", "agent", "broker", "consultant", "guarantee" or "indemnity", when used in conjunction or association with the word "assurance" or "insurance".

(2) NAMFISA may issue standards exempting a person or class of persons from the provisions of subsection (1).

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Limitations

7. (1) A registered insurer or reinsurer may not -

(a) carry on the business of insurance or reinsurance in Namibia or elsewhere other than for the class or classes of insurance for which it is registered;

(b) in Namibia issue policies other than written domestic policies; or

(c) vary a domestic policy so that it becomes payable either outside Namibia or in a currency other than the currency of Namibia or both

payable outside Namibia and in a currency other than the currency of Namibia.

(2) Despite subsection (1), at the request of a registered insurer or reinsurer concerned and subject to the provisions of any other law, NAMFISA, by notice given to the registered insurer or reinsurer and published in the *Gazette* and if satisfied that it will not be detrimental to the interests of policyholders and that it is desirable in the public interest, may -

(a) grant prior approval to a registered insurer or reinsurer to effect or renew reinsurance outside Namibia subject to such conditions or limitations contained in the standards and as may be determined by NAMFISA in any particular case;

(b) grant exemption for a class or classes of policies to be issued in a currency other than the currency of Namibia, except that every premium in respect of that policy must be paid in the same currency as that in which the policy is issued; or

(c) allow the registered insurer or reinsurer to carry on a business other than insurance or reinsurance that is ancillary to the class or classes of insurance or reinsurance for which it is registered in accordance with any standards that may be issued on the subject.

(3) For the purposes of subsection (2)(c), an ancillary activity for an insurer or a reinsurer registered for long-term insurance includes, but is not limited to -

(a) providing investment counselling services and portfolio management services;

(b) engaging in the provision of real estate brokerage services;

(c) providing information processing services in Namibia to entities which the insurer or reinsurer controls and that do not provide information processing services to other entities;

(d) acting as a custodian of property; or

(e) issuing unit-linked products.

(4) For the purposes of subsection (3)(e), "unit-linked products" has the meaning and must be subject to the requirements set out in the standards.

(5) Subject to subsection (6), an insurer or a reinsurer may not be registered for classes of insurance that include both long-term insurance and short-term insurance.

(6) Despite subsection (5), an insurer or reinsurer registered to carry on long-term insurance or short-term insurance may also be registered to carry on micro-insurance.

(7) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Classes of insurance

8. (1) For the purposes of subsections (2) and (3) -

"disability insurance business" means the business of providing or undertaking to provide policy benefits under disability policies;

"disability event" means the event of the functional ability of the mind or body of a person or an unborn person becoming impaired;

"disability policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a disability event, and includes a reinsurance policy in respect of such a contract;

"fund" means -

(a) a friendly society referred to in Chapter 6;

(b) a medical aid fund referred to in Chapter 7;

(c) a pension fund referred to in section 255;

(d) a retirement fund and a beneficiary fund referred to in Chapter 5;

(e) a permanent fund, approved by the Minister, established for the purposes of providing benefits to its members in the event of sickness, accident or unemployment or of providing benefits to surviving spouses, children, dependants or nominees of deceased members or mainly for these purposes; or

(f) any other prescribed person, arrangement or business;

"fund insurance business" means the business of providing or undertaking to provide policy benefits under fund policies;

"fund policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for purposes of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund, and includes a reinsurance policy in respect of such a contract;

"funeral insurance business" means the business of providing or undertaking to provide policy benefits under funeral policies;

"funeral policy" means a contract in terms of which a person, in return for a premium, undertakes to provide on the death of a particular person policy benefits, not exceeding such amount as may be prescribed, consisting mainly of the provision of a funeral for the deceased person or the granting to another person of some other non-monetary benefit, whether or not the policy provides for -

(a) the payment, at the option of the insurer or the reinsurer or any other person, of a sum of money instead of the provision of such funeral or the granting of such other non-monetary benefit; or

(b) the payment of a sum of money in addition to the provision of such funeral or the granting of such other non-monetary benefit, and includes a reinsurance policy in respect of such a contract;

"health event" means an event relating to the health of the mind or body of a person or an unborn person;

"health insurance business" means the business of providing or undertaking to provide policy benefits under health policies;

"health policy" means a health policy within the meaning of the regulations;

"life insurance business" means the business of providing or undertaking to provide policy benefits under life policies;

"life policy" means a contract in terms of which a person, in return for a premium, undertakes to -

(a) provide policy benefits -

(i) on death;

(ii) on the happening of an event or contingency dependent on human life; or

(iii) for a term dependent on human life; or

(b) pay an annuity for a certain period,

and includes a reinsurance policy in respect of such a contract;

"long-term insurance business" means the business of providing or undertaking to provide policy benefits under long-term policies, but does not include -

(a) the activities of an association of persons established for the purposes of rendering aid to its members or their dependants, commonly called a friendly society, which is registered under Chapter 6 or which is exempted from registration under that Chapter and which does not at any time after the commencement of this Act employ a person whose main remunerated occupation consists of inducing persons to become members of the association or collecting from those members contributions of subscriptions towards the funds of the association;

(b) the activities of a pension fund, a provident fund or a retirement annuity fund as defined in section 1 of the Income Tax Act, which is registered as a retirement fund under Chapter 5;

(c) the activities of a medical aid fund which is registered under Chapter 7;

(d) any activity connected with and subsidiary to any business other than insurance or reinsurance, which in the opinion of NAMFISA is not long-term insurance business as ordinarily understood; or

(e) any such business as may be prescribed which is considered not to be long-term insurance business for the purposes of this Act;

"long-term policy" means a disability policy, fund policy, funeral policy, health policy, life policy or sinking fund policy or a contract comprising a combination of any of these policies;

"sinking fund insurance business" means the business of providing or undertaking to provide policy benefits under sinking fund policies;

"sinking fund policy" means a contract, other than a life policy, in terms of which a person, in return for a premium, undertakes to provide one or more sums of money on a fixed or determinable future date as policy benefits, and includes a reinsurance policy in respect of such a contract.

(2) The classes of long-term insurance business in respect of which -

(a) an insurer may be registered to carry on business, other than reinsurance business; and

(b) a reinsurer may be registered to carry on reinsurance business only,

in Namibia are those set out in Part 1 of Schedule 1.

(3) The classes of short-term insurance business in respect of which -

(a) an insurer may be registered to carry on business, other than reinsurance business; and

(b) a reinsurer may be registered to carry on reinsurance business only,

in Namibia are those set out in Part 2 of Schedule 1.

(4) If a registered insurer or reinsurer or a person applying for registration and NAMFISA do not agree as to the class to which any particular long-term or short-term insurance business belongs or if that insurer or reinsurer or person so requests, NAMFISA must determine the class under which the business must be dealt with.

(5) The Minister may on his or her own accord or at the request of NAMFISA, by notice in the *Gazette,* amend Schedule 1 by adding to or removing from that Schedule any class or classes of long-term or short-term insurance business.

PART 2
REGISTRATION

Application for registration

9. (1) A public company that intends to carry on business as an insurer or a reinsurer in any particular class or classes of insurance in Namibia must make an application to NAMFISA for registration in respect of that class or those classes of insurance in accordance with subsection (2).

(2) An application for registration as an insurer or a reinsurer must be -

(a) made in the manner and form required by the standards;

(b) include the information with respect to the principal office and principal officer required by the standards;

(c) accompanied by the documents and other information required by the standards;

(d) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(e) made subject to and in accordance with any other applicable provision of this Act; and

(f) accompanied by the required fee.

(3) Before making an application referred to in subsection (1), the applicant must, at the expense of the applicant, give notice of the proposed application in two newspapers circulating nationally in Namibia, stating -

(a) the name of the applicant;

(b) the place where the application and the memorandum, articles and rules of the applicant may be inspected by members of the public; and

(c) the period within which objections to the application may be lodged with NAMFISA.

Registration requirements

10. (1) Before approving the application and registering the applicant as an insurer or a reinsurer for any class of insurance, NAMFISA must be satisfied on reasonable grounds that the requirements of subsection (3) have been met and that the applicant -

(a) is a public company;

(b) has appointed a principal officer pursuant to section 15 who is a member of the board of directors;

(c) has at least five directors -

(i) at least 50 percent of whom must be Namibian citizens or holders of permanent residence permits and who are resident in Namibia;

(ii) at least one third of whom must be independent within the meaning of the standards; and

(iii) none of whom is a registered insurance intermediary;

(d) has, in respect of such insurance business in Namibia, capital that meets the capital adequacy requirements of the standards;

(e) has paid up capital and surplus in Namibian dollars totalling at least -

(i) N$2 000 000 for registration for one class of long-term insurance;

(ii) N$8 000 000 for registration for more than one class of long-term insurance;

(iii) N$2 000 000 for registration for one class of short-term insurance;

(iv) N$8 000 000 for registration for more than one class of short-term insurance;

(v) N$200 000 for registration for funeral insurance;

(vi) N$200 000 for registration for micro-insurance;

(vii) NS12 000 000 for registration for reinsurance; or

(viii) such greater amount in any of the cases referred to in subparagraphs (i) to (vii) as the Minister may prescribe;

(f) has submitted to NAMFISA a business plan, certified by a valuator, covering a period of three years reflecting the classes of insurance proposed to be undertaken and their respective risk profiles and providing details of projected set-up costs, capital requirements, projected development of business, solvency margins and reinsurance arrangements, and such business plan has been found satisfactory by NAMFISA;

(g) will be in a position to -

(i) carry on the business of insurance or reinsurance in the class or classes for which the application has been made;

(ii) conduct all affairs relating to its insurance or reinsurance business in accordance with sound insurance, reinsurance and financial principles and practices and the provisions of this Act;

(iii) comply with the capital adequacy requirements set out in the standards; and

(iv) protect the interests of policyholders; and

(h) will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA.

(2) For the purposes of subsection (1)(c)(i), the principal officer may not be included in calculating the 50 percent required pursuant to that subsection.

(3) Before approving the application and registering the applicant, NAMFISA must be satisfied on reasonable grounds that -

(a) in relation to the applicant public company -

(i) every shareholder or other owner that controls the applicant, and every director, the principal officer and other officers of the applicant are fit and proper within the meaning of the standards;

(ii) the memorandum, articles or other founding documents of the applicant are not inconsistent with the provisions of this Act;

(iii) the direct or indirect control of the public company is not likely to be contrary to the interest of consumers of the financial services concerned; and

(iv) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;

(b) doing so is not contrary to-

(i) this Act; or

(iii) the public interest;

(c) the applicant has the attributes reasonably necessary and adequate to -

(i) provide the financial services in question with professional integrity, prudence, proper skill and due diligence;

(ii) maintain a sound financial position and not cause or further instability in the financial system of Namibia; and

(iii) comply with this Act;

(d) the name under which the applicant proposes to conduct business, or a translation, shortened form or derivative of that name is not in contravention of section 391;

(e) the applicant has submitted all other information which, in the opinion of NAMFISA, is necessary to assess the application, and such information has been found satisfactory by NAMFISA; and

(f) the applicant has complied and will continue to comply with any other requirements contained in this Act or in the standards which apply to the applicant.

Registration

11. (1) If NAMFISA is satisfied that the applicant complies with the provisions of sections 9 and 10, and after consideration of any objection received as a result of the notice referred to in section 9(3), NAMFISA must, subject to conditions that may be imposed under subsection (4), register the applicant as an insurer or a reinsurer to carry on the business of long-term insurance or short-term insurance in the class or classes in respect of which registration has been granted.

(2) The registration referred to in subsection (1) must specify -

(a) the principal office of the applicant in Namibia; and

(b) the places in Namibia from which the applicant may operate.

(3) Upon registration of an applicant NAMFISA must issue to the applicant a certificate of registration in a form provided by the standards.

(4) NAMFISA may impose such conditions on the registration of the applicant as it considers necessary, having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant, and any guidelines issued by NAMFISA under this Act.

(5) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions, and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(6) An insurer or a reinsurer must comply with the conditions subject to which it was registered.

Insurers and reinsurers previously registered

12. An insurer or a reinsurer that was registered under the Long-term Insurance Act or the Short-term Insurance Act on the date of commencement of this Act is deemed to be a registered insurer or reinsurer under section 11 and, subject to such adjustments as may be necessary and any applicable standards, the provisions of this Act apply to that insurer or reinsurer.

Application for cancellation or variation of registration

13. (1) An insurer or a reinsurer may at any time apply to NAMFISA for cancellation of a registration granted pursuant to section 11 or for a variation to the classes of insurance for which it was registered or to the conditions subject to which that registration was granted.

(2) An application made under subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) accompanied by the documents and other information required by the standards;

(c) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case; and

(d) accompanied by the required fee.

(3) Before making an application pursuant to subsection (1), the applicant must give prior notice of the proposed application in two newspapers circulating nationally in Namibia, at the expense of the applicant, stating -

(a) the name of the applicant;

(b) either -

(i) the reasons for the proposed cancellation;

(ii) the nature of the proposed variation to the classes of insurance for which it was registered; or

(iii) the nature of the proposed variation to the conditions; and

(c) the period within which objections to the application may be lodged with NAMFISA.

(4) Section 11 applies with the changes required by the context to an application for a variation of conditions referred to in subsection (1).

(5) If, after consideration of any objection received as a result of the notice referred to in subsection (3), NAMFISA is of the opinion that it is reasonable to do so and not against the public interest, NAMFISA may, by notice to the insurer or reinsurer concerned -

(a) cancel the registration; or

(b) vary the conditions of registration, including the imposition of additional conditions.

(6) NAMFISA must make public any cancellation of registration or variation of conditions of registration under subsection (5) and the reasons for the cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

Cancellation or variation of registration

14. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that -

(a) a registered insurer or reinsurer has made a material misrepresentation or failed to provide information that was materially relevant in its application for registration;

(b) a registered insurer or reinsurer has failed to comply with this Act;

(c) a registered insurer or reinsurer no longer meets the requirements for registration;

(d) a registered insurer or reinsurer has provided financial services without professional integrity, prudence, proper skill or due diligence;

(e) a registered insurer or reinsurer is in an unsound financial position;

(f) a registered insurer or reinsurer has failed to comply with a directive, request or requirement of NAMFISA issued under this Act;

(g) a registered insurer or reinsurer has failed to give effect to a decision of the Appeal Board;

(h) a registered insurer or reinsurer has ceased to operate or has failed to commence operating within a reasonable time after being registered;

(i) a registered insurer or reinsurer is involved in a financial crime; or

(j) any director, the principal officer, other officer or member of a board of the registered insurer or reinsurer no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take any of the following actions with respect to the registered insurer or reinsurer -

(a) cancel its registration;

(b) vary the conditions of its registration, including the imposition of additional conditions; or

(c) take any other steps that NAMFISA may consider necessary or advisable.

(3) Before taking any action pursuant to subsection (2), NAMFISA must give notice to the registered insurer or reinsurer of its intention to take the action, together with the reasons for taking the action, and must give the registered insurer or reinsurer a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the registered insurer or reinsurer may in writing make representations to NAMFISA on the matter.

(4) Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of a registered insurer or reinsurer without giving notice and an opportunity to be heard pursuant to subsection (3), if NAMFISA is satisfied on reasonable grounds that it is urgently necessary to do so in order to prevent or mitigate damage to the interests of financial institutions, financial intermediaries, their clients or the financial system of Namibia, but NAMFISA must -

(a) give the registered insurer or reinsurer the notice and an opportunity to be heard and make representations as soon as reasonably possible; and

(b) having considered any representations received, determine whether the provisional suspension should be continued until further conditions can be imposed or registration cancelled.

(5) On the cancellation of the registration of an insurer or a reinsurer under section 13, subsection (2)(a) or any other applicable provision of this Act, the insurer or reinsurer must be wound-up in accordance with the requirements of Chapter 10, and NAMFISA must take such steps and may impose such conditions as are necessary in the circumstances, which steps may include the transfer of the business of the insurer or reinsurer to another insurer or reinsurer, as appropriate, but no distribution of the assets of the insurer or reinsurer may be made without the prior approval of NAMFISA.

(6) NAMFISA must make public any suspension or cancellation of registration, variation of conditions of registration or any other steps taken under this section and the reasons for the suspension, cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

(7) A person who -

(a) continues to operate, or engage in, the business of insurance or reinsurance after the cancellation of registration under section 13(5)(a), subsection (2)(a) or any other applicable provision of this Act or after suspension of registration under subsection (4); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (4),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 3
ADMINISTRATION

Principal office and principal officer

15. (1) Every registered insurer or reinsurer must -

(a) have a principal office in Namibia where it must hold and maintain the documents referred to in the standards; and

(b) appoint to be its principal officer in Namibia, a fit and proper person within the meaning of the standards, who is -

(i) a Namibian citizen or permanent resident; and

(ii) resident in Namibia.

(2) Despite subsection (1)(b)(i), NAMFISA may, in exceptional circumstances, grant permission that a principal officer referred to in that subsection may, subject to the Immigration Control Act, 1993 (Act No. 7 of 1993), for such period as may be determined by NAMFISA, be a person other than a Namibian citizen or permanent resident.

(3) After the appointment of a principal officer pursuant to subsection (1)(b), a registered insurer or reinsurer must, within the period set out in the standards, in writing notify NAMFISA of the appointment.

(4) NAMFISA may, on the grounds that a principal officer is not a fit and proper person, within the meaning of the standards, and after giving the registered insurer or reinsurer and the principal officer a reasonable opportunity to be heard, direct the registered insurer or reinsurer to appoint some other person to be the principal officer of the registered insurer or reinsurer.

(5) Whenever a principal officer resigns or the appointment of a principal officer is terminated by a registered insurer or reinsurer or by the expiry of a contract

of employment, the registered insurer or reinsurer must, within the period set out in the standards, in writing notify NAMFISA and submit to NAMFISA a written statement of the reasons for the termination or in the opinion of the registered insurer or reinsurer, the reasons for the resignation.

(6) The principal officer of a registered insurer or reinsurer must be an *ex officio* member of the board of the insurer or reinsurer, but the principal officer may not serve as chairperson of the board.

(7) The principal officer of a registered insurer or reinsurer is authorised to act on behalf of the insurer or reinsurer to ensure compliance with this Act, and in any case where a person, including NAMFISA, communicates with that insurer or reinsurer, that person may do so by addressing the communication to the principal officer.

(8) Process in any legal proceedings may be served on a registered insurer or reinsurer by serving a copy of the process at its principal office.

(9) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Accounts

16. A registered insurer or reinsurer must keep in Namibia proper accounts of, and financial information relating to, its insurance or reinsurance business that comply with the requirements of the standards.

Appointment of auditor

17. (1) A registered insurer or reinsurer must, in accordance with section 401, appoint and at all times have an auditor or firm of auditors to be its auditor for its insurance business in Namibia.

(2) A registered insurer or reinsurer may not appoint as its auditor -

(a) an auditor who is; or

(b) a firm of auditors any member of which is,

an employee, officer, director or shareholder of the registered insurer or reinsurer or of an insurance intermediary that is affiliated with the registered insurer or reinsurer.

(3) NAMFISA may direct a registered insurer or reinsurer to change its auditor if NAMFISA is satisfied that the auditor or any member of the firm of auditors appointed as auditor is an employee, officer, director or shareholder of the registered insurer or reinsurer or of an insurance intermediary that is affiliated with the registered insurer or reinsurer.

(4) An auditor appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

an auditor by section 401.

Appointment of valuator

18. (1) A registered insurer or reinsurer must, in accordance with section 402, appoint and at all times have a valuator for the purposes of this Act.

(2) A registered insurer or reinsurer may not appoint as its valuator an employee, officer, director or shareholder of the registered insurer or reinsurer or of an insurance intermediary that is affiliated with the registered insurer or reinsurer.

(3) A registered insurer or reinsurer that was registered under the Short-term Insurance Act must appoint a valuator within 90 days of the coming into force of this Part.

(4) The valuator of a registered insurer or reinsurer that was registered under the Long-term Insurance Act may continue as the valuator of that registered insurer under this Act as long as the valuator meets the requirements of subsection (2) and section 402(2).

(5) NAMFISA may direct a registered insurer or reinsurer to change its valuator if NAMFISA is satisfied that the person appointed as valuator is an employee, officer, director or shareholder of the registered insurer or reinsurer or of an insurance intermediary that is affiliated with the registered insurer or reinsurer.

(6) In addition to the functions and duties assigned to a valuator by section 402, a valuator of a registered insurer or reinsurer must value the actuarial and other policy liabilities of the registered insurer or reinsurer with respect to its insurance or reinsurance business in Namibia as at the end of each financial year, and prepare a valuation report thereon for that financial year.

(7) The report of the valuator referred to in subsection (6) must include any particulars set out in the standards.

(8) The registered insurer or reinsurer must, within 180 days from the end of the valuation period, and subject to section 402 (10)(a), deposit a copy of the valuation report referred to in subsection (6) with NAMFISA.

(9) Whenever a registered insurer or reinsurer deposits with NAMFISA a copy of a report made by a valuator under this section, it must also deposit with NAMFISA a certificate of the board and of the principal officer of the registered insurer or reinsurer that to the best of their knowledge and belief the information furnished to the valuator for the purposes of the report was correct and complete in every material respect.

(10) A valuator appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

a valuator by section 402.

(11) Any person who contravenes or fails to comply with subsection (8) or (9) or makes a false or misleading statement when required to issue a certificate pursuant to subsection (9) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART 4
CONDUCT OF INSURANCE BUSINESS

Conduct of insurance business

19. (1) A registered insurer or reinsurer must, in carrying on the business of insurance and conducting its affairs -

(a) in all respects act honestly and in good faith;

(b) employ sound insurance, reinsurance and financial principles and practices; and

(c) comply with the provisions of this Act and any other applicable financial services law.

(2) Every registered insurer or reinsurer must -

(a) hold in strict confidence all information concerning the business and affairs of any client of the registered insurer or reinsurer acquired in the course of the professional relationship with that client and may not divulge any such information unless -

(i) authorised in writing by the client;

(ii) required by this Act or any other law or by an order of the court; or

(iii) as may be necessary in order to arrange or provide for the insurance required by the client;

(b) observe the requirements of this Act and all other relevant rules and legislation regarding the preservation and safekeeping of the property of the client entrusted to the registered insurer or reinsurer and, if there are no such requirements, rules or legislation or the registered insurer or reinsurer is in doubt, take the same care of such property as a careful and prudent person would take of that person's own property of like description;

(c) not stipulate, charge or accept any fee that is not fully disclosed or the basis for which is not fully disclosed, prior to the service being rendered or which is so disproportionate to the service provided as to be unconscionable;

(d) maintain accounts and financial records in respect of the business carried out for a period of at least five years after the period to which those accounts and records relate;

(e) comply with such instructions as may be issued by NAMFISA with respect to the specific accounting, financial and other records that must be maintained for the particular type of activity in which the registered insurer or reinsurer is engaged.

(3) A registered insurer or reinsurer may not, without the prior written approval of NAMFISA, make additions to or alter the provisions of its memorandum, articles or rules, and any purported addition or alteration without that approval is void, despite any provision in any other law.

Financially sound position

20. (1) A registered insurer or reinsurer must at all times maintain its business in a financially sound position by -

(a) having assets exceeding the capital adequacy requirements as set out in the standards; and

(b) generally conducting its business so that it is in a position to meet its liabilities and capital adequacy requirements at all times.

(2) For the purposes of determining the compliance of each registered insurer or reinsurer with the capital adequacy requirements, the values of the assets and liabilities of each registered insurer or reinsurer must be determined in accordance with the standards.

(3) A registered insurer or reinsurer must be regarded as having failed to comply with subsection (1) if it -

(a) does not have assets as required under this Act; or

(b) has not made provision for the liabilities and the capital adequacy requirements in accordance with this Act and the standards.

(4) A registered insurer or reinsurer may not declare or pay a dividend to its shareholders -

(a) while it fails or is likely to fail to comply with subsection (1);

(b) if the declaration or payment would result in it failing or being likely to fail to comply with subsection (1); or

(c) if, after the declaration or payment, the aggregate value of assets required under this Act would be less than the aggregate value of its liabilities, issued share capital and non-distributable reserves.

(5) A registered insurer or reinsurer may not declare or pay a dividend to its shareholders unless its valuator has certified that the declaration or payment will not be contrary to subsection (4).

(6) A registered insurer or reinsurer may, subject to the provisions of this Act and the regulations, invest its funds in any manner provided by its memorandum, articles or rules.

(7) The Minister may make regulations and NAMFISA may issue standards in respect of the investments by, or of, a registered insurer or reinsurer.

(8) Any person who makes an investment in contravention of, or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Restrictions on pledging assets and borrowing

21. (1) A registered insurer or reinsurer may not -

(a) pledge, hypothecate or otherwise encumber any of its assets; or

(b) allow any other person to hold any assets on its behalf,

unless the asset in question forms part of assets that are regarded as free assets of the registered insurer or reinsurer as determined in the standards.

(2) Where an asset of a registered insurer or reinsurer is held, pledged, hypothecated or otherwise encumbered as contemplated in subsection (1), the value of that asset must, for the purposes of this Act, be reduced proportionately to the extent to which it is so held, pledged, hypothecated or otherwise encumbered.

(3) A registered insurer or reinsurer may not -

(a) borrow money; or

(b) guarantee to discharge, or bind itself as surety for the discharge of, the debts or other obligations of any person,

unless the borrowing of money or the granting of the guarantee or surety is done or effected against the security of the free assets of the registered insurer or reinsurer as determined in the standards.

(4) A person who contravenes or fails to comply with subsection (1) or (3) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Actuarial soundness of policies

22. (1) A registered insurer or insurer may not -

(a) enter into any policy unless the valuator is satisfied that the premiums, benefits and other values of the policy are actuarially sound;

(b) make a distinction between the premiums, benefits or other values of different policies unless the valuator is satisfied that the distinction is actuarially justified; or

(c) award a bonus or similar benefit to a policyholder unless -

(i) it is done in accordance with the principles and practices of financial management of the registered insurer or reinsurer; and

(ii) the valuator is satisfied that it is actuarially sound and that payment of the bonus will not cause the insurer or reinsurer to be in contravention of section 20.

(2) For the purposes of subsection (1)(c)(i), "principles and practices of financial management" means a statement approved by the board of directors of the registered insurer or reinsurer setting out the discretion retained by the board of directors and the parameters within which that discretion must be exercised in respect of policies where the registered insurer or reinsurer has to exercise its discretion in awarding a bonus or similar benefit.

Prohibition against tied selling

23. (1) A person (hereinafter in this section referred to as "the creditor") may not -

(a) lend or offer to lend money;

(b) render or offer to render any service;

(c) lease or offer to lease goods; or

(d) grant or offer to grant credit,

to any person (hereinafter in this section referred to as "the debtor"), on condition that the debtor or any other person must take out insurance from that creditor or from a specific insurer, reinsurer or insurance intermediary nominated by the creditor.

(2) Despite subsection (1), where for the purposes of securing a debt or other obligation arising from a transaction contemplated in that subsection it is reasonable, having regard to -

(a) the creditworthiness of the debtor;

(b) any other security furnished or offered by the debtor; and

(c) any other relevant consideration,

for the creditor to require the debtor or other person concerned to take out insurance, the creditor must provide the debtor, before the transaction is entered into, with a written statement indicating, in bold face type of at least 15 points, that the debtor or other person concerned has -

(i) no obligation to acquire such insurance from the creditor or from a specific insurer, reinsurer or insurance intermediary nominated by the creditor; and

(ii) a reasonable period of time, which must not be less than 48 hours, to provide other alternative sources for such insurance from one or more registered insurers or reinsurers or insurance intermediaries.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Policies: miscellaneous provisions

24. (1) Despite anything to the contrary contained in any domestic policy or any document relating to such policy, any such policy issued before or after the commencement of this Act may not be invalidated, and the obligation of a registered insurer or reinsurer under that policy may not be excluded or limited, and the obligations of the policyholder may not be increased, on account of any non-disclosure or any representation made to the registered insurer or reinsurer which is not true, whether or not the representation has been warranted to be true, unless the incorrectness of such representation is of such a nature as to be likely to have materially affected the assessment of the risk under the policy at the time -

(a) of its issue;

(b) of any reinstatement or renewal of the policy;

(c) a material change is made to the policy; or

(d) the policy is converted to another policy.

(2) For the purposes of subsection (1), a representation or non-disclosure is material if a reasonable and prudent person would consider that the particular information constituting the representation or which was not disclosed ought to have been correctly disclosed to the registered insurer or reinsurer so that the registered insurer or reinsurer could form its own view as to the effect of such information on the assessment of the relevant risk.

(3) A policy issued by a registered insurer or reinsurer before or after the commencement of this Act will not be invalidated on account of the non-compliance by the registered insurer or reinsurer with a provision of any law applying to that policy.

(4) Interest on an unpaid premium or on a loan or advance made by a registered insurer or reinsurer on the sole security of a policy under which the registered insurer or reinsurer is liable, will cease to accrue when that interest has accumulated to an amount equal to the amount of that unpaid premium, loan or advance.

(5) In the case of a policy issued after 31 December 1973, a debt arising out of an unpaid premium or out of a loan or advance referred to in subsection (4), will not become prescribed before the liability of the registered insurer or reinsurer under that policy becomes prescribed.

Publication of statements of capital

25. (1) A registered insurer or reinsurer may not publish any statement concerning its authorised, subscribed or paid up capital other than that shown in its audited financial statements.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Prohibition against securing business for unregistered person

26. (1) A person may not induce or attempt to induce any other person to enter into or to make an application to enter into a domestic policy with a third person who is not a registered insurer or reinsurer.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Restriction on acquisition of shares or other interests

27. (1) In this section "registered insurance intermediary" means a registered insurance broker as defined in section 53, a registered reinsurance broker as defined in section 53 and a Lloyd's broker as defined in section 42.

(2) Except with the prior written approval of NAMFISA -

(a) a registered insurance intermediary the main business of which includes providing any financial service in connection with short-term insurance or the principal officer or a representative of that insurance intermediary may not acquire or hold shares in an insurer or a reinsurer that is registered to carry on short-term insurance;

(b) an insurer or a reinsurer that is registered to carry on short-term insurance may not acquire or hold shares or interests in a registered insurance intermediary the main business of which includes providing any financial service in connection with short-term insurance;

(c) a registered insurance intermediary the main business of which includes providing any financial service in connection with long-term insurance or the principal officer or a representative of that insurance intermediary may not acquire or hold shares in an insurer or a reinsurer that is registered to carry on long-term insurance; and

(d) an insurer or a reinsurer that is registered to carry on long-term insurance may not acquire or hold shares or interests in a registered insurance intermediary the main business of which includes providing any financial service in connection with long-term insurance.

(3) Subsection (2) does not apply to shares or interests that are acquired or held as a result of -

(a) an amalgamation;

(b) the demutualisation of a registered insurer or reinsurer that is a mutual company; or

(c) having received such shares or interests in payment of a debt.

(4) A person who contravenes or fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Participating policies

28. (1) The holder of one or more participating policies issued by a registered insurer or reinsurer is entitled to attend meetings of policyholders, or of shareholders and policyholders, of the insurer or reinsurer and is entitled to one vote at any such meeting.

(2) The board of directors of a registered insurer or reinsurer that issues participating policies, must -

(a) before issuing any participating policies; or

(b) in the case of a registered insurer or reinsurer that was registered under the Long-term Insurance Act, within 12 months after the coming into force of this Part,

establish, in accordance with the standards, a policy for determining the dividends and bonuses to be paid to the participating policyholders.

(3) A registered insurer or reinsurer, the directors of which establish or vary a dividend policy under subsection (2), must, within 30 days after the establishment or variation, send a copy of the dividend policy to NAMFISA.

Plain language

29. Such policies, certificates of coverage, related documents and any other documents specified in the standards must be written in plain language as described in the standards.

Misleading, false and deceptive statements: consequences of conviction

30. (1) Where a registered insurer or reinsurer is convicted of an offence under section 406 -

(a) the registered insurer or reinsurer may not enforce a policy which a person was induced to enter into unless so requested in writing by the person induced;

(b) the person who was induced to enter into the policy may cancel that policy and recover from the registered insurer or reinsurer any money or other property paid or transferred by the person under such policy, together with such compensation for any loss sustained as a result of

such payment or transfer as the person and the registered insurer or reinsurer may agree upon or as a court may determine, but if that person exercises the right of recovery under this subsection, he or she will not receive any benefits under the policy and must repay any benefits already received; or

(c) a person who was induced to exercise or refrain from exercising any rights under a policy referred to in paragraph (a) may, not more than 90 days after the conviction of the registered insurer or reinsurer -

(i) nullify the action the person was induced to take; and

(ii) exercise or refrain from exercising such rights in such manner as the person may determine regardless of a time limit that may have existed in the policy in respect of the exercise of those rights.

(2) Subsection (1) does not limit any other right of a person to enforce any other rights infringed by any action for which a registered insurer or reinsurer is convicted under this Act.

PART 5
CERTAIN LONG-TERM POLICIES

Life policies: minors

31. (1) A person who has attained the age of 18 years may, without the consent or assistance of his or her guardian -

(a) effect a life policy on his or her life;

(b) pay any premium due under the life policy with money which the minor has earned or with any other money at his or her disposal;

(c) give an undertaking to maintain the life policy for a specified period and cede his or her present or future earnings as security for such undertaking; and

(d) cede, pledge or surrender the life policy.

(2) If any money becomes payable to a person who has attained the age of 18 years under a life policy effected by that person on his or her own life, the registered insurer or reinsurer that is liable under the life policy must pay that money to that person, and that person may deal therewith as he or she thinks fit without the consent of his or her guardian.

(3) Any discharge given by a person referred to in subsection (1) to a registered insurer or reinsurer without the consent or assistance of his or her guardian with regard to a payment made in terms of subsection (2), will be of full force and effect.

Life policies: married persons

32. Despite the provision of any law, including the law relating to community of property or donation between spouses, but subject to the provisions of this Part, a married person -

(a) may effect and own a life policy;

(b) may hold and, by way of gift or otherwise, acquire from or dispose of to any person, including a spouse, any right or interest in a life policy;

(c) becomes the owner of -

(i) any moneys paid by a registered insurer or reinsurer in respect of any right or interest held by that person in a life policy or any assets acquired with those moneys; and

(ii) any moneys or assets acquired in respect of the disposal of any right or interest held by that person in a life policy or any assets acquired with those moneys; and

(d) may dispose of moneys or assets referred to in paragraph (c) to any person, including a spouse, by way of gift or otherwise, in all respects as if that person were a single person of full age and capacity, and any such policy, right, interest, assets or money may be excluded from any joint estate, whether or not it was effected, acquired or paid before or during the marriage.

Persons married in community of property

33. If a premium paid under a life policy effected by a spouse married in community of property or under a life policy in which that spouse holds any right or interest, was paid out of moneys which belonged to the joint estate of both spouses and the liabilities of both spouses continuously exceeded the value of their assets from the time of the payment of any such premium until their joint estate was sequestrated, the spouse by whom the life policy was effected or by whom the right or interest is held, must pay into the insolvent estate the amount of every such premium in so far as its payment created or increased the excess of liabilities over assets in the joint estate.

Life policy on own life: protection during life

34. (1) A life policy effected by a person on his or her own life which has endured for a period of at least three years from the date of the payment of the first premium and which -

(a) is attached in execution of a judgment or an order of any court at the instance of a judgment creditor of that person; or

(b) becomes part of that person's insolvent estate during the lifetime of that person,

is, to the extent specified in subsection (2), protected against any creditor of that person and against any claim in connection with the attachment or the insolvency.

(2) The protection afforded in respect of a life policy referred to in subsection (1) extends to so much of the realisable value of the life policy as does not exceed the prescribed amount, except that -

(a) where there are two or more such life policies, the protection will extend only to the amount determined in accordance with this subsection; and

(b) where a life policy referred to in that subsection is pledged or ceded as security for any liability, the realisable value of the policy which forms the security for the liability in respect of which the life policy was pledged or ceded, may not be included as part of the amount determined in accordance with this subsection.

(3) Where a life policy is afforded protection in the circumstances contemplated in subsection (1), the policyholder, the judgment creditor or the trustee of the insolvent estate must notify the registered insurer or reinsurer who is liable under that policy in writing of the protection, whereupon the registered insurer or reinsurer must issue an endorsement to the policy to the effect that during the time that the judgment debt remains unsettled or the owner of that policy remains an unrehabilitated insolvent, that policy may be dealt with only with the permission of the judgment creditor or the trustee or, if there is no judgment creditor or trustee, of a court.

(4) For the purposes of this section -

(a) a life policy issued by a registered insurer or reinsurer in exchange for or in consideration of the surrender of another life policy under which the registered insurer or reinsurer was previously liable, is deemed to have been effected on the date on which the surrendered life policy was issued, if no payment other than -

(i) the value of the surrendered life policy; and

(ii) any premium or premiums that would have become payable under that policy if it were not surrendered;

was received by the registered insurer or reinsurer as consideration for the new life policy; and

(b) a life policy issued by a registered insurer or reinsurer under section 38(3) is deemed to have been effected on the date on which the surrendered life policy for which it is substituted was issued.

Life policy on own life: protection on death

35. (1) If a person has effected a life policy on his or her own life which at the date of that person's death has endured for a period of at least three years from the date of the payment of the first premium, and -

(a) on the death of that person, and subject to the provisions of subsection (2), his or her liabilities exceed his or her assets, whether or not that person has been declared an insolvent; and

(b) that person has left a surviving spouse, child or parent,

any money payable to the deceased estate of that person under any such life policy must be paid to that estate.

(2) Money paid to an estate pursuant to subsection (1) -

(a) must, to the extent that it does not in the aggregate exceed the prescribed amount, devolve upon the surviving spouse, child or parent in accordance with the provisions of a valid testamentary disposition of that person or, if there is no valid testamentary disposition, by right of intestate succession; and

(b) is, to the extent that it does not in the aggregate exceed the prescribed amount, not liable to be attached in execution of a judgment or an order of any court at the instance of a judgment creditor of that person or of any other person.

(3) When calculating whether the liabilities of a deceased person exceed his or her assets, any life policy effected by the deceased person on his or her own life and which has endured for a period of at least three years from the date of the payment of the first premium, may not be included as assets of the deceased estate to the extent that the realisable value of such life policy or the aggregate realisable value of all such life policies does not exceed the prescribed amount.

Life policies: spouses and children

36. (1) Subsection (3) does apply in the situation where a person -

(a) cedes a life policy effected on his or her own life to, or in favour of, any person referred to in subsection (2);

(b) effects a life policy on his or her own life or on the life of his or her intended spouse whom he or she thereafter marries or on the life of his or her spouse in favour of any person referred to in subsection (2); or

(c) nominates his or her intended spouse (whom, for the purposes of this section, he or she thereafter marries), spouse or child as the beneficiary of a life policy mentioned in paragraph (a) or (b).

(2) The persons referred to in subsection (1)(a) and (b) are the person's -

(a) intended spouse; or

(b) spouse, and additionally or alternatively, child or children, including an unborn child.

(3) A life policy referred to in subsection (1) or money becoming due under that life policy, subject to the provisions of this section and to the terms and conditions on which the person may have ceded or effected the policy or may have made the nomination -

(a) is not liable for attachment in execution of a judgment or an order of any court at the instance of a judgment creditor of the person to whom such life policy was ceded or in whose favour it was effected or who has been nominated as beneficiary of the policy;

(b) may not become part of the insolvent estate of the person to whom such life policy was ceded or in whose favour it was effected or who has been nominated as beneficiary of the policy, but -

(i) the protection afforded in terms of this section may, together with the protection afforded in respect of life policies in terms of any other provision of this Act, not exceed the prescribed amount; and

(ii) where the life policy is pledged or ceded as security for any liability, the realisable value of the policy which forms the security for the liability in respect of which the life policy was pledged or ceded, must not be included as part of the amount determined in accordance with subparagraph (i).

(4) The entitlement to a benefit conferred or purported to be conferred upon an intended spouse, a spouse or child under a life policy in any of the circumstances contemplated in this section is, despite -

(a) any agreement to the contrary between the registered insurer or reinsurer liable under such policy and the person by whom such policy was effected; or

(b) the fact that the intended spouse, spouse or child has not accepted that benefit and is not a party to the life policy,

but subject to the terms and conditions on which such policy was ceded or effected or the nomination was made, enforceable against such registered insurer or reinsurer at the instance of the intended spouse, spouse or child or the legal representative of the intended spouse, spouse or child.

Protected life policies: selection for realisation

37. If -

(a) two or more life policies in respect of which protection is afforded under section 34, 35 or 36, are the property of one person and the life policies are attached in execution of a judgment or an order of any court at the instance of a judgment creditor of the policyholder; or

(b) the estate of the policyholder of two or more life policies referred to in paragraph (a) is sequestrated, and a part only of the aggregate realisable value of those life policies is so protected,

the creditor or the trustee of the insolvent estate of the policyholder may determine which life policy or policies will be realised wholly or partly in order to make available to the creditor or trustee so much of the aggregate realisable value as is not so protected.

Protected life policies: partial realisation

38. (1) A judgment creditor of the holder of a life policy or the trustee of the insolvent estate of that policyholder who is entitled to a part of the realisable value of the life policy may, if the creditor or trustee is in possession of the life policy, deliver that policy to the registered insurer or reinsurer who is liable under the life

policy for the purposes of the payment to the creditor or trustee of the amount to which that creditor or trustee is entitled.

(2) If a judgment creditor or trustee referred to in subsection (1) is not in possession of a life policy in respect of which the creditor or trustee is entitled to a part of the realisable value, the holder of the life policy or any other person in possession of the policy must, at the request of the creditor or trustee, deliver the life policy to the registered insurer or reinsurer who is liable under the life policy for the purposes of the payment to that creditor or trustee of the amount to which the creditor or trustee is entitled.

(3) On receipt of a life policy delivered to a registered insurer or reinsurer under subsection (1) or (2), the registered insurer or reinsurer must -

(a) at the request of the judgment creditor or trustee referred to in subsection (1), pay to that creditor or trustee an amount equal to the part of the realisable value of the life policy to which the creditor or trustee is entitled; and

(b) pay the remaining part of the realisable value to the holder of the life policy, if at that time the full realisable value of the life policy is less than the full sum insured under that life policy, including any bonus which may have accrued in connection therewith; or

(c) at the request of such policyholder, issue to the policyholder a new life policy with the same provisions, but for a sum insured equal to the difference between -

(i) the full sum insured under the original life policy, including any bonus which may have accrued in connection therewith; and

(ii) an amount which bears the same ratio to the full sum insured under the original life policy, including any bonus which may have accrued in connection therewith, as the amount paid by the registered insurer or reinsurer to such creditor or trustee bears at that time to the full realisable value of the original life policy, whereupon the original life policy will lapse.

Life policies ceded or trust policies not kept up

39. (1) If a person who -

(a) has effected or ceded a life policy for the benefit of his or her spouse, and additionally or alternatively of his or her child or children or of any of them; or

(b) holds a life policy in trust for any other person and is obliged to pay the premiums under that policy,

is or has been unable to pay the premiums, that person may, with the consent of any person who holds or has acquired any right or interest in the life policy or if the last-mentioned person is a minor, with the consent of that minor's guardian or of the Master

of the High Court, agree with the registered insurer or reinsurer liable under such policy as set out in subsection (2).

(2) A person referred to in subsection (1) may agree with the registered insurer or reinsurer liable under the policy concerned -

(a) to convert the life policy into a paid-up life policy of a value determined in accordance with the current tariff of the registered insurer or reinsurer payable, at the time and in the manner specified in the original policy, to the person entitled to the sum insured by the original policy;

(b) to borrow from the registered insurer or reinsurer upon security of such policy sums of money as may be necessary to keep such policy in force or to revive it; or

(c) to apply the value of any bonus which may have accrued in connection with the life policy to a temporary or permanent reduction of premiums or to the payment of any premiums which have fallen due.

Life policies ceded or premiums paid with intent to defraud creditors

40. (1) Nothing contained in this Part may be construed as derogating from the power of the High Court to set aside in terms of any law relating to insolvency, a cession of a life policy made with intent to benefit any person at the expense of a creditor of the cedent.

(2) If a premium under a life policy was paid with intent to benefit any person at the expense of a creditor of the person making the payment, the High Court may order the person so benefiting to pay an amount equal to the aggregate of all premiums so paid, with interest on the amount of each premium so paid as from the date of its payment, to the creditor to whose detriment one or more premiums were paid or if the estate of that creditor is sequestrated, to the trustee of the insolvent estate of that creditor.

(3) An order of the High Court contemplated in subsection (2) has the effect of pledging, in security for payment of the amount payable under that order, the life policy in question to the creditor entitled to the payment until the payment is made, and while the life policy is so pledged that creditor may possess the life policy.

Application of provisions to funeral, disability and health policies

41. The provisions of sections 31 to 40 apply with the changes required by the context to policies of funeral, disability and health insurance.

PART 6
PROVISIONS RELATING TO LLOYD'S

Definitions for this Part

42. In this Part, unless the context indicates otherwise -

"Lloyd's" means the association of underwriters generally known as Lloyd's which is incorporated by the Lloyd's Act of 1871 (34 Vict. c21), passed by the Parliament of the United Kingdom of Great Britain and Ireland;

"Lloyd's broker" means a person permitted by the Lloyd's Council to perform any act as a broker at Lloyd's;

"Lloyd's Council" means the council known as the Council of Lloyd's established by the Lloyd's Act, 1982, passed by the Parliament of the United Kingdom of Great Britain and Northern Ireland, to manage and superintend the affairs of Lloyd's;

"Lloyd's intermediary" means a person who performs any act relating to the placing of short-term insurance business with, or the issue of policies or the collection of premiums in respect of such business or assists with claims in respect of such business for or on behalf of, a Lloyd's broker or an underwriter at Lloyd's, whether or not as an agent of such broker or underwriter at Lloyd's;

"Lloyd's representative" means the person appointed in terms of section 45(1) and includes an alternate representative while acting as the Lloyd's representative as contemplated in that section;

"Lloyd's underwriter" means an underwriting member of Lloyd's; and

"trust account" means the trust account opened pursuant to section 46(1).

Authorisation of underwriters at Lloyd's

43. (1) Subject to this Part, Lloyd's underwriters are authorised to carry on short-term insurance business in Namibia.

(2) NAMFISA may issue standards determining the provisions of this Act that are applicable to Lloyd's underwriters and intermediaries and to the Lloyd's representative.

Change to constitution, powers, rights, obligations and bye-laws

44. (1) If there is -

(a) enacted any law governing Lloyd's whereby a material change is made to the constitution, powers, rights or obligations of Lloyd's or of Lloyd's underwriters; or

(b) passed any bye-law by Lloyd's whereby the rights or obligations of Lloyd's underwriters are materially changed,

the Lloyd's representative must, within 21 days after the enactment of such law or the passing of such bye-law, notify NAMFISA accordingly.

(2) If NAMFISA considers that, as a result of a law or bye-law referred to in subsection (1), Lloyd's will no longer be able to comply with the provisions of this Act, NAMFISA may take any action referred to in section 49.

Appointment of Lloyd's representative

45. (1) The Lloyd's Council must appoint, and at all times have, a natural person permanently resident in Namibia as its representative and another natural person so appointed as an alternate representative to act in Namibia as such

representative in the event of the Lloyd's representative for any reason not being able to act as such representative.

(2) The appointment of the Lloyd's representative or alternate representative does not take effect unless -

(a) the Lloyd's Council has notified NAMFISA of the appointment of a representative or alternate representative who is fit and proper within the meaning of the standards;

(b) NAMFISA has not sent a notice pursuant to subsection (3) to the effect that the appointee is not acceptable; and

(c) Lloyd's has, subject to such conditions as may be determined by NAMFISA in the standards, opened a trust account pursuant to section 46.

(3) NAMFISA may by notice in writing within a period of 30 days after the notice to NAMFISA referred to in subsection (2)(a) indicate to the Lloyd's Council that the representative or alternative representative appointed is not acceptable on the grounds that the appointee is considered by NAMFISA not to be a fit and proper person in accordance with the requirements of the standards.

(4) The Lloyd's representative must -

(a) have a principal place of business in Namibia;

(b) notify NAMFISA in writing of the physical address of that principal place of business; and

(c) if that address changes, notify NAMFISA in writing not more than 30 days after the change.

(5) When a process in any legal proceedings against Lloyd's or a Lloyd's underwriter is required to be served, such process may be served by delivering a copy of the process at the address referred to in subsection (4).

(6) The Lloyd's representative must ensure that Lloyd's complies with this Act.

(7) The Lloyd's representative and alternate representative in office at the date of commencement of this Act is deemed to have been appointed pursuant to this section.

Trust account to be kept by Lloyd's representative

46. (1) The Lloyd's representative must open and maintain in accordance with the requirements set out in the standards, a trust account in the name of Lloyd's at a banking institution or building society into which must be deposited such amounts of money that are required to be deposited in terms of the standards.

(2) On an on-going basis, the Lloyd's Council must ensure that the value of the funds in the trust account may not be less than as required under the standards.

(3) Prior to seeking exchange control approval from an authorised dealer in foreign exchange, Lloyd's must submit to NAMFISA such particulars regarding its business in Namibia as NAMFISA may require in the standards.

Returns to be submitted by Lloyd's representative

47. (1) The Lloyd's Council or the Lloyd's representative must furnish NAMFISA with returns in respect of the short-term insurance business carried on by Lloyd's underwriters in Namibia -

(a) in the medium and form;

(b) containing the information; and

(c) by the date and within the period,

set out in the standards.

(2) Despite the provisions of subsection (1), the Lloyd's representative must, if at any time so requested in writing by NAMFISA, submit to NAMFISA a return in respect of the trust account referred to in section 46(1) as at any other day specified by NAMFISA.

(3) Prior to making any deposit for the purposes of section 46(2) the Lloyd's representative must submit to NAMFISA -

(a) an audited annual return relating to the insurance business of Lloyd's in Namibia; and

(b) a return showing the calculation of the trust fund requirements for Lloyd's in the form set out in the standards.

(4) The Lloyd's representative must continuously maintain and furnish NAMFISA with a list of the names of all Lloyd's intermediaries and must notify NAMFISA of any change in such list within 30 days.

Application of certain provisions of Chapter to Lloyd's representative

48. The provisions of section 17 relating to the appointment of an auditor apply with the changes required by the context to the Lloyd's representative in respect of the trust account referred to in section 46(1) as if the Lloyd's representative were a registered insurer.

Imposition of prohibition on activities of Lloyd's underwriters

49. (1) If -

(a) NAMFISA concludes that as a result of a law or bye-law referred to in section 44, Lloyd's will no longer be able to comply with the provisions of this Act;

(b) Lloyd's or a Lloyd's representative fails to comply with the duties referred to in section 45; or

(c) a Lloyd's underwriter fails to comply with that underwriter's duties under this Part or in respect of the short-term insurance business carried on by Lloyd's underwriters in Namibia,

NAMFISA may, subject to subsections (2) and (3), prohibit Lloyd's underwriters or the underwriter concerned from carrying on short-term insurance business in Namibia.

(2) Before exercising the powers contemplated in subsection (1), NAMFISA must give notice in writing to the Lloyd's Council and the Lloyd's representative of NAMFISA' s intention to do so and the reasons for the action, and allow at least 30 days during which representations may be made in respect of the matter.

(3) If NAMFISA decides to proceed with the prohibition, NAMFISA must give notice to that effect in the *Gazette* specifying the date from which the prohibition will take effect.

Registration of Lloyd's intermediaries

50. (1) A person may not be registered as a Lloyd's intermediary unless that person is registered as an insurance intermediary under this Act.

(2) The registration, operation and duties of a Lloyd's intermediary in Namibia must be as required by the applicable standards.

Claims against underwriters at Lloyd's

51. (1) Any claim against an underwriter at Lloyd's arising from a policy entered into by virtue of an act performed by a Lloyd's intermediary is justiciable by any competent court in Namibia.

(2) In any action or other proceedings instituted in terms of subsection (1) the Lloyd's representative may be cited as nominal defendant or respondent.

(3) The Lloyd's representative may institute and conduct any proceedings in a competent court in Namibia as nominal plaintiff or applicant on behalf of any Lloyd's underwriter in relation to a short-term insurance policy.

(4) When the Lloyd's representative is cited as a nominal party, the Lloyd's underwriter may, at any time before or after judgment, be substituted -

(a) with leave of a court; or

(b) on production to the registrar or clerk of a competent court of an affidavit setting out the true parties and their normal citation, if a copy has previously been furnished to the other party.

Payment of claims against underwriters at Lloyd's

52. (1) Any claim against a Lloyd's underwriter arising from an insurance policy entered into by a Lloyd's intermediary may be disbursed from moneys standing to the credit of the trust account referred to in section 46(1).

(2) If the payment of a claim contemplated by subsection (1) results in the said trust account falling to a level below that determined in terms of section 46(2), the Lloyd's representative must -

(a) immediately notify NAMFISA of such fact; and

(b) cause the trust account to be restored to the credit level required by the standards within 14 days from the date on which the shortfall occurred.

(3) On the production to him or her of -

(a) a writ of execution issued by a court against a Lloyd's underwriter in respect of a claim contemplated in subsection (1); or

(b) a certificate issued by NAMFISA that the amount stated therein is lawfully due by Lloyd's to NAMFISA in respect of levies or fees,

the Lloyd's representative must immediately cause the amount due by Lloyd's to be paid out from the money standing to the credit of the said trust account to the creditor concerned, and the provisions of subsection (2) apply to such payment with the changes required by the context.

PART 7
AGENTS AND BROKERS

Definitions for this Part

53. In this Part, unless the context indicates otherwise -

"insurance agent" means a person who, on behalf of an insurer, or acting on behalf of an insurer, deals directly with the public in soliciting insurance or acting or aiding in any manner in connection with the negotiation, continuance or renewal of insurance and, where applicable, includes a corporate insurance agent;

"insurance broker" means a person who, on behalf of a member of the public, deals directly with an insurer or a person acting on behalf of an insurer, in arranging insurance or acting or aiding in any manner in connection with the negotiation and, continuance or renewal of insurance or provides consulting services with respect to insurance or insurance claims and, where applicable, includes a corporate insurance broker and a person whose activities include the placing of reinsurance, commonly known as a reinsurance broker;

"corporate insurance agent" means an entity that is an insurance agent;

"corporate insurance broker" means an entity that is an insurance broker;

"registered corporate insurance broker" means a corporate insurance broker that is registered pursuant to section 59;

"registered insurance agent" means an insurance agent who is registered pursuant to section 55;

"registered insurance broker" means a broker that is registered pursuant to section 59, and includes a registered corporate insurance broker;

"registered reinsurance broker" means a reinsurance broker that is registered pursuant to section 59 and, where applicable, includes a registered corporate reinsurance broker;

"reinsurance broker" means a person who on behalf of any insurer negotiates reinsurance business with one or more reinsurers.

Unregistered person may not act as agent or broker

54. (1) A person may not, for compensation, commission or any other thing of value, carry on any of the activities of an insurance agent in Namibia except, in accordance with and to the extent authorised by an insurance agent's registration or a corporate insurance agent's registration issued under section 55 or where the person is deemed to be registered under section 60.

(2) A person may not, for compensation, commission or any other thing of value, carry on any of the activities of an insurance broker or a reinsurance broker in Namibia except, in accordance with and to the extent authorised by an insurance broker's or a reinsurance broker's registration or a corporate insurance broker's registration issued under section 59 or where the person is deemed to be registered under section 60.

(3) Without limiting the application of any other remedies available under this Act, NAMFISA may direct a person acting in violation of subsection (1) or (2) to cease and desist from such conduct but must give that person a period of time within which to apply for the requisite registration upon that person giving an undertaking to comply with the direction.

(4) If a person referred to in subsection (3) -

(a) does not obtain registration within the period; or

(b) violates the undertaking,

referred to in that subsection, that person becomes ineligible to apply for registration until such time as NAMFISA may waive that ineligibility in writing.

(5) Despite subsections (1) and (2), an insurance agent or broker may not charge any commission or other thing of value or receive any compensation for having rendered a service to any person except the commission determined in the standards.

(6) A person who contravenes or fails to comply with subsection (1), (2) or (5) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Registration as insurance agent and renewal of registration

55. (1) A registered insurer may apply to NAMFISA for the registration of certain entities as corporate insurance agents by submitting a copy of the list maintained by that registered insurer of those entities, together with any required registration fee for each such entity (hereafter called "listed entity" in this section and section 56).

(2) A registered insurer may apply to NAMFISA for the registration of certain individuals as insurance agents by submitting a copy of the list maintained by

the insurer of those persons, together with any required registration fee for each such individual (hereafter called "listed individual" in this section and section 56).

(3) A registered insurer must have in place a code of conduct and applicable systems relevant to listed individual insurance agents employed by it or by its corporate insurance agents in order to be reasonably satisfied with respect to each of those insurance agents that -

(a) the individual is at least 18 years of age;

(b) the individual has met the requirements for an insurance agent that may be included in the standards from time to time;

(c) the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure business;

(d) the individual has not been refused registration, authorisation or acceptance or had such registration, authorisation or acceptance suspended or revoked under this Act or any other applicable financial services law;

(e) the individual has not been convicted of an offence the nature of which renders him or her, in the opinion of NAMFISA, unfit to hold a registration under this Act;

(f) the individual is fit and proper within the meaning of the standards;

(g) there are reasonable grounds for believing that the individual will carry on with integrity and honesty the activities of an insurance agent;

(h) the individual has met, and there is no reason to believe that the individual will not be able to meet, any other requirements of this Act, and any instructions and guidelines issued by NAMFISA under this Act or issued by the registered insurer concerned that apply to insurance agents;

(i) there is no reason to believe that the individual is likely to engage in conduct of a kind identified in the standards as misconduct;

(j) the individual is ordinarily resident in Namibia and is in a position to comply with the law relating to his or her residency in Namibia and with any other applicable laws of Namibia; and

(k) any required fee has been paid.

(4) A registered insurer must have in place a code of conduct and applicable systems relevant to its individual listed insurance agents in order to be reasonably satisfied with respect to each of those insurance agents that -

(a) the individual is at least 18 years of age;

(b) the individual has met the requirements for an insurance agent that may be included in the standards from time to time;

(c) the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure business;

(d) the individual has not been refused registration, authorisation or acceptance or had such registration, authorisation or acceptance suspended or revoked under this Act or any other applicable financial services law;

(e) the individual has not been convicted of an offence the nature of which renders him or her, in the opinion of NAMFISA, unfit to hold a registration under this Act;

(f) the individual is fit and proper within the meaning of the standards;

(g) there are reasonable grounds for believing that the individual will carry on with integrity and honesty the activities of an insurance agent;

(h) the individual has met, and there is no reason to believe that the individual will not be able to meet, any other requirements of this Act, and any instructions and guidelines issued by NAMFISA under this Act or issued by the registered insurer concerned that apply to insurance agents;

(i) there is no reason to believe that the individual is likely to engage in conduct of a kind identified in the standards as misconduct;

(j) the individual is ordinarily resident in Namibia and is in a position to comply with the law relating to his or her residency in Namibia and with any other applicable laws of Namibia; and

(k) any required fee has been paid.

(5) A registered insurer must, in addition to complying with subsection (3) or (4), in respect of each listed entity that is to be registered as a corporate insurance agent ensure that -

(a) the entity is registered in accordance with the relevant law requiring the registration of such entities in Namibia;

(b) it has in its possession the following information or documents in respect of the entity:

(i) certified copy of the memorandum and articles of association or founding statements, constitution or any other founding documents of the entity;

(ii) certified copies of share certificates or members' interest or any other documents proving ownership; and

(iii) any other document that the applicant considers relevant or that NAMFISA may require;

(c) the entity has met the requirements for a corporate insurance agent that may be included in the standards from time to time;

(d) the individuals who will carry on activities of the kind to which the registration relates on behalf of the entity will be registered as insurance agents;

(e) the entity is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure business;

(f) the entity has not been refused registration, authorisation or acceptance or had such registration, authorisation or acceptance suspended or revoked under this Act or any other applicable financial services law;

(g) there are reasonable grounds for believing that the entity will carry on with integrity and honesty the activities of a corporate insurance agent;

(h) the entity has met, and there is no reason to believe that the entity will not be able to meet, any other requirements of this Act, and any instructions and guidelines issued by NAMFISA under this Act or issued by the registered insurer concerned that apply to corporate insurance agents;

(i) there is no reason to believe that the entity is likely to engage in conduct of a kind identified in the standards as misconduct; and

(j) any required fee has been paid.

(6) A registered insurer must provide NAMFISA with such other information and material regarding its listed individuals as may be specified in the standards, and in the case of a listed entity, the insurer must provide NAMFISA with such other information and material regarding that entity as may be specified in the standards.

(7) NAMFISA must register each entity and each individual whose name appears on the list of corporate insurance agents or insurance agents maintained by the registered insurer.

(8) A registered insurer that has submitted a list to NAMFISA pursuant to subsection (1) or (2) must submit to NAMFISA an update of that list when there has been an addition or deletion, together with -

(a) in the case of additional listed entities to be registered that have been added to the list referred to in subsection (1); or

(b) in the case of additional listed individuals to be registered that have been added to the list referred to in subsection (2),

the required fee for each additional listed entity or listed individual and the information and material referred to in subsection (5), and upon receipt by NAMFISA of an updated list containing the names of additional listed entities and listed individuals, the provisions of subsections (6) and (7) apply.

(9) If a registered insurer removes an entity from the list referred to in subsection (1) or removes an individual from the list referred to in subsection (2), it must, at the same time when submitting the update of the list as required by subsection (8), provide NAMFISA with a statement indicating the reason that the entity or individual has been removed from the list.

(10) A registered insurer may not remove a listed entity or an individual from the list as referred to in subsection (9) unless the insurer has given the entity or individual concerned the reasons for the proposed removal and a reasonable opportunity to be heard.

(11) The term of registration as an insurance agent or a corporate insurance agent under this section expires on March 31 of each year or on such other date as NAMFISA may specify, but if the appropriate renewal fee as determined by NAMFISA in respect of each insurance agent is paid to NAMFISA in the manner set out in the standards, the registration must, subject to compliance with any requirements that may be set out in the standards, be renewed for a period of 12 months as from the expiry date.

(12) The renewal fee is payable within the period set out in the standards, and any payment received after that period bears interest at a rate determined by NAMFISA in the standards, which rate may not exceed the rate prescribed for this purpose.

(13) If -

(a) the renewal fee is not received within the period contemplated in subsection (12); or

(b) the requirements of the standards referred to in subsection (11) have not been complied with,

NAMFISA may not renew the registration of the insurance agent or corporate insurance agent and must remove or direct the registered insurer to remove the name of the insurance agent or corporate insurance agent whose renewal fee was not paid or in respect to whom the requirements of the standards have not been complied with from the list kept by NAMFISA or submitted to NAMFISA.

(14) A person who continues to operate, or to engage in, the business of an insurance agent or a corporate insurance agent after the non-renewal of registration under subsection (13), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Remedial action

56. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to a registered corporate insurance agent or a registered insurance agent -

(a) in the case of a listed individual, any of the requirements referred to in section 55(3) or (4) have not been met;

(b) the copy of the list submitted under section 55 or the accompanying information and material contained information concerning the listed entity or individual that was not materially accurate or omitted information that was materially relevant;

(c) the listed entity or individual no longer meets the requirements for an insurance agent;

(d) the listed entity or individual has suspended activities for a period of at least 12 months;

(e) the listed entity or individual is not in compliance with a requirement of this Act; or

(f) the listed entity or individual has engaged in conduct of the kind that has been identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take or direct the registered insurer to take remedial action including, without limitation -

(a) directing the insurer to provide further information with respect to the listed entity or individual;

(b) directing the insurer to provide further training for the listed entity or individual;

(c) directing the insurer to take disciplinary action against the listed entity or individual;

(d) directing the insurer to make changes to the code of conduct and systems referred to in section 55(3) or (4);

(e) requiring an undertaking from the listed entity or individual pursuant to section 436;

(f) requiring an undertaking from the insurer pursuant to section 436;

(g) directing the listed entity or individual to undertake specific actions or refrain from specific actions pursuant to section 439(4)(c);

(h) directing the insurer to undertake specific actions or refrain from specific actions pursuant to section 439(4)(c); or

(i) imposing on the insurer any penalty that may be specified in the standards, if the insurer has been negligent in satisfying itself with respect to the provisions of section 55(3) or (4).

(3) If on receipt of evidence that the required action has been taken pursuant to subsection (2), NAMFISA acting reasonably, finds that any of the circumstances referred to in subsection (1) continue to exist, NAMFISA may direct the insurer to remove the name of the listed entity or individual from the list referred to in section 55(1), (2) or (8).

(4) Before directing that the name of a listed entity or individual be removed from a list pursuant to subsection (3), NAMFISA must give both parties a reasonable opportunity to be heard.

(5) If a registered insurer fails to remove the name of a listed entity or individual from the list when required to do so by NAMFISA, NAMFISA may, after giving the listed entity or individual a reasonable opportunity to be heard, itself remove the name of the entity or individual from the list.

(6) If the name of a listed entity or individual is removed from a list by an insurer or NAMFISA, the registration of that entity or individual as an insurance agent or a corporate insurance agent is cancelled and the entity or individual may not act as an insurance agent or a corporate insurance agent or be included by a registered insurer on any list a copy of which is submitted under section 55 for such period as NAMFISA may determine.

(7) A person who continues to operate, or to engage in, the business of an insurance agent or a corporate insurance agent after the cancellation of registration under subsection (6), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Application for registration as insurance broker

57. (1) An individual or entity may, in accordance with subsection (2), make an application for registration as an insurance broker or a reinsurance broker or a corporate insurance or reinsurance broker to NAMFISA.

(2) An application for registration as an insurance broker or a reinsurance broker or a corporate insurance or reinsurance broker must be -

(a) made in the manner and form required by the standards;

(b) where applicable, include the information with respect to the principal office and principal officer required by the standards;

(c) accompanied by the documents and other information required by the standards;

(d) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(e) made subject to and in accordance with any other applicable provision of this Act; and

(f) accompanied by the required fee.

Registration requirements

58. (1) Before approving an application and registering an individual as an insurance broker or a reinsurance broker, NAMFISA must be satisfied that the requirements of subsections (3) and (4) have been met and that, in the case of an individual applicant -

(a) the individual is at least 18 years of age;

(b) the individual has met the requirements for registration that may from time to time be included in the standards;

(c) the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure insurance business;

(d) the individual has not been refused registration, authorisation or acceptance or had such registration, authorisation or acceptance suspended or revoked under this Act or any other applicable financial services law;

(e) the individual has not been convicted of an offence the nature of which renders him or her, in the opinion of NAMFISA, unfit to hold a registration under this Act;

(f) the individual is fit and proper within the meaning of the standards;

(g) there are reasonable grounds for believing that the individual will carry on with integrity and honesty the activities of an insurance broker;

(h) the individual has met, or will be able to meet, any other requirements of this Act and any instructions and guidelines issued by NAMFISA under this Act that apply to insurance brokers or reinsurance brokers;

(i) the individual does not, and will not be likely to, engage in conduct of a kind identified in the standards as misconduct;

(j) the individual is ordinarily resident in Namibia and is in a position to comply with the law relating to his or her residency in Namibia and with any other applicable laws of Namibia; and

(k) any required fee has been paid.

(2) Before approving an application and registering an entity as a corporate insurance or reinsurance broker, NAMFISA must be satisfied that the requirements of subsections (3) and (4) have been met and that -

(a) the individuals who will carry on activities of the kind to which the registration relates on behalf of the entity will be registered as insurance brokers or reinsurance brokers;

(b) the entity has met, or will be able to meet, the requirements of section 72;

(c) if applicable, the entity is registered in accordance with the relevant law requiring the registration of such entities in Namibia; and

(d) any required fee has been paid.

(3) Before approving the application and registering the applicant as an individual insurance broker or a corporate insurance or reinsurance broker, NAMFISA must be satisfied that -

(a) where the applicant is an entity -

(i) every shareholder or other owner that controls the applicant, and every director, the principal officer and other officers of the applicant and, where applicable, members of any board of trustees or other board are fit and proper within the meaning of the standards;

(ii) the memorandum, articles and rules or other founding documents of the applicant are not inconsistent with the provisions of this Act;

(iii) the direct or indirect control of the entity is not likely to be contrary to the interest of consumers of the financial services concerned; and

(iv) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;

(b) doing so is not contrary to -

(i) this Act; or

(ii) the public interest;

(c) the applicant has the attributes reasonably necessary and adequate to -

(i) provide the financial services concerned with professional integrity, prudence, proper skill and due diligence;

(ii) maintain a sound financial position and not cause or further instability in the financial system of Namibia; and

(iii) comply with this Act;

(d) the name under which the applicant proposes to conduct business, or a translation, shortened form or derivative of that name is not in contravention of section 391;

(e) the applicant has submitted all other information which, in the opinion of NAMFISA, is necessary to assess the application, and such information has been found satisfactory by NAMFISA; and

(f) the applicant has complied and will continue to comply with any other requirements contained in this Act or in the standards which apply to the applicant.

(4) In addition to the applicable requirements for a registration set out in subsections (1), (2) and (3) if an application for a registration is made after a date determined by the Minister by notice in the *Gazette* an individual or entity may not be granted a registration as an insurance broker or a reinsurance broker or a corporate insurance or reinsurance broker, unless NAMFISA is satisfied that -

(a) an insurance policy is in place providing errors and omissions coverage in respect of the activities of the individual or entity as broker, in a form approved by NAMFISA and in an amount that has been prescribed in respect of any one occurrence, with extended coverage for fraudulent acts or some other financial guarantee affording comparable protection acceptable to NAMFISA; and

(b) if the individual or entity will have employees carrying on the activities of a broker, a fidelity insurance policy is in place providing coverage in respect of losses arising from dishonesty of employees, in a form approved by NAMFISA and in an amount that has been prescribed in respect of any one occurrence.

Registration and renewal of registration

59. (1) If NAMFISA is satisfied that the applicant complies with the requirements of section 58, NAMFISA must register the applicant as an insurance broker or a reinsurance broker or a corporate insurance or reinsurance broker, subject to any conditions which NAMFISA may consider appropriate pursuant to subsection (4).

(2) The registration referred to in subsection (1) must specify -

(a) the principal office of the applicant in Namibia;

(b) the places in Namibia from which the applicant may operate.

(3) Upon registration of an applicant NAMFISA must issue to the applicant a certificate of registration in a form provided for in the standards.

(4) NAMFISA may impose such conditions on the registration of the applicant as it considers necessary having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant, and any guidelines issued by NAMFISA under this Act.

(5) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions, and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(6) An insurance broker or a reinsurance broker or a corporate insurance or reinsurance broker must comply with the conditions subject to which it was registered.

(7) The term of registration as an insurance broker, a reinsurance broker or a corporate insurance or reinsurance broker under this section expires on March 31 of each year or on such other date as NAMFISA may specify, but if the appropriate renewal fee as determined by NAMFISA in respect of each insurance or reinsurance broker is paid to NAMFISA in the manner set out in the standards, the registration must, subject to compliance with any requirements that may be set out in the standards, be renewed for a period of 12 months as from the expiry date.

(8) The renewal fee is payable within the period set out in the standards, and any payment received after that period bears interest at a rate determined by NAMFISA in the standards, which rate may not exceed the rate prescribed for this purpose.

(9) If -

(a) the renewal fee is not received within the period contemplated in subsection (8); or

(b) the requirements of the standards referred to in subsection (7) have not been complied with,

NAMFISA may not renew the registration of an insurance broker, a reinsurance broker, corporate insurance or reinsurance broker whose renewal fee was not paid or in respect to whom the requirements of the standards have not been complied with.

(10) A person who continues to operate, or to engage in, the business of an insurance broker or a reinsurance broker after the non-renewal of registration under subsection (9), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Agents, brokers previously registered

60. (1) An agent or broker who was registered under the Long-term Insurance Act or the Short-term Insurance Act on the date of commencement of this Part is deemed to be registered under this Act as an insurance agent, insurance broker, a corporate insurance broker or a reinsurance or corporate reinsurance broker, as applicable.

(2) Despite subsection (1), a person or an entity referred to in that subsection must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to section 55 or 57 for registration as an insurance agent, insurance broker, a corporate insurance broker or a reinsurance or corporate reinsurance broker, as applicable.

(3) If a person or an entity referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (2), the deemed registration of that person or entity is cancelled.

(4) A person who continues to operate, or engage in, the business of an insurance agent or an insurance broker or a reinsurance broker after the cancellation of registration under subsection (3), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Principal office and principal officer

61. (1) Every registered insurance or reinsurance broker or corporate insurance or reinsurance broker must -

(a) have a principal office in Namibia where it must hold and maintain the documents referred to in the standards; and

(b) where applicable, appoint to be its principal officer in Namibia, a fit and proper person within the meaning of the standards, who is -

(i) a Namibian citizen or permanent resident; and

(ii) resident in Namibia.

(2) Despite subsection (1)(b)(i), NAMFISA may, in exceptional circumstances, grant permission that a principal officer referred to in that subsection

may, subject to the Immigration Control Act, 1993 (Act No. 7 of 1993), for such period as may be determined by NAMFISA, be a person other than a Namibian citizen or permanent resident.

(3) After the appointment of a principal officer pursuant to subsection (1)(b), a registered insurance or reinsurance broker or corporate insurance or reinsurance broker must, within the period set out in the standards, in writing notify NAMFISA of the appointment.

(4) NAMFISA may, on the grounds that a principal officer is not a fit and proper person within the meaning of the standards, and after giving the registered insurance or reinsurance broker or corporate insurance or reinsurance broker and the principal officer a reasonable opportunity to be heard, direct the registered insurance or reinsurance broker or corporate insurance or reinsurance broker to appoint some other person to be the principal officer of the registered insurance or reinsurance broker or corporate insurance or reinsurance broker.

(5) Whenever a principal officer resigns or the appointment of a principal officer is terminated by a registered insurance or reinsurance broker or corporate insurance or reinsurance broker or by the expiry of a contract of employment, the registered insurance or reinsurance broker or corporate insurance or reinsurance broker must, within the period set out in the standards, in writing notify NAMFISA and submit to NAMFISA a written statement of the reasons for the termination or, in the opinion of the registered insurance or reinsurance broker or corporate insurance or reinsurance broker, the reasons for the resignation.

(6) The principal officer of a registered insurance or reinsurance broker is authorised to act on behalf of the insurance or reinsurance broker to ensure compliance with this Act, and in any case where a person, including NAMFISA, communicates with that insurance or reinsurance broker, that person may do so by addressing the communication to the principal officer.

(7) Process in any legal proceedings may be served on an insurance broker or a reinsurance or corporate broker by serving a copy of the process at its principal office.

(8) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Accounts

62. A registered insurance or reinsurance broker or corporate insurance or reinsurance broker must keep in Namibia proper accounts of, and financial information relating to, its insurance business that comply with the requirements of the standards.

Insurance to be in place

63. Every registered insurance or reinsurance broker or corporate insurance or reinsurance broker must have in place the insurance referred to in section 58(4) to the extent applicable to it, as from a date determined by the Minister by notice in the *Gazette*.

Only one registration

64. (1) A person may not be registered as an insurance agent and an insurance broker at the same time.

(2) Subject to subsection (3), a registered insurance agent may only be registered as either an agent for short-term insurance or an agent for long-term insurance and may not act as agent for more than one registered insurer or represent himself or herself to the public by advertisement or otherwise as the registered insurance agent of more than one registered insurer.

(3) Despite subsections (1) and (2) -

(a) if an insurer is registered under this Chapter for long-term insurance, and an affiliate of that registered insurer is registered under this Chapter for short-term insurance, an agent of that first insurer who has been registered for long-term insurance pursuant to section 55, may, on application by that second insurer, obtain a second registration as an agent for short-term insurance provided he or she meets all the other requirements of this Act; and

(b) if an insurer is registered under this Chapter for short-term insurance, and an affiliate of that registered insurer is registered under this Chapter for long-term insurance, an agent of that first insurer who has been registered for short-term insurance pursuant to section 55, may, on application by that second insurer, obtain a second registration as an agent for long-term insurance provided he or she meets all the other requirements of this Act.

Application for cancellation or variation of registration

65. (1) A registered insurance or reinsurance broker or corporate insurance or reinsurance broker may at any time, apply to NAMFISA for cancellation of a registration granted pursuant to section 59 or for a variation of the conditions subject to which that registration was granted.

(2) An application made under subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) accompanied by the documents and other information required by the standards;

(c) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case; and

(d) accompanied by the required fee.

(3) Before making an application pursuant to subsection (1), the applicant must give prior notice of the proposed application in two newspapers circulating nationally in Namibia at the expense of the applicant stating -

(a) the name of the applicant;

(b) either -

(i) the reasons for the proposed cancellation; or

(ii) the nature of the proposed variation; and

(c) the period within which objections to the application may be lodged with NAMFISA.

(4) Section 59 applies with the changes required by the context to an application for a variation of conditions referred to in subsection (1).

(5) If, after consideration of any objection received as a result of the notice referred to in subsection (3), NAMFISA is of the opinion that it is reasonable to do so and not against the public interest, NAMFISA may, by notice to the registered insurance broker concerned -

(a) cancel the registration; or

(b) vary the conditions of registration, including the imposition of additional conditions.

(6) NAMFISA must make public any cancellation of registration or variation of conditions of registration under subsection (5) and the reasons for the cancellation or variation, by notice in the *Gazette* and by means of any other appropriate public statement.

Cancellation or variation of registration

66. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to a registered insurance or reinsurance broker or corporate insurance or reinsurance broker:

(a) it has made a material misrepresentation or failed to provide information that was materially relevant in its application for registration;

(b) it has failed to comply with this Act;

(c) it no longer meets the requirements for registration;

(d) it has provided financial services without professional integrity, prudence, proper skill and due diligence;

(e) it is in an unsound financial position;

(f) it has failed to comply with a directive, request or requirement of NAMFISA issued under this Act;

(g) it has failed to give effect to a decision of the Appeal Board;

(h) it has ceased to operate or has failed to commence operating within a reasonable time after being registered;

(i) it is involved in a financial crime;

(j) in the case of an individual, the individual no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct; or

(k) in the case of a corporate insurance or reinsurance broker or corporate insurance or reinsurance broker, any director, the principal officer, other officer or member of a board no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take any of the following actions with respect to the registered insurance broker or reinsurance broker or corporate insurance or reinsurance broker -

(a) cancel its registration;

(b) vary the conditions of its registration, including the imposition of additional conditions; or

(c) take any other steps that NAMFISA may consider necessary or advisable.

(3) NAMFISA must give notice to the registered insurance or reinsurance broker or corporate insurance or reinsurance broker of the intention of NAMFISA to take any action referred to in subsection (2), together with the reasons for taking the action, and must give the registered insurance or reinsurance broker or corporate insurance or reinsurance broker a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the registered insurance or reinsurance broker or corporate insurance or reinsurance broker may make representations to NAMFISA on the matter.

(4) Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of a registered insurance or reinsurance broker or corporate insurance or reinsurance broker without giving notice and an opportunity to be heard pursuant to subsection (3) if NAMFISA is satisfied on reasonable grounds that it is urgently necessary to do so in order to prevent or mitigate damage to the interests of financial institutions, financial intermediaries, their clients or the financial system of Namibia, but NAMFISA must -

(a) give the registered insurance or reinsurance broker or corporate insurance or reinsurance broker the notice and an opportunity to be heard and make representations as soon as reasonably possible; and

(b) having considered any representations received, determine whether the provisional suspension should be continued until further conditions can be imposed or registration cancelled.

(5) On the cancellation of the registration of an insurance or a reinsurance broker under section 60(3), section 65, subsection (2)(a) or any other applicable provision of this Act, the insurance or reinsurance broker must be wound-up in accordance with the requirements of Chapter 10, and NAMFISA must take such steps and may impose

such conditions as are necessary in the circumstances, which steps may include the transfer of the business of the insurance or reinsurance broker to another insurance or reinsurance broker, as appropriate, but no distribution of the assets of the insurance or reinsurance broker may be made without the prior approval of NAMFISA.

(6) NAMFISA must make public any suspension or cancellation of registration, variation of conditions of registration or any steps other taken under this section and the reasons for the suspension, cancellation, variation or steps, by notice in the *Gazette* and by means of any other appropriate public statement.

(7) A person who -

(a) continues to operate, or engage in, the business of insurance or reinsurance broker after the cancellation of registration under section 60(3), section 65(5)(a), subsection (2)(a) or any other applicable provision of this Act or after suspension of registration under subsection (4); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (4),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Confirmation of cover by registered brokers

67. (1) After placing a policy of insurance, every registered insurance or reinsurance broker must ensure that the policyholder concerned is, within the period specified in the standards, provided with a policy or a certificate of coverage certifying that the insurance has been placed.

(2) A certificate of coverage referred to in subsection (1) must set out -

(a) the name and mailing address of the policyholder;

(b) a description of the coverage provided;

(c) the full name of each registered insurer or reinsurer authorised to underwrite the policy; and

(d) the amount of insurance placed with each registered insurer or reinsurer.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Other obligations of registered brokers

68. (1) A registered corporate insurance or reinsurance broker or a registered insurance or reinsurance broker who is an employee of a registered corporate insurance or reinsurance broker may not knowingly act or aid in soliciting, negotiating or procuring any policy with -

(a) a registered insurer or reinsurer that is a shareholder that controls the registered corporate insurance or reinsurance broker;

(b) a registered insurer or reinsurer of which the registered corporate insurance or reinsurance broker is a shareholder that controls the registered insurer or reinsurer; or

(c) a registered insurer or reinsurer that is under common ownership, directly or indirectly, with the registered corporate insurance or reinsurance broker,

unless the relationship between the registered corporate insurance or reinsurance broker and the registered insurer or reinsurer is specified in any certificate of coverage and on the face of the policy provided to the policyholder.

(2) Where any other circumstances exist which, in the opinion of NAMFISA, would constitute a conflict of interest or an apprehension of bias on the part of a registered insurance or reinsurance broker, those circumstances must be disclosed to any policyholder or potential policyholder, and specified in any certificate of coverage and on the face of the policy provided to the policyholder.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

No unreasonable delays

69. Every registered insurance or reinsurance broker must avoid unreasonable or repeated delays in transmitting funds to a policyholder or a claimant under a policy that are intended for such transmission.

Placing insurance outside Namibia

70. (1) Subject to subsection (2), a registered insurance or reinsurance broker may not place insurance with an insurer or a reinsurer that is not registered under this Act.

(2) A registered insurance or reinsurance broker may place insurance with a foreign insurer or reinsurer referred to in section 5(2).

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Broker liable to policyholder

71. (1) A registered insurance or reinsurance broker is liable to the policyholder on any policy issued through that registered insurance or reinsurance broker, directly or indirectly, that is underwritten by any person who is not a registered insurer or reinsurer or is not exempt from the requirement that insurers or reinsurers be registered under section 5(2) or under the NAMFISA Act in the same manner as if the registered insurance or reinsurance broker had been the insurer or reinsurer.

(2) For greater certainty -

(a) if the registered insurance or reinsurance broker through whom a policy of the kind referred to in subsection (1) is issued is an employee of a registered corporate insurance or reinsurance broker, the liability imposed by subsection (1) is a joint and several liability of the two registered insurance or reinsurance brokers; and

(b) no liability is imposed by subsection (1) in respect of a policy issued by an insurer or a reinsurer operating outside of Namibia referred to in section 5(2).

Policies and procedures

72. (1) Every registered corporate insurance or reinsurance broker must put in place policies and procedures to screen individuals it proposes to employ as brokers for suitability prior to employing them and to monitor their activities after employing them.

(2) If it comes to the attention of a registered corporate insurance or reinsurance broker that one of its employed insurance or reinsurance brokers is not complying with or has not complied with the provisions of this Act, it must immediately notify NAMFISA in writing of that fact.

Obligations of registered insurance intermediaries

73. (1) When a premium is received by a registered insurance intermediary in respect of a policy, that registered insurance intermediary must provide the policyholder, within the period set out in the standards, with a receipt for that premium, including the name of the registered insurer or reinsurer with which the coverage is to be placed.

(2) When a premium has been received by a registered insurance intermediary and a receipt issued pursuant to subsection (1), the premium is deemed to have been received by the registered insurer or reinsurer named in the receipt even if that insurer or reinsurer does not receive the premium as provided for under the terms of the contract or arrangement between the registered insurance intermediary and the registered insurer or reinsurer.

(3) Every premium paid to a registered insurance intermediary must be deposited in a trust account with a banking institution or building society as set out in the standards.

(4) Every premium paid into the trust account of a registered insurance intermediary constitutes funds held on behalf of the registered insurer or reinsurer with which the policy in question has been placed and may not be used by that intermediary for any other purpose.

(5) Commissions may be withdrawn from a trust account of a registered insurance intermediary as provided for in the contractual or other arrangement governing the relationship between the intermediary and the registered insurer or reinsurer from which the commissions are due.

(6) Every registered insurance intermediary must forward premiums received on behalf of a registered insurer or reinsurer to that insurer or reinsurer in accordance with the terms of the contract or other arrangement with the insurer or reinsurer, without unreasonable or repeated delays.

(7) When so requested in writing by NAMFISA, a registered insurance intermediary must, within 30 days of receipt of such request, provide an accounting to NAMFISA of all premium funds received during a period no longer than 24 months before the date of the request, as may be specified by NAMFISA.

Duties of registered insurance intermediaries

74. Every registered insurance intermediary must -

(a) hold in strict confidence all information concerning the business and affairs of any client of the intermediary acquired in the course of the professional relationship with that client and may not divulge any such information unless -

(i) authorised in writing by the client;

(ii) required by this Act or any other law or by an order of the court; or

(iii) as may be necessary in order to arrange for the insurance or reinsurance required by the client;

(b) observe the requirements of this Act and all other relevant rules and legislation regarding the preservation and safekeeping of the property of the client entrusted to the registered insurance intermediary and, if there are no such requirements, rules or legislation or the intermediary is in doubt, take the same care of such property as a careful and prudent person would take of the person's own property of like description;

(c) not stipulate, charge or accept any fee that is not fully disclosed or the basis for which is not fully disclosed, prior to the service being rendered, or which is so disproportionate to the service provided as to be unconscionable;

(d) maintain accounts and financial records in respect of the business carried out for a period of at least five years after the period to which those accounts and records relate;

(e) comply with such instructions as may be issued by NAMFISA with respect to the specific accounting, financial and other records that must be maintained for the particular type of activity in which the registered insurance intermediary is engaged; and

(f) act honestly and in good faith and in the best interests of its clients.

Other business or occupation

75. A registered insurance intermediary who engages in another business or occupation concurrently with the practice of the vocation of agent or broker may not

allow such outside interest to jeopardise the integrity, independence or competence of the intermediary.

Registration to be produced

76. (1) Every registered insurance intermediary must produce their registration certificate when requested so to do by -

(a) NAMFISA or any person authorised by NAMFISA;

(b) any registered insurer or reinsurer that wishes to establish or that has established any business relationship with that intermediary; and

(c) an actual or a prospective client.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Powers of NAMFISA in relation to registered insurance intermediaries

77. (1) In carrying out the provisions of this Act, an inspector may visit any office or place of business of any registered insurance intermediary and may inspect the records relating to the business carried out and may request any information reasonably required to properly investigate the situation.

(2) Every registered insurance intermediary must do everything possible to facilitate any inquiries by an inspector and must make all required information available on a timely basis.

(3) An inspector is entitled to question any registered insurance intermediary and any employee, officer or director of a registered insurance intermediary under oath.

(4) NAMFISA may in the standards describe conduct that will constitute misconduct on the part of a registered insurance intermediary for the purposes of this Part.

CHAPTER 3
FINANCIAL MARKETS

PART 1
PRELIMINARY

Definitions for this Chapter

78. (1) In this Chapter, unless the context indicates otherwise -

"administrative service" means the provision of a clerical, technical, administrative or other similar service that does not -

(a) require judgment on the part of the person providing the service; or

(b) lead any person to enter into any specific transaction with respect to a security,

and includes the provision of the factual information listed in paragraph (a) of the definition of "securities advice";

"authorised advisor" means a natural person employed by a registered securities advisor to give securities advice;

"authorised representative" means a natural person employed by an authorised user or a securities dealer to buy or sell securities or to give securities advice;

"authorised user" means a company authorised by a registered exchange to perform such securities services as the exchange rules may permit;

"central securities depository" means a public company through which participants provide for the holding in custody and administration of securities or an interest in securities to facilitate the evidencing of ownership and the transferring of such securities or interests;

"clear", in relation to a transaction or group of transactions in listed securities, means -

(a) to calculate and determine before each settlement process -

(i) the exact number or nominal value of securities of each kind to be transferred by or on behalf of a seller; and

(ii) the amount of money to be paid by or on behalf of a buyer, to enable settlement of a transaction or group of transactions; or

(b) where applicable, the process by means of which -

(i) the functions referred to in paragraph (a) are performed; and

(ii) the due performance of the transaction is underwritten from the time of trade to the time of settlement;

"depository rules" means the rules made by a central securities depository in accordance with section 126;

"derivative instrument" means a financial instrument or contract that creates rights and obligations and -

(a) that derives its value from the price or value of; or

(b) the value of which may vary depending on a change in the price or value of,

some other particular product or thing;

"directive" means a directive issued by a registered exchange or registered central securities depository in accordance with its rules;

"electronic exchange" means an exchange that provides for trading through electronic terminals or similar equipment without a physical trading floor;

"exchange" means a public company that constitutes, maintains and provides an infrastructure -

(a) for bringing together buyers and sellers of securities;

(b) for matching the orders for securities of multiple buyers and sellers; and

(c) whereby a matched order for securities constitutes a transaction,

and includes, unless the context otherwise indicates, an electronic exchange;

"exchange rules" means the rules made by a registered exchange in accordance with section 112;

"foreign exchange" means a person authorised as an exchange under the laws of a country other than Namibia;

"investment manager" means a company that is in the business of investment management;

"investment management" means managing for another person, the buying, handling, selling or exchanging of securities, and includes the handling of the funds of, and giving securities advice to, that other person in connection with such activity;

"issuer" means an issuer of securities and, for the purposes of Part 4 of this Chapter, includes an issuer of money market instruments;

"linked investment service provider" means a company whose business -

(a) consists wholly or partly of implementing or capturing investment instructions given by or on behalf of clients in relation to investments on the basis that the linked investment service provider holds, purchases or sells such investments in bulk;

(b) involves the implementation on behalf of another person of a decision to buy, sell or deal with investments in listed securities or investments of which listed securities form part, but does not include -

    (i) the giving of securities advice on the merits of such transactions without receiving funds or assets from a client; or

    (ii) the performance of the functions of a company or institution which is registered as trustee or custodian under this Act;

"listing requirements" means the requirements, determined by a registered exchange, that must be met before a security may be traded, or may continue to be traded, on that exchange;

"listed securities" means securities included in the list of securities kept by a registered exchange pursuant to section 106;

"money market instruments" means money market instruments within the meaning of the regulations;

"nominee" means a company that acts as the registered holder of securities or an interest in securities on behalf of other persons;

"participant" means a company that holds in custody and administers securities or an interest in securities and that has been -

(a) accepted by a registered central securities depository as a participant in that central securities depository under section 97(1); and

(b) registered pursuant to section 97(3);

"portfolio manager" means a natural person who is employed by a registered investment manager or linked investment service provider to perform investment management functions on behalf of that investment manager or linked investment service provider;

"prudential and financial markets institution" means -

(a) a building society;

(b) a juristic person to which the Development Bank of Namibia Act, 2002 (Act No. 8 of 2002), applies;

(c) the Namibia Post Limited established by section 2(1)(a) of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992);

(d) a juristic person to which the Agricultural Bank of Namibia Act, 2003 (Act No. 5 of 2003), applies; or

(e) an entity declared by the Minister to be a prudential and financial markets institution by notice under subsection (2);

"recognised foreign exchange" means a foreign exchange that has been recognised by NAMFISA pursuant to section 101;

"recognised self-regulatory organisation" means a self-regulatory organisation that has been recognised by NAMFISA pursuant to section 136;

"regulated person" means any of the following persons registered under this Chapter -

(a) an authorised advisor of a securities advisor;

(b) an authorised representative of an authorised user;

(c) an authorised representative of a securities dealer;

(d) an authorised user;

(e) a central securities depository;

(f) an exchange;

(g) an investment manager;

(h) a linked investment service provider;

(i) a nominee of an authorised user;

(j) a nominee of a participant;

(k) a participant;

(l) a portfolio manager of an investment manager or of a linked investment service provider;

(m) a securities advisor;

(n) a securities clearing house;

(o) a securities dealer;

(p) a securities rating agency; and

(q) a stockbroker;

"securities advice" means any recommendation, guidance, projection or proposal of a financial nature furnished by any means or medium, to any person who is a client or potential client or a group of clients or potential clients, whether or not specifically sought by that person or group, and irrespective of whether or not such advice results in a transaction being effected in respect of buying, selling, handling or exchanging a security, and includes advising on investment strategy, asset allocation and giving similar advice on how a portfolio should or should not be invested to obtain an investment return, but does not include -

(a) factual information given merely -

(i) on the procedure for entering into a transaction in respect of a security;

(ii) in relation to the description of a security;

(iii) in answer to routine administrative enquiries;

(iv) in the form of objective information about a particular security, including information regarding the tax treatment of a particular security;

(v) by the display or distribution of promotional material; or

(vi) by way of an analysis or report on a security without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the security is appropriate to the particular investment objectives, financial situation or particular needs of a client;

(b) advice given by a member of an professional association, including without limitation, a legal practitioner or an auditor or actuary where the advice is for tax purposes or ancillary to some other advice that is not securities advice; or

(c) any other advisory activity exempted from the provisions of this Chapter by NAMFISA by notice under subsection (3)(a);

"securities advisor" means a natural person or company in the business of giving securities advice to clients or potential clients;

"securities clearing house" means a public company that is retained by a registered exchange to provide securities clearing services to that exchange;

"securities clearing services" means securities clearing services or securities settlement services or both securities clearing and securities settlement services provided to a registered exchange by a securities clearing house;

"securities dealer" means a company, other than an authorised user, that is engaged in the business of buying and selling securities for own account or in a fiduciary capacity, whether through a broker or otherwise, but excludes a company that, for own account and not as part of its regular business, buys and sells securities;

"securities rating agency" means a company that carries on the business of rating securities and issuers of securities;

"security" includes -

(a) a share;

(b) stock;

(c) a bond;

(d) a debenture;

(e) a note;

(f) a derivative instrument and an option, warrant, certificate or other instrument acknowledging, conferring or creating a right to subscribe to, acquire, dispose of, or convert a security;

(g) an investment scheme, plan, programme or contract designed to entice a client or potential client to invest, use or commit money or other property with the expectation of future payment of interest, dividends, capital appreciation or other return or monetary benefit; and

(h) an instrument declared by NAMFISA by notice under subsection (3)(b) to be a security,

but does not include a money market instrument, a participatory interest in a collective investment scheme as defined in section 168, a unit or other form of participation in a foreign collective investment scheme as defined in section 218 or a security declared by NAMFISA by notice under subsection (3)(c) not to be a security for the purposes of this Chapter;

"self-regulatory organisation" means a public company that is organised for the purpose of regulating the operations and business conduct in capital markets of its members and

their representatives with the public interest objectives of enhancing market integrity, investor protection and market efficiency and includes -

(a) a registered exchange;

(b) a registered central securities depository;

(c) a registered securities clearing house; and

(d) a recognised self-regulatory organisation;

"settle" means to discharge the obligations arising from a transaction in listed securities;

"stockbroker" means a person who was a stockbroker within the meaning of the Stock Exchanges Control Act at the time this Act comes into force;

"Stock Exchanges Control Act" means the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), repealed by this Act;

"systemic risk" means the risk of a failure or disruption of Namibia's financial system as a whole; and

"transaction" means a contract of purchase and sale of securities.

(2) The Minister may, for the purposes of paragraph (e) of the definition of "prudential and financial markets institution", by notice in the *Gazette* declare any entity to be a prudential and financial markets institution for the purposes of this Act.

(3) NAMFISA may, for the purposes of -

(a) paragraph (c) of the definition of "securities advice", by notice in the *Gazette* exempt any advisory activity from the provisions of this Chapter;

(b) paragraph (h) of the definition of "security", by notice in the *Gazette* declare any instrument to be a security for the purposes of this Chapter; and

(c) the definition of "security", by notice in the *Gazette* declare any instrument not to be a security for the purposes of this Chapter.

Objects of Chapter

79. The objects of this Chapter are to -

(a) increase confidence in the Namibian financial markets by -

(i) requiring that securities services be provided in a fair, efficient and transparent manner; and

(ii) contributing to the maintenance of a stable financial market environment;

(b) promote the supervision of regulated persons and the protection of clients;

(c) reduce systemic risk; and

(d) promote the international competitiveness of securities services in Namibia.

Non-application of gambling laws

80. Any law relating to gambling or wagering does not apply to any activity regulated by or under this Chapter.

PART 2
PROHIBITIONS AND RESTRICTIONS

Prohibitions

81. (1) A person may not operate or act as a regulated person, unless that person is registered or is deemed to be registered to operate or act in the applicable capacity under this Chapter.

(2) A person referred to in subsection (1) who is not registered or deemed to be registered under this Chapter may not purport to be a regulated person or behave in a manner or use a name or description which is calculated to indicate or likely to lead other persons to believe or which suggests, signifies or implies that the person is a regulated person or that there is some connection between that person and a regulated person.

(3) If at the commencement of this Chapter any person was using, in connection with that person's business, any name or description referred to in subsection (2) and that person -

(a) subsequently changes that name;

(b) produces any deed or document, bearing the previous name which was registered in any deeds registry or in any other office where a register or record of the ownership of or entitlement to any property is kept, to the person charged with the registration of deeds in that registry or to the officer in charge of that other office; and

(c) satisfies the person so charged or officer that the name was changed as a result of the prohibition contained in subsection (2),

that person so charged or officer must, without any charge, substitute the new name for the previous name on such deed or document and in all the relevant registers.

(4) A person who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Listed securities: exception

82. (1) A person may not carry on the business of buying or selling listed securities unless that person -

(a) is a registered authorised user;

(b) is the registered authorised representative of a registered authorised user;

(c) effects such buying or selling through a registered authorised user or registered authorised representative;

(d) is a banking institution, prudential and financial markets institution or a financial institution transacting as principal with another banking institution, prudential and financial markets institution or financial institution also transacting as principal; or

(e) is a person who, subject to any conditions that may be set out in the standards, buys or sells listed securities in order to -

(i) give effect to a reconstruction of a company or group of companies by the issue or reallocation of shares or a takeover by one company of another or an amalgamation of two or more companies; or

(ii) effect a change in the control over management or the business of a company.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 3
REGISTRATION OF CERTAIN REGULATED PERSONS

Application for registration

83. (1) Only a public company may, in accordance with subsection (4), make an application for registration as -

(a) a central securities depository;

(b) an exchange, in respect of one or more types of securities; or

(c) a securities clearing house,

to NAMFISA.

(2) Only a company may, in accordance with subsection (4), make an application for registration as -

(a) an investment manager;

(b) a linked investment service provider;

(c) a securities rating agency; or

(d) a securities dealer,

to NAMFISA.

(3) A company or an individual may, in accordance with subsection (4), make an application for registration as a securities advisor to NAMFISA.

(4) An application for registration pursuant to subsection (1), (2) or (3) must -

(a) be made in the manner and form required by the standards;

(b) include the information with respect to the principal office and principal officer required by the standards;

(c) in the case of -

(i) a central securities depository or an exchange, be accompanied by the proposed rules of the central securities depository or exchange; and

(ii) an exchange, be accompanied by the proposed listing requirements of the exchange;

(d) be accompanied by the documents and other information required by the standards;

(e) be accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(f) be made subject to and in accordance with any other applicable provision of this Act; and

(g) be accompanied by the required fee.

(5) Before making an application for registration referred to in subsection (1) or (2)(c), the applicant must give notice of the proposed application in two newspapers circulating nationally in Namibia at the expense of the applicant, stating -

(a) the name of the applicant;

(b) the period within which, and the manner in which, objections to the application may be lodged with NAMFISA; and

(c) in the case of an application referred to -

(i) in subsection (1)(a) or (b), the place where the proposed rules of the exchange or central securities depository may be inspected by members of the public;

(ii) in subsection (1)(b), the place where the proposed listing requirements of the exchange may be inspected by members of the public,

and the manner in which, and the period within which, the members of the public may lodge objections to the proposed rules or listing requirements with NAMFISA.

Registration requirements

84. (1) Before approving the application and registering the applicant pursuant to an application made under section 83(1), (2) or (3) NAMFISA must be satisfied that -

(a) in relation to the applicant company -

(i) every shareholder or other owner that controls the applicant, and every director, the principal officer or other officers of the applicant, and where applicable, members of any other board of an applicant, are fit and proper within the meaning of the standards;

(ii) the memorandum, articles and rules or other founding documents of the applicant are not inconsistent with the provisions of this Act;

(iii) the direct or indirect control of the entity is not likely to be contrary to the interest of consumers of the financial services concerned; and

(iv) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;

(b) doing so is not contrary to -

(i) this Act; or

(ii) the public interest;

(c) the applicant has the attributes reasonably necessary and adequate to -

(i) provide the financial services in question with professional integrity, prudence, proper skill and due diligence;

(ii) maintain a sound financial position and not cause or further instability in the financial system of Namibia; and

(iii) comply with this Act;

(d) in the case of a central securities depository or an exchange, the applicant will be in a position to ensure compliance with its rules by its participants and authorised users and its clients;

(e) in the case of an exchange, the applicant will be in a position to ensure compliance with its listing requirements by its authorised users and its clients;

(f) the name under which the applicant proposes to conduct business, or a translation, shortened form or derivative of that name is not in contravention of section 391;

(g) the applicant has submitted all other information which, in the opinion of NAMFISA, is necessary to assess the application, and such information has been found satisfactory by NAMFISA; and

(h) the applicant has complied and will continue to comply with any other requirements contained in this Act or in the standards which apply to the applicant.

(2) Before approving an application and registering an individual as a security advisor pursuant to section 83(3), NAMFISA must, in addition to the requirements of subsection (1)(b), (c), (f), (g) and (h) be satisfied that -

(a) the individual is at least 18 years of age;

(b) the individual has met the requirements for a securities advisor that may be included in the standards from time to time;

(c) the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure business;

(d) the individual has not been refused registration, authorisation or acceptance as a securities advisor or had such registration, authorisation or acceptance suspended or revoked under this Act or any other applicable financial services law;

(e) the individual has not been convicted of an offence the nature of which renders him or her, in the opinion of NAMFISA, unfit to hold a registration under this Act;

(f) the individual is fit and proper within the meaning of the standards;

(g) there are reasonable grounds for believing that the individual will carry on with integrity and honesty the activities of a securities advisor;

(h) the individual has met, and there is no reason to believe that the individual will not be able to meet, any other requirements of this Act, and any instructions and guidelines issued by NAMFISA under this Act that apply to a securities advisor;

(i) there is no reason to believe that the individual is likely to engage in conduct of a kind identified in the standards as misconduct;

(j) the individual is ordinarily resident in Namibia and is in a position to comply with the law relating to his or her residency in Namibia and with any other applicable laws of Namibia; and

(k) any required fee has been paid.

Registration and renewal of registration

85. (1) If -

(a) after consideration of any objection received as a result of the notice referred to in section 83(5); and

(b) in any other case where a notice is not required to be given before an application referred to in that section is made,

NAMFISA is satisfied that the applicant complies with the requirements of section 84, NAMFISA must register the applicant as a central securities depository, an exchange, an investment manager, a linked investment services provider, securities clearing house, securities rating agency, securities advisor or securities dealer and -

(i) in the case of a central securities depository, approve its proposed depository rules; and

(ii) in the case of an exchange, approve its proposed exchange rules and listing requirements.

(2) The registration referred to in subsection (1) must specify -

(a) the principal office of the applicant in Namibia;

(b) the places in Namibia from which the applicant may operate;

(c) the financial services in securities that may be provided by the applicant;

(d) in the case of a securities clearing house, whether the securities clearing house may provide both securities clearing and securities settlement services or only securities clearing services or only securities settlement services; and

(e) in the case of an exchange, whether the exchange may, in addition to securities, also list and provide for trading in money market instruments, participatory interests in collective investment schemes and other products or interests that are not securities.

(3) Upon registration of an applicant NAMFISA must issue to the applicant a certificate of registration in a form provided by the standards.

(4) NAMFISA may impose such conditions on the registration of the applicant as it considers necessary having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant and any guidelines issued by NAMFISA under this Act.

(5) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions, and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(6) A central securities depository, an exchange, an investment manager, a linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer must comply with the conditions subject to which it was registered.

(7) The term of registration as a securities rating agency, securities advisor or securities dealer under this section expires on March 31 of each year or on such other date as NAMFISA may specify, but if the appropriate renewal fee as determined by NAMFISA in respect of each securities rating agency, securities advisor or securities dealer is paid to NAMFISA in the manner set out in the standards, the registration must, subject to compliance with any requirements that may be set out in the standards, be renewed for a period of 12 months as from the expiry date.

(8) The renewal fee is payable within the period set out in the standards, and any payment received after that period bears interest at a rate determined by NAMFISA in the standards, which rate may not exceed the rate prescribed for this purpose.

(9) If -

(a) the renewal fee is not received within the period contemplated in subsection (8); or

(b) the requirements of the standards referred to in subsection (7) have not been complied with,

NAMFISA may not renew the registration of a securities rating agency, securities advisor or securities dealer whose renewal fee was not paid or in respect to whom the requirements of the standards have not been complied with.

(10) A person who continues to operate, or to engage in, the business of a securities rating agency, securities advisor or securities dealer after the non-renewal of registration under subsection (9), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Existing exchanges

86. (1) An exchange that was licensed under the Stock Exchanges Control Act prior to, and remains licensed on, the date of commencement of this Chapter, despite that such exchange is not a public company, is deemed to be registered as an exchange under this Act, subject to subsection (3).

(2) An exchange referred to in subsection (1) is, from the date on which this Chapter comes into force, a juristic person capable of suing and being sued under the name by which it is registered, of acquiring rights and duties and of acquiring, owning, burdening, hiring, letting and alienating property and, subject to this Act, of doing such

things as may be necessary for or incidental to the performance of its functions under its exchange rules.

(3) An exchange referred to in subsection (1) must, in accordance with section 138, be incorporated into a public company having a share capital within 12 months of the date of commencement of this Chapter and must, upon such incorporation, comply with all the requirements imposed on an applicant for registration as an exchange in terms of this Act.

(4) If an exchange referred to in subsection (1) contravenes or fails to comply with subsection (3), NAMFISA may take action that NAMFISA considers appropriate against the exchange pursuant to section 89, 412 or 439.

Persons approved by Registrar

87. (1) A person that was approved by the Registrar under section 4(1)(f) of the Stock Exchanges Control Act on the date of commencement of this Chapter is, subject to subsection (2), deemed to be registered in the appropriate category of regulated person under this Act as determined by NAMFISA.

(2) Despite subsection (1), a person referred to in that subsection must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to section 83 for registration in the appropriate category of regulated person.

(3) If a person referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (2), the deemed registration of that person is cancelled.

Application for cancellation or variation of registration

88. (1) A registered central securities depository, an exchange, an investment manager, a linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer may at any time apply to NAMFISA for cancellation of a registration granted pursuant to section 85 or for a variation to the conditions subject to which that registration was granted.

(2) An application made under subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) accompanied by the documents and other information required by the standards;

(c) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case; and

(d) accompanied by the required fee.

(3) Before making an application pursuant to subsection (1), the applicant must give prior notice of the proposed application in two newspapers circulating nationally in Namibia, at the expense of the applicant, stating -

(a) the name of the applicant;

(b) either -

(i) the reasons for the proposed cancellation; or

(ii) the nature of the proposed variation; and

(c) the period within which objections to the application may be lodged with NAMFISA.

(4) Section 85 applies with the changes required by the context to an application for a variation of conditions referred to in subsection (1).

(5) If, after consideration of any objection received as a result of the notice referred to in subsection (3), NAMFISA is of the opinion that it is reasonable to do so and not against the public interest, NAMFISA may, by notice to the applicant concerned -

(a) cancel the registration; or

(b) vary the conditions of registration, including the imposition of additional conditions.

(6) NAMFISA must make public any cancellation of registration or variation of conditions of registration under subsection (5) and the reasons for the cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

Cancellation or variation of registration

89. (1) NAMFISA may take any of the actions set out in subsection (3), if NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to a registered central securities depository, an exchange, an investment manager, a linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer:

(a) it has made a material misrepresentation or failed to provide information that was materially relevant in its application for registration;

(b) it has failed to comply with this Act;

(c) it no longer meets the requirements for registration;

(d) it has provided financial services without professional integrity, prudence, proper skill and due diligence;

(e) it is in an unsound financial position;

(f) it has failed to comply with a directive, request or requirement of NAMFISA issued under this Act;

(g) it has failed to give effect to a decision of the Appeal Board;

(h) it has ceased to operate or has failed to commence operating within a reasonable time after being registered;

(i) it is involved in a financial crime;

(j) in the case of a securities advisor that is an individual, the individual no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct; or

(k) every shareholder or other owner that controls the entity, and any director, the principal officer, other officer or member of a board no longer meets the fit and proper requirements within the meaning of the entity standards or has engaged in conduct identified in the standards as misconduct.

(2) In addition to the reasons set out in subsection (1), NAMFISA may take any of the actions set out in subsection (3) if, in the opinion of NAMFISA, such action is warranted because -

(a) the person has failed to -

(i) give effect to a decision of the Appeal Board and such failure has defeated the objects of this Chapter referred to in section 79 or is likely to defeat them; or

(ii) in the case of an exchange or a central securities depository, comply with the rules of that exchange or central securities depository; or

(b) after an inspection of the person's affairs under this Act, NAMFISA is satisfied on reasonable grounds that the manner in which it is operated is -

(i) not in the best interests of authorised advisors, authorised representatives, authorised users, participants or portfolio managers or their clients; or

(ii) defeating the objects of this Chapter referred to in section 79.

(3) If NAMFISA is satisfied that any of the circumstances described in subsection (1) or (2) exist, NAMFISA may take any of the following actions with respect to the registered central securities depository, exchange, investment manager, linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer -

(a) cancel its registration;

(b) vary the conditions of its registration, including the imposition of additional conditions; or

(c) take any other steps that NAMFISA may consider necessary or advisable.

(4) NAMFISA must give notice to the registered central securities depository, exchange, investment manager, linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer of the intention of NAMFISA to take any action referred to in subsection (3), together with the reasons for

taking the action, and must give the registered central securities depository, exchange, investment manager, linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the registered central securities depository, exchange, investment manager, linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer may make representations to NAMFISA on the matter.

(5) Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of a registered central securities depository, an exchange, an investment manager, a linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer without giving notice and an opportunity to be heard pursuant to subsection (4), if NAMFISA is satisfied on reasonable grounds that it is urgently necessary to do so in order to prevent or mitigate damage to the interests of financial institutions, financial intermediaries, their clients or the financial system of Namibia, but NAMFISA must -

(a) give the registered central securities depository, exchange, investment manager, linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer the notice and an opportunity to be heard and make representations as soon as reasonably possible; and

(b) having considered any representations received, determine whether the provisional suspension should be continued until further conditions can be imposed or the registration cancelled.

(6) NAMFISA must make public any suspension or cancellation of registration, variation of conditions of registration or any other steps taken under this section and the reasons for the suspension, cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

(7) A person who -

(a) continues to operate, or engage in, the business of a central securities depository, an exchange, an investment manager, a linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer after the cancellation of registration under section 87(3), 88(5)(a), subsection (3)(a) or any other applicable provision of this Act or after suspension of registration under subsection (5); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (5),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Transfer or winding-up

90. If the registration of any regulated person is cancelled under section 87(3), 88(5)(a), 89(3)(a) or any other applicable provision of this Act or suspended

pursuant to section 89(5), NAMFISA must take such steps and may impose such conditions as are necessary to achieve the objects of this Chapter referred to in section 79, which steps may include -

(a) the transfer of the business of the regulated person to another regulated person; and

(b) if the regulated person is a company, the winding-up of the company in accordance with Chapter 10.

Registration as authorised user, portfolio manager, authorised advisor or authorised representative

91. (1) A registered exchange may authorise a company to be an authorised user of that exchange in accordance with the exchange rules referred to in section 112, and may apply to NAMFISA for the registration of that company as an authorised user by submitting a copy of the list maintained by that registered exchange of those companies, together with any required registration fee for each such company.

(2) A registered investment manager or linked investment service provider may apply to NAMFISA for the registration of certain of its employees as portfolio managers by submitting a copy of the list maintained by the registered investment manager or linked investment service provider of those employees, together with any required registration fee for each such employee.

(3) A registered securities advisor may apply to NAMFISA for the registration of certain of its employees as authorised advisors by submitting a copy of the list maintained by the registered securities advisor of those employees, together with any required registration fee for each such employee.

(4) A registered securities dealer may apply to NAMFISA for the registration of certain of its employees as authorised representatives by submitting a copy of the list maintained by the registered securities dealer of those employees, together with any required registration fee for each such employee.

(5) A registered investment manager, registered linked investment service provider, registered securities advisor or registered securities dealer (in this section and in section 92 referred to as "list applicants"), must have in place a code of conduct and applicable systems relevant to its portfolio managers, authorised advisors or authorised representatives (in this section referred to as "listed individuals), in order to be reasonably satisfied with respect to each of its listed individuals that -

(a) the individual is at least 18 years of age;

(b) the individual has met the requirements for portfolio managers, authorised advisors or authorised representatives that may be included in the standards from time to time;

(c) the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure business;

(d) the individual has not been refused registration, authorisation or acceptance or had such registration, authorisation or acceptance

suspended or revoked under this Act or any other applicable financial services law;

(e) the individual has not been convicted of an offence the nature of which renders him or her, in the opinion of NAMFISA, unfit to hold a registration under this Act;

(f) the individual is fit and proper within the meaning of the standards;

(g) there are reasonable grounds for believing that the individual will carry on with integrity and honesty the activities of a portfolio manager, authorised advisor or authorised representative;

(h) the individual has met, and there is no reason to believe that the individual will not be able to meet, any other requirements of this Act, and any instructions and guidelines issued by NAMFISA under this Act or issued by the list applicant concerned, that apply to the individual;

(i) there is no reason to believe that the individual is likely to engage in conduct of a kind identified in the standards as misconduct;

(j) the individual is ordinarily resident in Namibia and is in a position to comply with the law relating to his or her residency in Namibia and with any other applicable laws of Namibia; and

(k) any required fee has been paid.

(6) Each list applicant must provide NAMFISA with such other information and material regarding its listed individuals as may be specified in the standards, and the registered exchange must provide NAMFISA with such other information and material regarding the companies on its list as may be specified in the standards.

(7) NAMFISA must register each company, the name of which appears on a list referred to in subsection (1), as an authorised user, and each listed individual whose name appears on the lists referred to in subsection (2), (3) or (4) as a portfolio manager, authorised advisor or authorised representative.

(8) A registered exchange that has submitted a list to NAMFISA pursuant to subsection (1) must submit to NAMFISA an update of that list when there has been an addition or deletion, together with additional companies to be registered that have been added to a list referred to in subsection (1), and the required fee for each additional company and the information and material referred to in subsection (6), and upon receipt by NAMFISA of an updated list containing the names of additional companies, the provisions of subsection (7) apply.

(9) Each list applicant that has submitted a list to NAMFISA pursuant to subsection (2), (3) or (4), must submit to NAMFISA an update of that list when there has been an addition or deletion, together with additional listed individuals to be registered that have been added to a list referred to in subsection (2), (3) or (4), and the required fee for each additional listed individual and the information and material referred to in subsection (6), and upon receipt by NAMFISA of an updated list containing the names of additional listed individuals, the provisions of subsection (7) apply.

(10) If a registered exchange removes a company from the list referred to in subsection (1) or a list applicant removes a listed individual from a list referred to in subsection (2), (3) or (4), the registered exchange or the list applicant must, at the same time as submitting the update of the list as required by subsection (8) or (9), provide NAMFISA with a statement indicating the reason that the company or individual has been removed from the list.

(11) A registered exchange may not remove a company from the list as referred to in subsection (10) unless the registered exchange has given the company concerned the reasons for the proposed removal and a reasonable opportunity to be heard.

(12) A list applicant may not remove a listed individual from the list as referred to in subsection (10) unless the list applicant has given the listed individual concerned the reasons for the proposed removal and a reasonable opportunity to be heard.

Remedial action

92. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to a person who is a registered authorised user, registered portfolio manager, registered authorised advisor or registered authorised representative -

(a) in the case of individuals, any of the requirements referred to in section 91(5) have not been met;

(b) the copy of the list submitted under section 91 or the accompanying information and material contained information concerning the person that was not materially accurate or omitted information that was materially relevant;

(c) the person no longer meets the requirements for an authorised user, portfolio manager, authorised advisor or authorised representative, as applicable;

(d) the person has suspended the activities for which the person was registered for a period of at least 12 months;

(e) the person is not in compliance with a requirement of this Act; or

(f) the person has engaged in conduct of a kind that has been identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take or direct the registered exchange or list applicant concerned to take remedial action including, without limitation -

(a) directing the registered exchange or list applicant to provide further information with respect to the person;

(b) directing the registered exchange or list applicant to provide further training for the person;

(c) directing the registered exchange or list applicant to take disciplinary action against the person;

(d) directing the list applicant to make changes to the code of conduct and systems referred to in section 91(5);

(e) requiring an undertaking from the person pursuant to section 436;

(f) requiring an undertaking from the list applicant pursuant to section 436;

(g) directing the person to undertake specific actions or refrain from specific actions pursuant to section 439(4)(c);

(h) directing the list applicant to undertake specific actions or refrain from specific actions pursuant to section 439(4)(c); or

(i) imposing on the list applicant any penalty that may be specified in the standards, if the list applicant has been negligent in satisfying itself with respect to the provisions of section 91(5).

(3) If on receipt of evidence that the required action has been taken pursuant to subsection (2), NAMFISA acting reasonably, finds that any of the circumstances referred to in subsection (1) continue to exist, NAMFISA may direct the list applicant to remove the name of the person from the list referred to in section 91(1), (2), (3), (4), (8) or (9).

(4) Before directing that the name of a person be removed from a list pursuant to subsection (3), NAMFISA must give the registered exchange or list applicant and the person the reasons for the proposed removal and a reasonable opportunity to be heard.

(5) If a registered exchange or list applicant fails to remove the name of a person from the list when required to do so by NAMFISA, NAMFISA may, after giving the person a reasonable opportunity to be heard, itself remove the name of the person from the list.

(6) If the name of a person is removed from a list by a registered exchange or list applicant or NAMFISA, the registration of that person as an authorised user, portfolio manager, authorised advisor or authorised representative is cancelled and the person may not act as an authorised user, portfolio manager, authorised advisor or authorised representative or be included on any list a copy of which is submitted under section 91 for such period as NAMFISA may determine.

(7) A person who continues to operate, or engage in, the business of an authorised user, a portfolio manager, an authorised advisor or authorised representative after the cancellation of registration under subsection (6), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Stockbrokers

93. (1) A stockbroker that was licensed under the Stock Exchanges Control Act on the date of commencement of this Chapter is, subject to subsections (2) and (3), deemed to be an authorised user or authorised representative under this Act.

(2) Despite subsection (1), a stockbroker that is a company or other entity or an individual stockbroker who is not an employee of a stockbroker that is a company or entity must be included in the list submitted to NAMFISA by the registered exchange of which it is an authorised user, pursuant to section 91.

(3) Despite subsection (1), a stockbroker who is an employee of a company or other entity that is a stockbroker must be included in the list of authorised representatives submitted by that company or other entity to the registered exchange of which that company or entity is an authorised user, pursuant to section 95.

(4) If a stockbroker referred to in subsection (2) is not included in a list submitted to NAMFISA by a registered exchange pursuant to section 91 within 12 months from the date of commencement of this Chapter, the deemed registration of that person is cancelled.

(5) If a stockbroker referred to in subsection (3) is not included in a list submitted to NAMFISA by a company or other entity concerned pursuant to section 95 within 12 months from the date of commencement of this Chapter, the deemed registration of that person is cancelled.

(6) A stockbroker may continue to use the designation "stockbroker", "stockbroker (Namibia)" or "stockbroker (Nam)".

(7) Where the business of a person to whom the rules of a foreign exchange apply is substantially similar to that of a stockbroker, that person may use the designation "stockbroker" if the law under which the foreign exchange is regulated or the rules of that foreign exchange authorise that designation.

(8) An authorised user who was not licensed under the Stock Exchanges Control Act on the date of commencement of this Chapter, but whose business as an authorised user is substantially similar to that of a stockbroker, may use the designation "stockbroker".

(9) A person who is not mentioned in any of the provisions of subsections (1), (2) (3), (7) and (8) may not -

(a) purport to be a stockbroker; or

(b) use any designation referred to in subsection (6), (7) or (8) or any other name, title, description or symbol or perform any act implying or tending to induce the belief that such person is a stockbroker.

(10) A person who contravenes or fails to comply with subsection (9) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(11) A person who continues to operate, or engage in, the business of an authorised user, authorised representative or a stockbroker after the cancellation of registration under subsection (4) or (5), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Existing portfolio managers

94. (1) A portfolio manager who is approved by the Registrar under section 4(1)(f) of the Stock Exchanges Control Act on the date of commencement of this Chapter is deemed to be registered as a portfolio manager under this Act.

(2) Despite subsection (1), a registered investment manager or a registered linked investment service provider that employs a portfolio manager referred to in that subsection must, within six months of the date of commencement of this Chapter, include the portfolio manager in a list submitted to NAMFISA by the investment manager or linked investment service provider pursuant to section 91(2).

(3) If a portfolio manager referred to in subsection (1) is not included in a list submitted to NAMFISA by a registered investment manager or registered linked investment service provider pursuant to section 91(2) within the period referred to in subsection (2), the deemed registration of that person is cancelled.

(4) A person who continues to operate, or engage in, the business of a portfolio manager after the cancellation of registration under subsection (3), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Registration as authorised representative of authorised user

95. (1) An authorised user must submit to the registered exchange of which it is an authorised user, a copy of the list maintained by the authorised user of its employees that are its authorised representatives.

(2) An authorised user must have in place a code of conduct and applicable systems relevant to authorised representatives in order to be reasonably satisfied with respect to each authorised representative that -

(a) the individual is at least 18 years of age;

(b) the individual has met the requirements for authorised representatives that may be included in the standards or the exchange rules from time to time;

(c) the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure business;

(d) the individual has not been refused registration, authorisation or acceptance or had such registration, authorisation or acceptance suspended or revoked under this Act or any other applicable financial services law;

(e) the individual has not been convicted of an offence the nature of which renders him or her, in the opinion of NAMFISA, unfit to hold a registration under this Act.

(f) the individual is fit and proper within the meaning of the standards;

(g) there are reasonable grounds for believing that the individual will carry on with integrity and honesty the activities of an authorised representative;

(h) the individual has met, and there is no reason to believe that the individual will not be able to meet, any other requirements of this Act, the rules of the registered exchange and any instructions and guidelines issued by NAMFISA under this this Act or issued by the exchange that apply to authorised representatives;

(i) there is no reason to believe that the individual is likely to engage in conduct of a kind identified in the standards as misconduct;

(j) the individual is ordinarily resident in Namibia and is in a position to comply with the law relating to his or her residency in Namibia and with any other applicable laws of Namibia; and

(k) any required fee has been paid.

(3) An authorised user must provide the exchange with such other information and material regarding its authorised representatives as the exchange rules may require.

(4) The registered exchange must forward the copy of the list to NAMFISA together with any required fee and NAMFISA must register each person whose name appears on the list as an authorised representative.

(5) An authorised user that has submitted a list to the registered exchange pursuant to subsection (1) must submit to the registered exchange an update of that list when there has been an addition or deletion, together, in the case of additional authorised representatives, with the required fee for each additional authorised representative and the information and material referred to in subsection (3).

(6) An authorised user may not remove an individual from the list referred to in subsection (1) unless the authorised user has given the individual concerned the reasons for the proposed removal and a reasonable opportunity to be heard.

(7) If an authorised user removes an individual from the list, it must, at the same time as submitting the update of the list as required by subsection (5), provide the registered exchange with a statement indicating the reason that the individual has been removed from the list.

(8) The registered exchange must forward any updated list received pursuant to subsection (5) to NAMFISA, together with any statement referred to in subsection (7), and in the case of any addition, the provisions of subsection (4) apply.

Remedial action

96. (1) A registered exchange may take any of the actions set out in subsection (2), if the exchange acting reasonably, finds that any of the following circumstances exist with respect to an authorised representative -

(a) any of the requirements referred to in section 95(2) have not been met;

(b) the copy of the list submitted under section 95 or the accompanying information and material contained information concerning the individual that was not materially accurate or omitted information that was materially relevant;

(c) the individual no longer meets the requirements for an authorised representative;

(d) the individual has suspended the activities for which the individual was registered for a period of at least 12 months;

(e) the individual is not in compliance with a requirement of this Act; or

(f) the individual has engaged in conduct of a kind that has been identified in the standards as misconduct.

(2) If the registered exchange is satisfied that any of the circumstances described in subsection (1) exist, the registered exchange may take or direct the authorised user of which the individual is the authorised representative to take remedial action including, without limitation -

(a) directing the authorised user to provide further information with respect to the individual;

(b) directing the authorised user to provide further training for the individual;

(c) directing the authorised user to take disciplinary action against the individual;

(d) directing the authorised user to make changes to the code of conduct and systems referred to in section 95(2);

(e) requiring an undertaking from the authorised user or from the authorised representative or from both pursuant to section 436;

(f) directing the authorised user or the authorised representative or both to take specific actions or refrain from specific actions; or

(g) referring the matter to NAMFISA.

(3) If on receipt of evidence that the required action has been taken pursuant to subsection (2), the registered exchange acting reasonably, finds that any of the circumstances referred to in subsection (1) continue to exist, the registered exchange may direct the authorised user to remove the name of the individual from the list referred to in section 95(1) or (5).

(4) Before directing that the name of a person be removed from a list pursuant to subsection (3), the registered exchange must give the authorised user and the authorised representative the reasons for the proposed removal and a reasonable opportunity to be heard.

(5) If an authorised user fails to remove the name of an authorised representative from the list when required to do so by the registered exchange, the

registered exchange may, after giving the authorised representative a reasonable opportunity to be heard, itself remove the name of the person from the list.

(6) The registered exchange must inform NAMFISA forthwith of any direction to an authorised user to remove the name of an authorised representative from the list pursuant to subsection (3) or of the removal of the name of an authorised representative from the list by the exchange pursuant to subsection (5) and in that event or in the event that the registered exchange refers the matter to NAMFISA pursuant to subsection (2)(g), the provisions of section 92 apply with any changes made necessary by the context.

(7) If the name of a person is removed from a list by a registered exchange, an authorised user or NAMFISA, the registration of that person as an authorised representative is cancelled and the person may not act as an authorised representative or be included on any list a copy of which is submitted under section 95 for such period as NAMFISA may determine.

(8) A person who continues to operate, or engage in, the business of an authorised representative after the cancellation of registration under subsection (7), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Registration as participant

97. (1) A registered central securities depository may accept a company that holds securities or an interest in securities as a participant in that central securities depository in accordance with its depository rules, and must apply to NAMFISA for the registration of that participant by submitting a copy of the list of such participants maintained by the central securities depository, together with any required fee for each such participant.

(2) The registered central securities depository must provide NAMFISA with such other information and material regarding the companies on its list as may be specified in the standards.

(3) NAMFISA must register each company, the name of which appears on a list referred to in subsection (1).

(4) A registered central securities depository must submit to NAMFISA an update of the list referred to in subsection (1) when there has been an addition or deletion of a participant together, in the case of additional participants to be registered, with the required fee for each such additional participant.

(5) On receipt of a list referred to in subsection (4) and the required fee, NAMFISA must register those companies as participants.

(6) If a registered central securities depository removes a company from the list referred to in subsection (1), the registered central securities depository must, at the same time as submitting the update of the list as required by subsection (4), provide NAMFISA with a statement indicating the reason that the company has been removed from the list.

(7) A registered central securities depository may not remove a company from the list as referred to in subsection (6) unless the registered central securities depository has given the company concerned the reasons for the proposed removal and a reasonable opportunity to be heard.

Remedial action

98. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to the company that is registered as a participant -

(a) the copy of the list submitted under section 97 or the accompanying information and material contained information concerning the company that was not materially accurate or omitted information that was materially relevant;

(b) the company no longer meets the requirements for a participant;

(c) the company has suspended the activities for which the company was registered for a period of at least 12 months;

(d) the company is not in compliance with a requirement of this Act; or

(e) the company has engaged in conduct of a kind that has been identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take or direct the registered central securities depository concerned to take remedial action including without limitation -

(a) directing the registered central securities depository to provide further information with respect to the company;

(b) directing the registered central securities depository to provide further training for the company;

(c) directing the registered central securities depository to take disciplinary action against the company;

(d) requiring an undertaking from the company pursuant to section 436;

(e) requiring an undertaking from the central securities depository pursuant to section 436;

(f) directing the company to undertake specific actions or refrain from specific actions pursuant to section 439(4)(c);

(g) directing the central securities depository to undertake specific actions or refrain from specific actions pursuant to section 439(4)(c).

(3) If on receipt of evidence that the required action has been taken pursuant to subsection (2), NAMFISA acting reasonably, finds that any of the circumstances referred to in subsection (1) continue to exist, NAMFISA may direct the central securities

depository to remove the name of the company from the list referred to in section 97(1) or (4).

(4) Before directing that the name of a company be removed from a list pursuant to subsection (3), NAMFISA must give the registered central securities depository and the company the reasons for the proposed removal and a reasonable opportunity to be heard.

(5) If a registered central securities depository fails to remove the name of a company from the list when required to do so by NAMFISA, NAMFISA may, after giving the company a reasonable opportunity to be heard, itself remove the name of the company from the list.

(6) If the name of a company is removed from a list by a registered central securities depository or NAMFISA, the registration of that company as a participant is cancelled and the company may not act as a participant or be included on any list a copy of which is submitted under section 97 for such period as NAMFISA may determine.

(7) A person who continues to operate, or engage in, the business of a participant after the cancellation of registration under subsection (6), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Nominees

99. (1) An authorised user must -

(a) maintain a list of approved nominees;

(b) submit a copy of such list to the registered exchange of which it is an authorised user; and

(c) submit to the registered exchange an update of the list at the end of each month in which there has been an addition or deletion of a nominee.

(2) A participant must -

(a) maintain a list of approved nominees;

(b) submit a copy of such list to the registered central securities depository of which it is a participant; and

(c) submit to the registered central securities depository an update of the list at the end of each month in which there has been an addition or deletion of a nominee.

(3) A registered exchange or registered central securities depository must submit a copy of the list referred to in subsection (1) or (2), as applicable, to NAMFISA.

(4) NAMFISA must maintain a list of all nominees approved under the exchange rules or depository rules and sent to NAMFISA pursuant to subsection (3).

Remedial action

100. (1) A registered exchange or registered central securities depository may take any of the actions set out in subsection (2), if the exchange or central securities depository acting reasonably, finds that any of the following circumstances exist with respect to a nominee -

(a) any of the requirements set out in the rules of the exchange or of the central securities depository have not been met;

(b) the copy of the list submitted under section 99(1)(b) or (2)(b) respectively or the accompanying information and material contained information concerning the nominee company that was not materially accurate or omitted information that was materially relevant;

(c) the nominee company no longer meets the requirements for an approved nominee;

(d) the nominee company has suspended the activities for which it was registered for a period of at least 12 months;

(e) the nominee company is not in compliance with a requirement of this Act; or

(f) the nominee company has engaged in conduct of a kind that has been identified in the standards as misconduct.

(2) If the registered exchange or registered central securities depository is satisfied that any of the circumstances described in subsection (1) exist, the registered exchange or registered central securities depository may take or direct the authorised user or participant of which the nominee company is an approved nominee to take remedial action including, without limitation -

(a) directing the authorised user or participant to provide further information with respect to the nominee company;

(b) directing the authorised user or participant to provide further training for the nominee company;

(c) directing the authorised user or participant to take disciplinary action against the nominee company;

(d) directing the authorised user or participant to make changes to the code of conduct and systems as provided for the exchange or depository rules;

(e) requiring an undertaking from the authorised user or participant or from the approved nominee or from both pursuant to section 436;

(f) directing the authorised user or participant or the approved nominee or both to take specific actions or refrain from specific actions pursuant to section 439(4)(c); or

(g) referring the matter to NAMFISA.

(3) If on receipt of evidence that the required action has been taken pursuant to subsection (2), the registered exchange or registered central securities depository acting reasonably, finds that any of the circumstances referred to in subsection (1) continue to exist, the registered exchange or registered central securities depository may direct the authorised user or participant to remove the name of the nominee company from the list referred to in section 99(1) or (2).

(4) Before directing that the name of a nominee company be removed from a list pursuant to subsection (3), the registered exchange or registered central securities depository must give the authorised user or participant, and the approved nominee the reasons for the proposed removal and a reasonable opportunity to be heard.

(5) If an authorised user or a participant fails to remove the name of an approved nominee from the list when required to do so by the registered exchange or registered central securities depository, the registered exchange or registered central securities depository may, after giving the approved nominee a reasonable opportunity to be heard, itself remove the name of the nominee company from the list.

(6) The registered exchange or registered central securities depository must inform NAMFISA forthwith of any direction to an authorised user or a participant to remove the name of an approved nominee from the list pursuant to subsection (3) or of the removal of the name of an approved nominee from the list by the exchange or central securities depository or pursuant to subsection (5) and in that event, or in the event that the registered exchange or registered central securities depository refers the matter to NAMFISA pursuant to subsection (2)(g), the provisions of section 98 apply with any changes made necessary by the context.

(7) If the name of a person is removed from a list by a registered exchange, registered central securities depository, authorised user, participant or NAMFISA, the registration of that person as a participant is cancelled and the person may not act as a nominee company, or be included on any list a copy of which is submitted under section 99 for such period as NAMFISA may determine.

(8) A person who continues to operate, or engage in, the business of a nominee company after the cancellation of registration under subsection (7), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Foreign exchange and electronic exchange

101. (1) NAMFISA may, by notice in the *Gazette,* recognise a foreign exchange.

(2) If a recognised foreign exchange operates an electronic exchange through one or more terminals located in Namibia through which trade can be entered on that foreign exchange, that electronic exchange is deemed not to be located in Namibia provided that the terminals located in Namibia are operated by a person or persons who are registered as an exchange or as an authorised user under this Chapter.

Principal office and principal officer

102. (1) Every registered regulated person that is a company and an exchange referred to in section 86 must -

(a) have a principal office in Namibia where it must hold and maintain the documents referred to in the standards; and

(b) appoint to be its principal officer in Namibia, a fit and proper person within the meaning of the standards who is -

(i) a Namibian citizen or permanent resident; and

(ii) resident in Namibia.

(2) Despite subsection (1)(b)(i), NAMFISA may, in exceptional circumstances, grant permission that a principal officer referred to in that subsection may, subject to the Immigration Control Act, 1993 (Act No. 7 of 1993), for such period as may be determined by NAMFISA, be a person other than a Namibian citizen or permanent resident.

(3) After the appointment of a principal officer pursuant to subsection (1)(b), the regulated person or exchange referred to in subsection (1) must, within the period set out in the standards, in writing notify NAMFISA of the appointment.

(4) NAMFISA may, on the grounds that a principal officer is not a fit and proper person within the meaning of the standards, and after giving the regulated person or exchange referred to in subsection (1) and the principal officer a reasonable opportunity to be heard, direct the regulated person or exchange referred to in subsection (1) to appoint some other person to be the principal officer of the regulated person or exchange referred to in subsection (1).

(5) Whenever a principal officer resigns or the appointment of a principal officer is terminated by a regulated person or exchange referred to in subsection (1) or by the expiry of a contract of employment, the regulated person or exchange referred to in subsection (1) must, within the period set out in the standards, in writing notify NAMFISA and submit to NAMFISA a written statement of the reasons for the termination or, in the opinion of the regulated person or exchange referred to in subsection (1), the reasons for the resignation.

(6) The principal officer referred to in subsection (1)(b) must be an *ex officio* member of the board of the regulated person or of the exchange, but the principal officer may not serve as chairperson of the board.

(7) The principal officer of a regulated person is authorised to act on behalf of the regulated person or the exchange to ensure compliance with this Act, and in any case where a person, including NAMFISA, communicates with that regulated person or the exchange, that person may do so by addressing the communication to the principal officer.

(8) Process in any legal proceedings may be served on the regulated person or the exchange by serving a copy of the process at its principal office.

(9) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Appointment of auditor

103. (1) Every regulated person that is a company and an exchange referred to in section 86 must, in accordance with section 401, appoint, and at all times have an auditor or firm of auditors to be the auditor for its business in Namibia.

(2) A regulated person that is a company or exchange referred to in section 86 may not appoint as its auditor -

(a) an auditor who is; or

(b) a firm of auditors, any member of which is,

a director, officer, employee or shareholder or other owner of that regulated person or that exchange or who has any financial interest in that regulated person or that exchange.

(3) NAMFISA may direct a regulated person that is a company or an exchange referred to in section 86 to change its auditor, if NAMFISA is satisfied that the auditor or any member of the firm of auditors appointed as auditor is an employee, officer, director or shareholder of that regulated person or that exchange.

(4) An auditor appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

an auditor by section 401.

PART 4
EXCHANGES

Interpretation

104. For the purposes of this Part, "securities" include -

(a) money market instruments;

(b) a participatory interest in a collective investment scheme as defined in section 168;

(c) a unit or other form of participation in a foreign collective investment scheme as defined in section 168; and

(d) other products or interests that the registered exchange may list and provide for trading pursuant to section 85(2)(e).

Functions of exchange and power of NAMFISA

105. (1) A registered exchange -

(a) must issue and enforce the exchange rules and listing requirements;

(b) must supervise compliance by authorised users with this Act and the exchange rules;

(c) may issue directives;

(d) after consultation with NAMFISA, may amend or suspend the exchange rules under section 147(4) and may amend its listing requirements;

(e) must make provision for the clearing and settlement of transactions in listed securities effected through the exchange;

(f) may retain one or more securities clearing houses to perform securities clearing services for the exchange in accordance with the exchange rules;

(g) must consult with its retained securities clearing houses when making or amending exchange rules pertaining to securities clearing and settlement;

(h) must supervise compliance by issuers of listed securities with the listing requirements, the exchange rules and this Act; and

(i) may do all other things that are necessary for, or incidental or conducive to, the proper operation of a registered exchange and that are not inconsistent with this Act.

(2) NAMFISA may assume responsibility for one or more of the functions of a registered exchange referred to in subsection (1) if NAMFISA considers it necessary in order to achieve the objects of this Chapter referred to in section 79.

(3) NAMFISA must, before assuming responsibility under subsection (2) -

(a) inform the registered exchange of NAMFISA's intention to assume responsibility;

(b) give the registered exchange the reasons for the intended assumption; and

(c) call upon the registered exchange to show cause within a period specified by NAMFISA why responsibility should not be assumed by NAMFISA.

Listing of securities

106. (1) A registered exchange must issue listing requirements which set out -

(a) the manner in which securities may be listed or removed from the list or the manner in which the trading in listed securities may be suspended;

(b) the requirements with which issuers of listed securities and of securities which are intended to be listed, must comply;

(c) the standards of conduct that issuers of listed securities and their directors, officers and agents must meet;

(d) the standards of disclosure and corporate governance that issuers of listed securities must meet;

(e) such details relating to the listed securities as may be necessary;

(f) the steps that must be taken by the exchange or a person to whom the exchange has delegated its investigative and disciplinary functions, for the investigation and discipline of an issuer, or a person who controls an issuer or a director, officer or employee of an issuer that contravenes or fails to comply with the listing requirements, including a requirement that adequate notice of the date of any contemplated hearing be given to the parties to the hearing and the procedures to be followed before or during a disciplinary hearing;

(g) any one or more of the following penalties that may be imposed by the exchange or by a person to whom the exchange has delegated its investigative and disciplinary functions for any contravention of or failure to comply with the listing requirements -

(i) a reprimand;

(ii) a fine not exceeding the amount prescribed by the Minister;

(iii) disqualification, in the case of a natural person, from holding the office of a director or officer of a listed company for a specified period of time;

(iv) the payment of compensation to any person prejudiced by the contravention or failure; and

(h) any other matter determined in the standards.

(2) The listing requirements of a registered exchange may require that -

(a) full particulars regarding the imposition of a penalty may be published in the *Gazette*, in newspapers circulating nationally in Namibia or through the news service of the exchange;

(b) any person who contravenes or fails to comply with the listing requirements may be ordered to pay the costs incurred in an investigation or hearing; and

(c) the exchange may take into account at a hearing, information obtained by NAMFISA in the course of an inspection conducted under this Act or obtained by NAMFISA in an investigation under section 164.

(3) If a person fails to pay a fine or compensation referred to in subsection (1)(g), the registered exchange may take such steps as are necessary, including the institution of legal action, to recover the fine or compensation.

(4) The listing requirements of a registered exchange must set out the purpose for which a fine referred to in subsection (1)(g) must be appropriated.

(5) The listing requirements of a registered exchange and any other conditions of listing are binding on an issuer and an authorised user and on any person who controls an issuer or an authorised user that is a company, and on their directors, officers, employees and agents.

(6) A registered exchange -

(a) must keep a list of the securities which may be traded on that exchange;

(b) must receive and consider, and may grant, defer or refuse, subject to its listing requirements and any other conditions that it may determine, applications for the inclusion of securities in the list;

(c) may include securities issued by it in its own list subject to the approval of NAMFISA and the conditions set out in the standards; and

(d) may, despite any arrangement entered into before or after the commencement of this Chapter according to which listed securities may be bought and sold on the exchange, charge the fees provided for in the listing requirements or the exchange rules.

(7) A registered exchange must, before refusing an application to include securities in the list under subsection (6)(b) -

(a) inform the issuer of the exchange's intention to refuse the application;

(b) give the issuer the reasons for the intended refusal; and

(c) call upon the issuer to show cause within a period specified by the exchange why the application should not be refused.

Removal of listing and suspension of trading

107. (1) A registered exchange may, subject to this section, the exchange rules and the listing requirements, remove securities from the list, even to the extent that a removal may have the effect that an entire trading board or substantial portion of the trading board of the exchange is closed or suspend the trading in listed securities, if the removal or suspension will further one or more of the objects of this Chapter referred to in section 79.

(2) A registered exchange must, subject to subsection (3) and before a removal or suspension -

(a) inform the issuer of the intended removal or suspension;

(b) give the issuer the reasons for the intended removal or suspension; and

(c) call upon the issuer to show cause, within a period specified by the exchange, why the removal or suspension should not be effected.

(3) If -

(a) the listing requirements, the conditions determined by a registered exchange in respect of the listing of securities or the exchange rules are not complied with; or

(b) a circumstance arises which is envisaged by the exchange rules or the listing requirements as a circumstance justifying the immediate suspension of trading,

a registered exchange may order an immediate suspension of trading for a period not exceeding 30 days, which period may be extended for one or more further periods of 30 days.

(4) If the trading of listed securities has been suspended under this section, a registered exchange may, despite subsections (1) and (3), permit authorised users to buy and sell those securities for the sole purpose of fulfilling obligations entered into in relation to those securities before the suspension.

(5) If an issuer requests a registered exchange to remove the issuer's securities from the list, the exchange must be satisfied on reasonable grounds that the interests of minority holders of the securities have been considered and the applicable provisions of the Companies Act have been complied with.

(6) An issuer must provide reasons for a request referred to in subsection (5).

(7) If a registered exchange -

(a) refuses an application for the inclusion of securities in the list under section 106(6)(b); or

(b) removes securities from the list pursuant to subsection (1),

the exchange must immediately notify every other exchange, including a foreign exchange, on which the issuer is listed, if any, of the reasons for and date of the refusal or removal.

(8) If -

(a) the refusal to list securities was due to any fraud or other crime committed by the issuer or any material misstatement of its financial position or non-disclosure of any material fact; or

(b) the removal of securities was due to a failure to comply with the listing requirements of the registered exchange,

any other registered exchange may not, for a period of six months from the date referred to in subsection (7), grant an application for the inclusion of the securities concerned in the list kept by it or allow trading in such securities, unless the refusal or removal is withdrawn by the first exchange or set aside on appeal by NAMFISA.

(9) If a registered exchange withdraws a refusal referred to in section 106(6)(b) or a removal referred to in this section before the expiry of six months, it must notify the issuer and every other exchange on which the issuer is listed.

Application of new listing requirements

108. (1) A registered exchange may, by notice in writing to the issuer of listed securities, apply the new listing requirements or conditions determined by that exchange in respect of the listing of securities to securities listed before the coming into force of the new listing requirements or conditions.

(2) Listing requirements or conditions referred to in subsection (1) take effect from a date determined by the registered exchange which date -

(a) must not be earlier than one month after the date on which the exchange notifies the issuer; or

(b) may be an earlier date than that date, when special circumstances justify,

but the exchange may postpone the date referred to in paragraph (a) on written request by the issuer.

(3) If a registered exchange refuses a request for a postponement referred to in subsection (2), the issuer concerned may make representations in writing to NAMFISA, and if the request for a postponement is reasonable, NAMFISA may, after consultation with the registered exchange, postpone the date on which the new listing requirements or conditions take effect by not more than three months and must inform the exchange accordingly.

Disclosure of information by issuers

109. (1) A registered exchange may require an issuer of listed securities to disclose to the exchange any information about those securities which is at the issuer's disposal or about the affairs of the issuer, if such disclosure is necessary to achieve one or more of the objects of this Chapter referred to in section 79.

(2) A registered exchange must require the issuer to disclose the information referred to in subsection (1) to the registered holders of the securities, within a period specified by the exchange, if the objects of this Chapter referred to in section 79 are not being met.

(3) If an issuer refuses to disclose the information referred to in subsection (1) or (2) to the registered exchange or the registered holders of the securities, the exchange may, unless the issuer obtains an order of the High Court excusing it from such disclosure, suspend trading in those securities until such time as the required disclosure has been made to the satisfaction of the exchange.

(4) If the information disclosed by an issuer under this section to the registered holders of securities may influence the price of those securities, the issuer must at the same time make the information available to the public.

Imposition of levy

110. A registered exchange may impose a levy on any person involved in a transaction in listed securities effected through that exchange for the purpose of maintaining insurance, a guarantee, a compensation fund or other warranty for those using the services of the exchange.

Funds of registered exchange

111. (1) A registered exchange may, in compliance with the standards, require its authorised users and their clients to contribute towards the funds of the exchange for the purpose of carrying on its business.

(2) If a registered exchange has assets which are surplus to its requirements it may distribute such assets to any person -

(a) after providing for any liabilities of the exchange;

(b) in accordance with its founding documents; and

(c) with the prior approval of NAMFISA.

(3) If a registered exchange is a non-proprietary exchange, the distribution referred to in subsection (2) may be made despite any contrary provisions of any law or the common law and without affecting the non-proprietary status of the exchange.

Requirements for exchange rules

112. (1) The exchange rules of a registered exchange must be consistent with this Act.

(2) The exchange rules of a registered exchange must provide -

(a) for the criteria for authorisation and exclusion of authorised users and, in particular, that no company may be admitted as an authorised user or allowed to continue as an authorised user unless that company is owned and managed by persons who are -

(i) fit and proper persons within the meaning of the standards; and

(ii) of high business integrity and comply with the requirements for training, experience and other qualifications of the exchange rules;

(b) for the capital adequacy, guarantee and risk management requirements with which an authorised user must comply, and that such requirements must be prudent although they may differ in respect of different categories of authorised users or different activities of an authorised user's business;

(c) if there are different categories of authorised users, for the restriction of the activities of such categories subject to different conditions;

(d) for an efficient, honest, transparent and fair manner in which and terms and conditions subject to which transactions in listed securities must be effected by authorised users, whether for own account or on behalf of other persons;

(e) for the manner in which transactions in listed securities must be cleared and settled;

(f) for the clearing and settlement of transactions if the registered exchange has not retained a registered securities clearing house;

(g) for the circumstances in which a buyer or seller of listed securities may repudiate the transaction;

(h) for the regulation of transactions in listed securities entered into as a result of any first communication made to a person without an express or tacit invitation from such person;

(i) for the circumstances in which a transaction in listed securities may be declared void by the registered exchange;

(j) for the conditions subject to which an authorised user may undertake management of listed securities for remuneration or benefit in any form;

(k) that no authorised user may effect a transaction in securities with a person whom the authorised user believes or suspects requires approval to undertake management of securities under this Act without having taken reasonable measures to ascertain that such person has the necessary approval;

(l) for the approval by the registered exchange of a nominee of an authorised user which nominee holds securities in a securities repository or central securities repository as defined in section 121;

(m) for surveillance of any matter relevant for the purposes of this Act, the exchange rules and any directives issued by the registered exchange;

(n) for the conditions subject to which an authorised representative of an authorised user may, in relation to the buying and selling of listed securities, advise on or conclude any transaction on behalf of the authorised user in the course of that authorised user's business and for the circumstances in which such authorised representative may be denied access to the registered exchange;

(o) for the circumstances in which trading in any listed security may be suspended or stopped;

(p) generally for the manner in which an authorised user is required to conduct the business of buying and selling listed securities;

(q) for the operation by the registered exchange or an authorised user of a trust account referred to in section 119;

(r) for -

(i) recording transactions effected through the registered exchange;

(ii) monitoring compliance by authorised users with this Act and the exchange rules and directives of the registered exchange; and

(iii) surveillance of any matter relevant for the purposes of this Act and the exchange rules and directives referred to in subparagraph (ii);

(s) for the circumstances and manner in which an authorised user may advertise or canvass for business;

(t) for the equitable and expeditious settlement of disputes between authorised users;

(u) for the manner in which complaints against an authorised user or an authorised representative of an authorised user must be investigated;

(v) for the referral of a complaint by a client against an authorised user or an authorised representative of an authorised user to the Adjudicator;

(w) for the steps to be taken by the registered exchange or a person to whom the registered exchange has delegated its investigative and disciplinary functions, to investigate and discipline an authorised user or an authorised representative of an authorised user who contravenes or fails to comply with this Act or the exchange rules, interim exchange rules or directives of the registered exchange, and for a report on the disciplinary proceedings to be furnished to NAMFISA within 30 days after the completion of such proceedings and the procedures to be followed before or during a disciplinary hearing;

(x) for the manner in which an authorised user or an authorised representative of an authorised user who is believed to be -

(i) in possession of any information relevant to an investigation referred to in paragraph (u) or (w); or

(ii) in possession or have under their control any document which has a bearing on an investigation referred to in paragraph (u) or (w),

may be required to appear before the registered exchange or a person conducting an investigation, to be questioned on such information or to produce such document;

(y) with respect to the insurance, guarantee, compensation fund or other warranty referred to in section 110, for -

(i) the persons who must contribute in order to maintain such insurance, guarantee, compensation fund or other warranty;

(ii) the amount of the levy imposed by the registered exchange for this purpose;

(iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty;

(iv) restrictions on the amount of any claim;

(v) the control and administration of the insurance, guarantee, compensation fund or other warranty; and

(vi) the ownership of the insurance, guarantee, compensation fund or other warranty;

(z) for the disclosure by authorised users to clients of the fees for their services;

(aa) for authorised users to charge a fee for different categories of transactions;

(bb) for the purposes for which the registered exchange may issue directives;

(cc) for the supervision by the registered exchange of compliance with the duties imposed on it and its authorised users by this Act, any other applicable financial services law and the exchange rules; and

(dd) for such other matters as may be set out in the standards.

(3) A registered exchange may, with the approval of NAMFISA, make exchange rules on matters additional to those listed in subsection (2).

(4) An exchange rule made under this section is binding on the registered exchange, its authorised users and their authorised representatives, issuers and their officers and employees, and on clients.

Reporting transactions in listed securities

113. (1) A person, whether that person carries on the business of buying or selling listed securities or not, must report to NAMFISA in accordance with the standards, any transaction in listed securities resulting in a change of control of beneficial ownership of those securities and concluded by that person outside a registered exchange and simultaneously must report that transaction to the registered exchange on which the securities are listed.

(2) NAMFISA must, in respect of a report referred to in subsection (1), specify in the standards -

(a) the information required in respect of any transaction; and

(b) the manner in which and time within which reports are to be rendered.

(3) A person referred to in subsection (1) that is a registered exchange may publish any information disclosed to it under that subsection.

(4) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Undesirable advertising or canvassing

114. (1) A person, other than an authorised user or an authorised representative of an authorised user who is so permitted under the exchange rules, may not in any manner, directly or indirectly, advertise or canvass for the business of that authorised user.

(2) Despite any other law to the contrary, NAMFISA may, if it is of the opinion that an advertisement, brochure or other document relating to securities is misleading or for any other reason objectionable, issue a directive to the effect that the advertisement, brochure or other document not be published or that its publication be stopped or that such amendments as NAMFISA considers necessary be effected.

(3) A person who contravenes or fails to comply with subsection (1) or contravenes or fails to comply with a directive issued under subsection (2) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Identity and source to be disclosed

115. (1) A person may not publish or circulate any written comment which relates to the trading results of a public company or which may influence the value of the listed securities of a public company unless such comment is accompanied by -

(a) the name of the person or persons who compiled the comment or the name of the person or persons on the editorial staff of a newspaper or periodical who, in the opinion of the editor, compiled the comment; or

(b) disclosure of the source from which the comment was obtained.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Restriction on borrowing and re-pledging

116. (1) An authorised user may not -

(a) borrow against pledged listed securities an amount in excess of the outstanding balance of any amount which the authorised user may have lent the pledgor against the pledged securities; or

(b) re-pledge listed securities without the written consent of the pledgor.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000

or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Marking or recording securities

117. When a document of title relating to a listed security comes into the possession of an authorised user, the authorised user must as soon as possible -

(a) mark it; or

(b) record and store the necessary details,

in a manner which will render it possible at any time thereafter to readily establish the identity of the owner of those securities.

Restriction on alienation of securities

118. Subject to the exchange rules of a registered exchange, an authorised user may only alienate listed securities deposited with the authorised user if the person who deposited them has authorised such alienation in writing.

Segregation of funds of authorised users and other persons

119. (1) Every authorised user -

(a) must open and maintain at a banking institution, a trust account designated for client funds; or

(b) may use a trust account opened and maintained by the registered exchange of which it is an authorised user,

into which any instruments of payment or cash received from a client must be deposited on the day of receipt, except that any deposit that is made by a client directly into an authorised user's own account or any deposit that is received after banking hours must be transferred into such trust account by the start of business on the following business day.

(2) A trust account referred to in subsection (1) must contain only the funds of clients and not those of the registered exchange or authorised user.

(3) Funds received from a client need not be deposited into a trust account pursuant to subsection (1) if payment -

(a) is made to the authorised user by a buyer of listed securities -

(i) against delivery of such securities to the buyer; or

(ii) against such securities being marked or recorded as the property of the buyer;

(b) is preceded by a payment made by the authorised user to the seller of listed securities against delivery of such securities to the authorised user;

(c) is made to pay a debt due to the authorised user, but a debt arising from the purchase of listed securities which have not been marked or recorded as the property of the buyer of the securities may not be regarded as a debt due for this purpose; or

(d) is made under any other law or exchange rule which specifically provides for such payment to be deposited into some other account.

(4) Subject to subsection (8), funds held in a trust account and any funds which have not been deposited into a trust account as required by subsection (1) but which are identifiable as belonging to a specific person are considered to be trust property.

(5) Funds deposited into a trust account may only be withdrawn by an authorised user for the purpose of making payment -

(a) to the person entitled to the payment; or

(b) under any other law or exchange rule,

but, if after any such withdrawal, any deposited draft or other instrument of payment against which the withdrawal was made is not subsequently honoured, the authorised user must pay the shortfall arising from the default into the trust account immediately.

(6) All charges made by the banking institution concerned accruing in respect of a trust account referred to in this section are for the account of the authorised user, except that any such charges specifically relating to a deposit or withdrawal of the funds of a particular client are for that client's own account.

(7) Any interest accruing to the funds in a trust account referred to in this section is payable to the owner of the funds after deduction of any fees owing to the authorised user or registered exchange.

(8) Despite subsection (4), any excess remaining in a trust account after payment of ,or provision for, all claims of persons whose funds have or should have been deposited in the trust account, may not be considered to be trust property.

(9) The High Court may, on the application of a registered exchange, NAMFISA or any other person having a claim against a trust account of an authorised user, on good cause shown, prohibit the authorised user from operating the trust account, and may retain a person to control and administer the trust account with such rights, powers and duties in relation to the trust account as the court may consider necessary.

Appeal from decision of exchange

120. (1) A person aggrieved by a decision of a registered exchange may appeal that decision to NAMFISA in the manner provided for in the standards.

(2) An appeal referred to in subsection (1) must be heard on a date and at a time and place determined by NAMFISA, upon notification to the person concerned and the registered exchange.

(3) NAMFISA may -

(a) confirm, set aside or vary the decision of the registered exchange; or

(b) remit the matter to the registered exchange for reconsideration in accordance with such directions, if any, as NAMFISA may determine.

(4) A person or a registered exchange may, in the manner prescribed appeal against a decision of NAMFISA pursuant to subsection (3) to the Appeal Board.

PART 5
CUSTODY AND ADMINISTRATION OF SECURITIES

Definitions for this Part

121. In this Part, unless the context indicates otherwise -

"central securities account" means an account kept by a registered central securities depository for a participant that reflects the number or nominal value of securities of each kind deposited and all entries made in respect of such securities;

"central securities repository" means a collection of securities of the same kind held by a registered central securities depository;

"certificated securities" means securities evidenced by a certificate or written instrument;

"deposit" means a deposit of securities and includes a deposit by means of an entry in a securities account or a central securities account;

"entry" includes an electronic recording of any deposit, withdrawal, transfer, attachment, pledge, cession to secure a debt or other transaction in respect of securities;

"securities" include certificated securities and uncertificated securities, money market instruments and other products or interests included as securities pursuant to section 104;

"securities account" means an account kept by or on behalf of a participant for a client that reflects the number or nominal value of securities of each kind deposited and all entries made in respect of such securities;

"securities of the same kind" means securities issued by the same issuer and of the same class;

"securities repository" means a collection of securities of the same kind held by a participant;

"subregister" means the record of uncertificated securities administered and maintained by a participant, which forms part of the register of members of the company concerned; and

"uncertificated securities" means securities that are not evidenced by a certificate or written instrument and are transferable by book-entry without a certificate or a written instrument, resulting in the original certificate or other written instrument evidencing ownership or title no longer being recognised as *prima facie* evidence of ownership or title.

Functions of central securities depository

122. (1) A registered central securities depository -

(a) must issue and enforce the depository rules;

(b) must supervise compliance by participants with this Act and the depository rules;

(c) may issue directives;

(d) may amend or suspend the depository rules under section 147(4);

(e) may hold all securities of the same kind deposited with it by a participant collectively in a separate central securities repository;

(f) must maintain a central securities account with due regard to the interests of participants and their clients;

(g) must notify a participant in writing or as otherwise agreed to by the participant of an entry made in the participant's central securities account;

(h) must balance and reconcile the aggregate of the central securities accounts with the records of the relevant issuer -

(i) in respect of each kind of certificated security, at least once every six months;

(ii) in respect of each kind of uncertificated security -

(aa) if that aggregate has not changed, at least once every month;

(bb) if that aggregate has changed, on the business day after such change;

(i) must administer and maintain a record of uncertificated securities deposited with it;

(j) is entitled to access the records of uncertificated securities administered and maintained by its participants;

(k) may be retained as a securities clearing house by a registered exchange, if the central securities depository is also registered as a securities clearing house under section 85;

(l) must disclose to participants and issuers the fees and charges required by it for its services;

(m) must on request disclose -

(i) to NAMFISA information about the securities held by a participant in a central securities account;

(ii) to an issuer information about the securities issued by that issuer and held by participants in central securities accounts;

(n) must, if a participant ceases to be a participant, notify NAMFISA immediately pursuant to section 97(4);

(o) must conduct its business in a prudent manner and with due regard to the rights of participants, clients and issuers; and

(p) must perform such other functions as NAMFISA may set out in the standards.

(2) NAMFISA may assume responsibility for one or more of the functions of a registered central securities depository referred to in subsection (1), if NAMFISA considers it necessary in order to achieve the objects of this Chapter referred to in section 79.

(3) NAMFISA must, before assuming responsibility under subsection (2) -

(a) inform the registered central securities depository of NAMFISA's intention to assume responsibility;

(b) give the registered central securities depository the reasons for the intended assumption; and

(c) call upon the registered central securities depository to show cause within a period specified by NAMFISA why responsibility should not be assumed by NAMFISA.

Functions of participant

123. A participant must -

(a) deposit securities that are deposited with it with a central securities depository, unless the client expressly directs otherwise in writing;

(b) maintain a securities account for a client in respect of deposited securities;

(c) reflect the number or nominal value of each kind of securities deposited in a securities account;

(d) administer and maintain a record of all securities deposited with it in accordance with the depository rules;

(e) record all securities of the same kind deposited with it in a subregister if so required by the depository rules;

(f) disclose to clients and issuers the fees and charges required by it for its services;

(g) notify a client in writing or as otherwise agreed to by the client, of an entry made in the client's securities account;

(h) on request disclose -

(i) to NAMFISA, information about the securities recorded in a securities account; and

(ii) to an issuer, information about the securities issued by that issuer and recorded in a securities account;

(i) maintain a central securities account with a central securities depository, and may -

(i) deposit securities with, or withdraw securities from, that central securities depository; or

(ii) transfer, pledge or cede an interest in securities through that central securities depository, and in case of securities held on behalf of clients, transfer, pledge or cede interests in those securities in accordance with the instructions of the clients;

(j) exercise the rights in respect of securities deposited by it with a central securities depository in its own name on behalf of a client when so instructed by the client;

(k) balance and reconcile the aggregate of the securities accounts with the central securities account on a daily basis; and

(l) perform such other functions as NAMFISA may require in the standards.

Uncertificated securities

124. (1) Certificated securities may be converted to uncertificated securities and an issuer may issue uncertificated securities despite any contrary provision in -

(a) any other law;

(b) the common law;

(c) an agreement;

(d) the articles of association of the issuer;

(e) a prospectus; or

(f) any other conditions applicable to the issuing of securities.

(2) An issuer or a central securities depository and its participants must make arrangements in accordance with depository rules for uncertificated securities to be evidenced by way of an entry.

(3) An issuer has the same obligations in respect of uncertificated securities as it has in respect of certificated securities except that no certificate or written instrument is issued in respect of uncertificated securities.

Responsibilities of issuer of uncertificated securities

125. An issuer of uncertificated securities must -

(a) record in its register the number or nominal value of each kind of uncertificated securities issued by it;

(b) maintain separate records for each central securities depository holding uncertificated securities, unless all those securities are held by one central securities depository;

(c) if required by section 127(1), record the name of that central securities depository or its wholly owned subsidiary as the registered holder of the uncertificated securities;

(d) balance and reconcile with a central securities depository the record referred to in paragraph (a) in respect of each kind of uncertificated security -

(i) if that record has not changed, at least once every month; and

(ii) if the record has changed, on the next business day after such change; and

(e) comply with any other requirements set out in the standards.

Depository rules

126. (1) The depository rules of a registered central securities depository must be consistent with this Act.

(2) The depository rules -

(a) must provide for equitable criteria for the acceptance and expulsion of a participant and for such acceptance and expulsion to be in the interests of issuers and clients;

(b) if applicable, must provide for arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;

(c) must provide for adequate steps to be taken by the central securities depository or a person to whom the central securities depository has delegated its investigative and disciplinary functions, to investigate and discipline a participant or an officer or employee of a participant who contravenes or fails to comply with this Act, the depository rules, the interim depository rules or the directives of the central securities depository and must require a report on the disciplinary proceedings to be furnished to NAMFISA within 30 days after the completion of such proceedings and make provision for the procedure to be followed before or during any disciplinary proceedings;

(d) must provide for the manner in which a participant who is believed to -

(i) be able to furnish any information on the subject of any investigation; or

(ii) have in that participant's possession or under that participant's control, any document which has a bearing upon that subject,

may be required to appear before a person conducting an investigation, to be questioned or to produce such document;

(e) must provide for requirements in respect of a participant's financial soundness and valid financial cover that the participant must hold in respect of -

(i) the participant's actual and potential liabilities;

(ii) the participant's conditional and contingent liabilities to the central securities depository; and

(iii) liabilities which existed before or accrue after a person has ceased to be a participant;

(f) must require that -

(i) dividends paid and other payments owing by issuers in respect of securities are paid by such issuers to participants or clients and, if applicable, by participants to clients;

(ii) all notices regarding rights and other benefits accruing to the owners of securities deposited with the central securities depository are conveyed to participants and clients;

(iii) the rights of participants or clients are not in any way diminished by the fact that securities held by them or on their behalf are held collectively in a central securities repository as provided for by this Part; and

(iv) securities belonging to or held on behalf of clients must be dealt with only in accordance with the instructions of the clients;

(g) must require that where a participant agrees or is otherwise required to -

(i) receive monies in respect of securities on behalf of clients from a central securities depository or issuer, that such monies are in fact paid to the clients concerned;

(ii) convey to clients all information regarding rights and other benefits accruing to the securities held on behalf of such clients, that such information is in fact conveyed; and

(iii) give effect to the lawful instructions of clients with regard to voting rights and other matters, and that the necessary action is taken;

(h) must require that a participant, on written request from a client to withdraw securities or an interest in securities held in a securities repository or central securities repository, delivers a certificate or written instrument evidencing the same number of securities or securities of the same nominal value and of the same kind, as the securities held on behalf of that client in the securities repository or central securities repository, as long as the client has a sufficient unencumbered credit balance of those securities with the participant;

(i) must require that a participant's central securities account must not show a debit balance;

(j) may provide that a central securities depository may refuse to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of a registered exchange for transactions in those securities;

(k) must provide for -

(i) the duty of a client to disclose to a participant, and the duty of a participant to disclose to a central securities depository, information about a beneficial, limited or other interest in securities deposited by a client with a participant or by a participant with a central securities depository; and

(ii) the manner, form and frequency of the disclosure referred to in subparagraph (i);

(l) must provide for the manner in which a central securities depository or a participant must keep records of clients or owners or beneficial owners of securities and limited or other interests in securities;

(m) must provide for the manner in which participants must give instructions to a central securities depository;

(n) if the central securities depository is retained as a securities clearing house by a registered exchange, may regulate, consistent with the exchange rules, the securities clearing and settlement functions to be performed by participants in the securities clearing and settlement process;

(o) must provide for the purposes for which a central securities depository may issue directives;

(p) must provide for the manner in which a participant must hold and administer securities;

(q) must provide for the approval by the central securities depository of a nominee of a participant or any other nominee who has an account with a participant, which nominee holds securities in a securities repository or central securities repository; and

(r) must include such other matters as may be required by the standards.

(3) A central securities depository may, with the approval of NAMFISA, make depository rules on matters additional to those listed in subsection (2).

(4) A depository rule made under this section is binding on the central securities depository, a participant, a nominee, an issuer of securities deposited with the central securities depository and their officers and employees, and on clients.

Registration of securities

127. (1) NAMFISA may direct that any securities held by a central securities depository must, unless they are bearer instruments, money market instruments or recorded in a subregister, with due consideration of the depository rules, be registered in the name of that central securities depository or its wholly owned subsidiary that has been approved by NAMFISA.

(2) A central securities depository or participant does not become the owner, co-owner, holder, pledgee or cessionary for the purpose of securing a debt, of securities merely because of -

(a) a deposit of securities; or

(b) the registration in its name of -

(i) securities;

(ii) limited rights in securities;

(iii) other rights in securities;

(iv) benefits in respect of securities; or

(v) benefits accruing to securities.

(3) Subsection (2) also applies to a wholly owned subsidiary of a central securities depository or participant.

Ownership of securities

128. (1) Where securities of any kind -

(a) are deposited with -

(i) a participant; or

(ii) a registered central securities depository; or

(b) accrue to the owner of securities held by -

(i) a participant in a securities repository; or

(ii) a registered central securities depository,

the person who was the owner of the securities at the time of deposit or accrual becomes entitled to an interest as co-owner of all the securities of the same kind comprised in the securities repository or central securities repository.

(2) In so far as any limited right exists in respect of any securities at the time of a deposit or accrual referred to in subsection (1), such limited right extends to the interest of such co-owner and to any securities delivered to that co-owner.

(3) The interest of a co-owner, client or participant in all the securities in a securities repository or central securities repository must be calculated by reference to the proportion that the number or nominal value of securities deposited by or on behalf of that co-owner, client or participant and accruing to such securities bears to the total number or nominal value of all securities of that kind held in the securities repository or central securities repository.

(4) A written statement issued by or on behalf of -

(a) a participant in respect of an owner of securities or of a client; or

(b) a registered central securities depository in respect of a participant,

and specifying the interest of that owner, client or participant is *prima facie* evidence of the title or interest of that person in such securities.

Transfer of securities

129. Transfer of an interest in securities held by a registered central securities depository or participant must be effected by entry in the central securities account or securities account of the transferor and of the transferee kept by the central securities depository or the participant.

Pledge or cession of securities to secure debt

130. (1) A pledge or cession to secure a debt in respect of an interest in securities held by a registered central securities depository or participant or in a securities account held on behalf of a participant, must be effected by entry in the central securities account or the securities account of -

(a) the pledgor in favour of the pledgee specifying the name of the pledgee, the interest in the securities pledged and the date of entry; or

(b) the cedent in favour of the cessionary specifying the name of the cessionary, the interest in the securities ceded and the date of entry.

(2) An interest in securities referred to in subsection (1) may not be transferred except with the written consent of the pledgee or cessionary.

(3) The pledgee or cessionary of an interest in securities referred to in subsection (1) is entitled to all the rights of a pledgee of movable property or cessionary of a right in movable property pledged or ceded to secure a debt, as applicable.

(4) Subsections (1), (2) and (3) also apply, with the changes required by the context, to the pledge and cession to secure a debt by one participant to another of

an interest in securities held by a registered central securities depository in a central securities account.

Delivery of securities

131. Subject to sections 128 and 130, the owner of an interest in securities held by a participant in a securities repository or a participant holding an interest in securities in a central securities repository is at all times entitled, on written request for withdrawal, to delivery, within a reasonable time, by the participant or central securities depository concerned, of a certificate or written instrument evidencing the same number of securities or securities of the same nominal value and of the same kind as the interest in securities held on behalf of such owner or participant, as long as such owner or participant has a sufficient unencumbered credit balance of those securities in that owner's securities account or in that participant's central securities account.

Records

132. If the records of a registered central securities depository are inconsistent with those of a participant regarding securities deposited with the central securities depository by that participant, the records of the central securities depository are considered to be correct until the contrary is proved.

Warranty

133. (1) Every person, whether a client or participant, who deposits securities with a participant or registered central securities depository is deemed to warrant that such person is entitled to deposit such securities and that any document or instruction relating to such securities lodged or given by that person is genuine and correct in all respects and that person is deemed to have agreed to indemnify the participant or the central securities depository against any claim made upon the participant or central securities depository and against any loss suffered by the participant or central securities depository arising out of such deposit or breach of warranty.

(2) A registered central securities depository is not deemed to have given a warranty or indemnity referred to in subsection (1).

Recognition of trust

134. A registered central securities depository is not obliged to recognise any relationship of trust or agency of its participants in respect of securities.

Attachment

135. (1) The attachment of an interest in securities deposited with a participant and held in a securities repository or central securities repository is only complete when -

(a) notice of the attachment has been given in writing by the sheriff or the messenger of court to the participant;

(b) the sheriff or the messenger of court has taken possession of any securities account as evidenced by a written acknowledgement issued by the participant or the sheriff or the messenger of court has certified that the sheriff or the messenger of court has been unable, despite

diligent search, to obtain possession of such written acknowledgement; and

(c) the sheriff or the messenger of court has made an entry of the attachment on such securities account or caused it to be made by such participant.

(2) The sheriff or the messenger of court may upon exhibiting the original of the warrant of execution to the participant enter the premises where such account is kept and make an inventory and valuation of the interest attached.

(3) For the purposes of this section, "sheriff" means the sheriff, deputy sheriff or other officer appointed under section 30 of the High Court Act, 1990 (Act No. 16 of 1990), the sheriff, deputy sheriff or other officer appointed under section 26 of the Supreme Court Act, 1990 (Act No. 15 of 1990) or the messenger of the court appointed in terms of section 14 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

PART 6
SELF-REGULATORY ORGANISATIONS

Recognised self-regulatory organisations

136. (1) A public company may, in accordance subsection (2), apply to NAMFISA to be recognised as a self-regulatory organisation.

(2) An application for recognition as a self-regulatory organisation must -

(a) be made in the manner and form required by the standards;

(b) include the information with respect to members of its governing body as may be required by the standards;

(c) be accompanied by the documents and other information required by the standards;

(d) be accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(e) be made subject to and in accordance with any other applicable provision of this Act; and

(f) be accompanied by the required fee.

(3) NAMFISA may require an applicant to furnish such additional information or require such information to be verified as NAMFISA may consider necessary -

(a) including taking into consideration any other information regarding the applicant derived from whatever source or from any other supervisory authority; and

(b) if such information is disclosed to the applicant, the applicant is given a reasonable opportunity to respond thereto.

(4) Before recognising an applicant as a self-regulatory organisation NAMFISA must be satisfied that the applicant -

(a) has assets and resources in Namibia, which resources include financial, management and human resources with appropriate experience to perform its functions as set out in this Act;

(b) has governance arrangements that are clear and transparent, promote the safety and efficiency of its infrastructure, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;

(c) demonstrates that the fit and proper requirements as set out in the standards are met by the applicant, its directors and senior management;

(d) has made arrangements for the efficient and effective surveillance of all transactions effected through its infrastructure and for the supervision of its members so as to identify possible market inefficiencies and discrepancies and ensure compliance with the requirements, relevant rules and directives and this Act;

(e) has made arrangements for the efficient and effective monitoring of compliance by members and other stakeholders with its requirements;

(f) has made arrangements to efficiently and effectively manage the material risks associated with its operations;

(g) has made arrangements for efficient and effective security and back-up procedures to ensure the integrity of the records of transactions effected through its infrastructure;

(h) has insurance, a guarantee, compensation fund or other warranty in place to enable it to provide compensation to clients, subject to the requirements of the standards and its rules;

(i) has made arrangements for the efficient and effective supervision of its members so as to ensure compliance with this Act and any other applicable financial services law; and

(j) demonstrates that it has effective and reliable infrastructure necessary to facilitate smooth conduct of its operations.

(5) If NAMFISA is satisfied that the applicant meets the requirements of subsection (4) and other relevant provisions of this Act, and that it is not contrary to the public interest to do so, NAMFISA must recognise the applicant public company as a self-regulatory organisation.

(6) A recognition under this section must be in writing and is subject to such terms and conditions as NAMFISA may impose.

(7) Upon recognition of an applicant NAMFISA must issue to the applicant a certificate of recognition in a form provided by the standards.

(8) NAMFISA may impose such conditions on the recognition of the applicant as it considers necessary having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant, and any guidelines issued by NAMFISA under this Act.

(9) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions, and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(10) A recognised self-regulatory organisation must -

(a) regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its bye-laws, rules, regulations, policies, procedures, interpretations and practices;

(b) have the capacity to carry out the purposes of its governing laws, regulations and rules consistent with the responsibility of the self-regulatory organisation, and to enforce compliance by its members and associated persons subject to its bye-laws, rules, regulations, policies, procedures, interpretations and practices;

(c) treat all members of the self-regulatory organisation, applicants for membership and similarly situated market participants subject to its rules in a fair and consistent manner;

(d) develop rules that are designed to set standards for its members and to promote investor protection;

(e) submit to NAMFISA, its rules and any amendments thereto, for approval and ensure that the rules are consistent with the directives issued by NAMFISA under this Act;

(f) co-operate with NAMFISA and other domestic self-regulatory organisations to investigate and enforce applicable financial services laws;

(g) ensure a fair representation of members in selection of its directors and administration of its affairs;

(h) avoid rules that may create anti-competitive situations;

(i) avoid using its oversight role to allow any market participant to unfairly gain advantage in the market;

(j) provide information to NAMFISA that allows matters requiring regulatory intervention to be identified at an early stage;

(k) have procedures in place to address potential conflicts of interest and, where applicable, take necessary steps to avoid, eliminate, disclose and

otherwise manage possible conflicts of interest between its regulatory functions and its commercial services, which steps must include -

(i) the implementation of appropriate arrangements, which arrangements must comply with the requirements of the standards, be documented and be publicly available; and

(ii) an annual assessment, in the manner set out in the standards, of the arrangements referred to in subparagraph (i), the results of which must be published; and

(l) adopt standards of confidentiality for its staff and standards of procedural fairness applicable to its members.

(11) NAMFISA may, if it considers that it is in the public interest to do so, make any decision with respect to the bye-laws, rules, regulations, policies, procedures, interpretations and practices of a recognised self-regulatory organisation.

(12) NAMFISA may, if it considers that there are good reasons to do so, and after giving the recognised self-regulatory organisation a reasonable opportunity to make representations to NAMFISA on the matter, suspend, revoke or withdraw the recognition of a recognised self-regulatory organisation.

(13) NAMFISA may issue standards regarding the recognition of self-regulatory organisations and the operations and other matters relating to recognised self-regulatory organisations.

Carrying on additional business

137. If a self-regulatory organisation carries on business in addition to that regulated by or under this Chapter NAMFISA may, for the purpose of minimising systemic risk, issue directives in respect of the carrying on of such business.

Incorporation of self-regulatory organisation as public company

138. (1) With the prior approval of NAMFISA, and upon written application made in the form and manner provided for in the standards, and subject to the standards and to such conditions as NAMFISA may impose, a self-regulatory organisation that is an exchange, a central securities depository or a securities clearing house, which is not incorporated as a company having a share capital under the Companies Act, must be incorporated as a public company with a share capital.

(2) Upon the incorporation of a self-regulatory organisation referred to in subsection (1) -

(a) the self-regulatory organisation is deemed to be a public company incorporated in terms of the Companies Act from a date determined by NAMFISA in consultation with the self-regulatory organisation;

(b) the Registrar of Companies appointed in terms of section 6 of the Companies Act must register the memorandum and articles of association of the self-regulatory organisation in terms of section 68(1) of that Act on the date referred to in paragraph (a);

(c) the continued corporate existence of the self-regulatory organisation from the date on which it was first registered by NAMFISA is unaffected and any actions of the self-regulatory organisation before its incorporation remain effectual;

(d) all the assets and liabilities of the self-regulatory organisation, including any insurance, guarantee, compensation fund or other warranty owned or maintained by the self-regulatory organisation to cover any liabilities to clients of authorised users or participants remain vested in, and binding upon, the company into which the self-regulatory organisation has been incorporated or upon such other entity acceptable to NAMFISA as the self-regulatory organisation may designate;

(e) the self-regulatory organisation has the same rights and is subject to the same obligations as it had immediately before its incorporation into a company;

(f) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the self-regulatory organisation and in force immediately before the incorporation of the self-regulatory organisation, remain in full force and effect, and must be construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the company into which the self-regulatory organisation has been incorporated;

(g) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services made by the self-regulatory organisation which was in force immediately before the incorporation of the self-regulatory organisation, remains in full force and effect, and must be construed for all purposes as a bond, pledge, guarantee or instrument given to or in favour of the company into which the self-regulatory organisation has been incorporated;

(h) any claim, right, debt, obligation or duty accruing to any person against the self-regulatory organisation or owing by any person to the self-regulatory organisation is enforceable against or owing to the company into which the self-regulatory organisation has been incorporated, subject to any law governing prescription;

(i) any legal proceedings that were pending or could have been instituted against the self-regulatory organisation before the incorporation may be continued or instituted against the company into which the self-regulatory organisation has been incorporated, subject to any law governing prescription; and

(j) the registration of the self-regulatory organisation remains vested in the company into which the self-regulatory organisation has been incorporated, as long as the company complies with all the requirements of this Act.

Amalgamation and mergers

139. (1) Two or more -

(a) registered exchanges;

(b) registered central securities depositories; or

(c) recognised self-regulatory organisations,

that have similar objects or that perform similar functions may, with the approval of NAMFISA and subject to the standards and to such conditions as NAMFISA may impose, amalgamate or merge.

(2) An exchange referred to in section 86 must be incorporated as a public company with a share capital pursuant to section 138 prior to any amalgamation or merger under this section.

(3) If an amalgamation or merger referred to in subsection (1) takes place -

(a) all the assets and liabilities of the amalgamating or merging companies, including any insurance, guarantee, compensation fund or other warranty owned or maintained by the amalgamating or merging companies to cover any liabilities to clients of authorised users or participants vest in and become binding upon the amalgamated or merged company or upon such other entity acceptable to NAMFISA as the parties to the amalgamation or merger may designate;

(b) the amalgamated or merged company has the same rights and is subject to the same obligations as each of the amalgamating or merging companies had immediately before the amalgamation or merger;

(c) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the amalgamating or merging companies and in force immediately before the amalgamation or merger remain in full force and effect and must be construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the amalgamated or merged company;

(d) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services made by any of the amalgamating or merging companies and which was in force immediately prior to the amalgamation or merger, remains in full force and effect and must be construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated or merged company;

(e) any claim, right, debt, obligation or duty accruing to any person against any of the amalgamating or merging companies or owing by any person to any of the amalgamating or merging companies, is enforceable against or owing to the amalgamated or merged company;

(f) any legal proceedings that were pending or could have been instituted against any of the amalgamating or merging companies before the amalgamation or merger may be continued or instituted against the amalgamated or merged company, subject to any law governing prescription; and

(g) the registration of the amalgamating or merging companies remains vested in the amalgamated or merged company, as long as the amalgamated or merged company complies with all the requirements of this Act.

Transfer of assets and liabilities

140. (1) A -

(a) registered exchange may, with the approval of NAMFISA and subject to the standards and to such conditions as NAMFISA may impose, transfer any of its assets and liabilities to any other registered exchange;

(b) registered central securities depository may, with the approval of NAMFISA and subject to the standards and to such conditions as NAMFISA may impose, transfer any of its assets and liabilities to any other registered central securities depository; and

(c) recognised self-regulatory organisation may, with the approval of NAMFISA and subject to the standards and to such conditions as NAMFISA may impose, transfer any of its assets and liabilities to any other registered recognised self-regulatory organisation or registered self-regulatory organisation,

that has similar objects or that performs similar functions as the registered exchange, central securities depository, recognised self-regulatory organisation or registered self-regulatory organisation that is transferring the assets and liabilities.

(2) If a transfer of assets and liabilities referred to in subsection (1) takes place, section 139(3) applies with any changes required by the context.

Duty of shareholders of controlling entity

141. Each shareholder or other owner of any entity that controls a self-regulatory organisation and each member of the board of directors of a self-regulatory organisation owes a fiduciary duty and a duty of care and skill to that self-regulatory organisation.

Appointment as officer of self-regulatory organisation

142. (1) A person may not be appointed as an officer of a self-regulatory organisation if that person -

(a) may not be appointed or act as a director under section 225 of the Companies Act; or

(b) has been penalised in disciplinary proceedings for a contravention of the rules of any professional organisation, including a self-regulatory organisation, which involved dishonesty.

(2) A person who accepts an appointment in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) If a self-regulatory organisation makes an appointment in contravention of subsection (1) -

(a) without making reasonable enquiry as to whether the person appointed is disqualified under subsection (1); or

(b) knowing that the person appointed is so disqualified,

NAMFISA may impose a penalty upon the self-regulatory organisation not exceeding the amount that the Minister may prescribe.

(4) A self-regulatory organisation must, within 14 days of the appointment of a new officer, inform NAMFISA of the appointment together with such information on the matter as NAMFISA may require.

(5) The provisions of subsection (4) may not be construed so as to render the appointment of an officer of a self-regulatory organisation subject to the approval of NAMFISA.

(6) If it appears to NAMFISA that an officer of a self-regulatory organisation is disqualified under subsection (1), NAMFISA may, subject to subsection (7) and in accordance with section 412, direct that self-regulatory organisation to take all necessary steps to have that person removed as an officer.

(7) NAMFISA must, before giving a directive under subsection (6) -

(a) inform the self-regulatory organisation and the person concerned of NAMFISA's intention to give such a directive;

(b) give the self-regulatory organisation and the person reasons for the intended directive; and

(c) call upon the self-regulatory organisation and the person to show cause within a period of 14 days why the directive should not be given.

(8) If NAMFISA directs the self-regulatory organisation to have an officer removed, the self-regulatory organisation must have the person removed within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the management of the self-regulatory organisation.

(9) If a self-regulatory organisation fails to comply with subsection (8), NAMFISA may, in respect of such non-compliance, take any action against that self-regulatory organisation which NAMFISA is empowered to take under section 412 or 439 and the provisions of those sections apply to such non-compliance.

(10) NAMFISA must afford the self-regulatory organisation the right to be heard before imposing any penalty under this section.

Limitation on control of self-regulatory organisations

143. (1) A person may not, without the prior approval of NAMFISA, acquire or hold shares or any other interest in a self-regulatory organisation which is a company, if the acquisition or holding results in that person, directly or indirectly,

alone or with one or more associates, acquiring or holding control of the self-regulatory organisation.

(2) If NAMFISA is satisfied on reasonable grounds that the retention of a particular shareholding in a self-regulatory organisation by a particular person will be prejudicial to the self-regulatory organisation, NAMFISA may apply to the High Court for an order -

(a) compelling the person to reduce, within a period determined by the High Court, that shareholding to a shareholding with a total nominal value not exceeding 20 per cent of the total nominal value of all the issued shares of the self-regulatory organisation; and

(b) limiting, with immediate effect, the voting rights that may be exercised by that person by virtue of that shareholding to 20 per cent of the voting rights attached to all the issued shares of the self-regulatory organisation.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Delegation of functions

144. (1) A self-regulatory organisation may delegate or assign any function entrusted to it by this Chapter or its rules to any person or persons approved by the entity that controls the self-regulatory organisation, subject to the conditions that the self-regulatory organisation may determine.

(2) A self-regulatory organisation is not divested or relieved of a function delegated or assigned under subsection (1) and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.

Report to NAMFISA

145. Within 90 days after the end of its financial year, a self-regulatory organisation must submit to NAMFISA an annual report containing the details required by the standards and audited annual financial statements that fairly present the financial affairs and status of the self-regulatory organisation.

Right of NAMFISA to attend meetings and obtain documents

146. (1) NAMFISA may attend any meeting of the entity that controls a self-regulatory organisation or a committee of that entity, and may take part, but may not vote, in all the proceedings at such meeting.

(2) The entity that controls a self-regulatory organisation must furnish NAMFISA with all notices, minutes and documents which are furnished to shareholders or other owners of the entity that controls the self-regulatory organisation or a committee of that entity.

Rules of self-regulatory organisations

147. (1) In this section "rules" means rules of a self-regulatory organisation.

(2) NAMFISA must as soon as possible after registering a regulated person that is a self-regulatory organisation under section 85(1) or recognising a self-regulatory organisation under section 136(5), cause the rules made by that organisation to be published in the *Gazette*.

(3) The costs of a notice published in the *Gazette* pursuant to subsection (2), (7), (8), (9), (10), (11) or (12) or in newspapers circulating nationally in Namibia pursuant to subsection (15)(a) must be at the expense of the self-regulatory organisation concerned.

(4) A self-regulatory organisation may, subject to this section, amend or suspend its rules.

(5) A proposed amendment of the rules, other than a suspension, must be submitted to NAMFISA for approval and must be accompanied by an explanation of the reasons for the proposed amendment.

(6) If NAMFISA acting reasonably, finds that any amendment to the rules is not satisfactory, NAMFISA must by notice to the self-regulatory organisation concerned containing the reasons why the amendment is not satisfactory, give the self-regulatory organisation an opportunity to be heard including a period of at least 30 days within which to make representations.

(7) NAMFISA must as soon as possible -

(a) after the receipt of a proposed amendment; or

(b) in the event that subsection (6) applies, after representations have been made by the self-regulatory organisation that satisfy NAMFISA with respect to the amendment,

cause to be published in the *Gazette*, a notice of the proposed amendment calling upon all interested persons who have any objections to the proposed amendment to lodge their objections with NAMFISA within a period of 21 days from the date of publication or such other period as NAMFISA may direct.

(8) If no objections have been lodged with NAMFISA pursuant to subsection (7) or if objections have been lodged and NAMFISA has considered such objections and after consultation with the self-regulatory organisation, has decided to approve the proposed amendment in the form published in the *Gazette* under subsection (7), the amendment comes into operation on a date determined by NAMFISA and published by a further notice in the *Gazette*.

(9) If as a result of objections lodged with NAMFISA pursuant to subsection (7) NAMFISA decides, after consultation with the self-regulatory organisation, to amend the proposed rules as published in the *Gazette*, the proposed rules as amended must be published by NAMFISA by further notice in the *Gazette* and come into operation on a date determined by NAMFISA in that notice.

(10) NAMFISA may -

(a) if there exists an urgent situation under exceptional circumstances;

(b) if it is necessary to achieve the objects of this Chapter referred to in section 79; and

(c) after consultation with the self-regulatory organisation concerned,

by notice in the *Gazette* amend the rules of that self-regulatory organisation.

(11) Subject to the prior approval of NAMFISA, a self-regulatory organisation may suspend any of its rules for a period not exceeding 30 days after giving reasonable notice of the proposed suspension by notice in the *Gazette*.

(12) NAMFISA may, for the period of such suspension, issue an interim rule to regulate the matter covered by the rule suspended under subsection (11) by notice in the *Gazette*.

(13) Any contravention of, or failure to comply with, an interim rule has the same legal effect as a contravention of, or failure to comply with, a rule.

(14) The rules may provide that the self-regulatory organisation concerned or a person to whom the self-regulatory organisation has delegated its investigative and disciplinary functions, may impose any one or more of the following penalties for any contravention of, or failure to comply with, the rules or this Act -

(a) a reprimand;

(b) a penalty not exceeding the amount provided in the rules;

(c) suspension or cancellation of the authorisation to act as an authorised user, a participant or person or an entity that is subject to the rules;

(d) a restriction on the manner in which an authorised user or participant, and an authorised representative of the authorised user or an officer or employee of the participant or person or entity that is subject to the rules may conduct business; and

(e) the payment of compensation to clients prejudiced by the contravention or failure.

(15) The rules must provide that -

(a) full particulars regarding the imposition of a penalty must be published in the *Gazette*, newspapers circulating nationally in Namibia or through the news service, if any, of the self-regulatory organisation;

(b) any person who has contravened or failed to comply with the rules or this Act may be ordered to pay the costs incurred in an investigation or hearing conducted in accordance with the rules;

(c) the self-regulatory organisation may take into account at a disciplinary hearing any information obtained by NAMFISA in the course of an inspection or investigation under sections 418 to 429; and

(d) the self-regulatory organisation or a person to whom a self-regulatory organisation has delegated its investigative and disciplinary functions, may, upon good cause shown and subject to the conditions it may impose, vary or modify any penalty which it may previously have imposed, but that in varying or modifying such penalty the penalty may not be increased.

(16) If a person fails to pay a fine or compensation referred to in subsection (14)(b) or (e), the self-regulatory organisation may take such steps as are necessary, including the institution of legal action, to recover the fine or compensation.

(17) This section does not prejudice the common law rights of a person aggrieved by a contravention of, or failure to comply with, a rule or this Act to claim any amount, except to the extent that any portion of such amount has been recovered under subsection (14).

(18) The rules must set out the purpose for which a penalty referred to in subsection (14) must be appropriated.

Limitation of liability

148. (1) A person referred to in subsection (2) may not be held liable for any loss sustained or damage suffered by any other person in respect of anything done or omitted to be done by that person or by an authorised user, a participant or person or an entity that is subject to the rules of a self-regulatory organisation in the performance in good faith of any function under this Act, the rules or directives of the self-regulatory organisation or the listing requirements of an exchange.

(2) The persons to whom subsection (1) applies are -

(a) a self-regulatory organisation;

(b) a member of the board, the principal officer, other officer, an employee or a representative of a self-regulatory organisation; and

(c) a shareholder or any other owner, director or officer of an entity that controls the self- regulatory organisation or a member of a committee of such entity.

Disclosure of information

149. Despite sections 166 and 426, a self-regulatory organisation may disclose information relating to or arising from its responsibilities for regulating, investigating or prosecuting financial institutions or financial intermediaries, to any other self-regulatory organisation or supervisory authority, whether domestic or foreign, that is also responsible for regulating, investigating or prosecuting financial institutions or financial intermediaries.

PART 7
SECURITIES CLEARING HOUSE

Limitation of liability

150. Section 148 applies to a securities clearing house with the changes required by the context.

Amalgamation and merging

151. (1) Two or more securities clearing houses that have similar objects or perform similar functions may, with the approval of NAMFISA and subject to the standards and to such conditions as NAMFISA may impose, amalgamate or merge with one another or with any self-regulatory organisation that has similar objects or performs similar functions as those of the securities clearing house that it proposes to amalgamate or merge with.

(2) Section 139(3) applies with any changes made necessary by the context to an amalgamation or merger referred to in subsection (1).

Transfer of assets and liabilities

152. (1) A securities clearing house may, with the approval of NAMFISA and subject to the standards and to such conditions as NAMFISA may impose, transfer any of its assets and liabilities to any other securities clearing house or to a self-regulatory organisation that has similar objects or performs similar functions as those of the securities clearing house that it proposes to effect the transfer of assets and liabilities with.

(2) Section 139(3) applies with any changes made necessary by the context to a transfer referred to in subsection (1).

PART 8
CODE OF CONDUCT FOR REGULATED PERSONS

Codes of conduct

153. (1) NAMFISA may provide in the standards a code of conduct for one or more categories of regulated persons.

(2) The code of conduct referred to in subsection (1) for a category of regulated persons is binding on those regulated persons, their directors, officers and other employees and on their clients.

Principles of code of conduct

154. (1) A code of conduct referred to in section 153 must be based on the following principles:

(a) the regulated person must act honestly and fairly and with due care, skill and diligence, in the interests of clients;

(b) the regulated person must uphold the integrity of the securities industry;

(c) the regulated person must have and effectively employ the resources, procedures and technological systems necessary for the conduct of its business;

(d) the regulated person must seek information from a client regarding the financial position, investment experience and objectives of the client, in connection with the service required; and

(e) the regulated person must act fairly in any situation of conflicting interests.

(2) The code of conduct must in particular and as appropriate, provide for -

(a) the disclosure to a client of relevant material information, including the disclosure of actual or potential interests of the regulated person;

(b) proper record-keeping;

(c) avoidance of fraudulent and misleading advertising, canvassing and marketing;

(d) proper safekeeping, separation and protection of funds and transaction documents of clients;

(e) suitable guarantees or professional indemnity or fidelity insurance cover; and

(f) any other matter which it is necessary or expedient to regulate in the code of conduct for the achievement of the objects of this Chapter.

PART 9
MARKET ABUSE

Definitions for this Part

155. In this Part, unless the context indicates otherwise -

"affected transaction" means any transaction, including a transaction which forms part of a series of transactions or a scheme, whatever form it may take which -

(a) together with any securities held by a person immediately before such transaction or scheme takes place has or will have the effect of -

(i) vesting control of any entity in that person or in that person and one or more associates and persons acting in concert with that person, in whom control did not vest prior to such transaction or scheme; or

(ii) that person or that person and one or more associates and persons acting in concert with that person, acquiring or becoming the sole holder or holders of all the securities, or all the securities of a particular class, of any entity;

(b) involves the acquisition by a person or that person and one or more associates and persons acting in concert with that person, in whom control of any entity

had already vested, of further securities of that entity in excess of the limits set out in the standards; or

(c) is a disposal pursuant to section 236 of the Companies Act;

"claims officer" means the person appointed by NAMFISA to be responsible for considering and determining claims pursuant to section 161(1);

"deal" means any manner in which securities are acquired or disposed of, and includes conveying or giving an instruction to deal;

"inside information" means specific or precise information which has not been made public and which -

(a) is obtained or learned as an insider; and

(b) if it were made public would be likely to have a material effect on the price or value of any security listed on a regulated market;

"insider" means a person who has inside information -

(a) through -

(i) being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates; or

(ii) having access to such information by virtue of employment, office or profession; or

(b) knowing that the direct or indirect source of the information was a person referred to in paragraph (a);

"made public", in relation to inside information, means making the inside information public as described in section 157;

"market abuse rules" means the rules made under section 164(2)(d);

"market corner" means any arrangement, agreement, commitment or understanding involving the purchasing, selling or issuing of securities listed on a regulated market -

(a) by which a person or two or more associates or two or more persons acting in concert acquire direct or indirect beneficial ownership of, or exercise control over, or are able to influence the price of, securities listed on that regulated market; and

(b) where the effect of the arrangement, agreement, commitment or understanding is or is likely to be that the trading price of those securities, as reflected through the facilities of that regulated market, is or is likely to be abnormally influenced or arbitrarily dictated by such person or persons in that the trading price deviates or is likely to deviate materially from the trading price which would otherwise likely have been reflected through the facilities of that regulated market on which those securities are traded;

"public sector body" means -

(a) all spheres of the government of Namibia or of any other country or territory;

(b) the Bank of Namibia; and

(c) the central bank of any country or territory outside Namibia;

"regulated market" means any market, including an exchange, whether domestic or foreign, which is regulated under the laws of the country in which the market conducts business as a market for dealing in securities traded on that market; and

"securities" include participatory interests in collective investment schemes as defined in section 168, and money market instruments and other products or interests included as securities pursuant to section 104.

Insider trading offences

156. (1) An insider who knows that he or she has inside information may not deal directly or indirectly or through an agent for his or her own account in securities traded on a regulated market to which the inside information relates or which are likely to be affected by the inside information.

(2) Despite subsection (1), an insider does not commit an offence under that subsection if such insider proves on a balance of probabilities that he or she -

(a) was acting in pursuit of the completion of an affected transaction; or

(b) only became an insider after he or she had given the instruction to deal to a registered authorised user or a registered securities dealer and the instruction was not changed in any manner after he or she became an insider.

(3) An insider who knows that he or she has inside information may not, directly or indirectly or through an agent or any other person, deal for another person in the securities traded on a regulated market to which the inside information relates or which are likely to be affected by the inside information.

(4) Despite subsection (3), an insider does not commit an offence under that subsection if such insider proves on a balance of probabilities that he or she -

(a) is a registered authorised representative of a registered authorised user or of a registered securities dealer and was acting on specific instructions from a client, except where the inside information was disclosed to him or her by that client;

(b) was acting on behalf of a public sector body in pursuance of monetary policy, policies in respect of exchange rates, the management of public debt or external exchange reserves;

(c) was acting in pursuit of the completion of an affected transaction; or

(d) only became an insider after he or she had given the instruction to deal to an authorised user or securities dealer and the instruction was not changed in any manner after he or she became an insider.

(5) An insider who knows that he or she has inside information may not disclose that inside information to another person.

(6) Despite subsection (5), an insider does not commit an offence under that subsection if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market and that at the same time he or she disclosed that the information was inside information.

(7) An insider who knows that he or she has inside information may not encourage or cause another person to deal or discourage or stop another person from dealing in the securities traded on a regulated market to which the inside information relates or which are likely to be affected by the inside information.

(8) A person who contravenes or fails to comply with subsection (1), (3), (5) or (7) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Publication

157. (1) Inside information is regarded as having been made public in circumstances which include, but are not limited to the following:

(a) the information is published in accordance with the rules of the relevant regulated market for the purpose of informing clients and their professional advisers;

(b) the information is contained in records which by virtue of any law are open to inspection by the public;

(c) the information can be readily acquired by those likely to deal in any listed securities -

(i) to which the information relates; or

(ii) of an issuer to which the information relates; or

(d) the information is derived from other information which has been made public.

(2) Inside information which would otherwise be regarded as having been made public must continue to be regarded as having been made public even though -

(a) it can be acquired lawfully only by persons exercising diligence or observation or having expertise;

(b) it is communicated lawfully only on payment of a fee; or

(c) it is only published outside Namibia.

Prohibited trading practices

158. (1) A person may not -

(a) either for such person's own account or on behalf of another person, directly or indirectly, use or knowingly participate in the use of any manipulative, improper, false or deceptive practice of trading in a security traded on a regulated market, which practice creates or might create -

(i) a false or deceptive appearance of the trading activity in connection with the security; or

(ii) an artificial price for the security; or

(b) place an order to buy or sell traded securities which to his or her knowledge will, if executed, have an effect described in paragraph (a).

(2) Without limiting the generality of subsection (1), the following are considered to be manipulative, improper, false or deceptive trading practices:

(a) approving or entering on a regulated market an order to buy or sell a security traded on that market which involves no change in the beneficial ownership of that security;

(b) approving or entering on a regulated market an order to buy or sell a security traded on that market with the knowledge that an opposite order or orders of substantially the same size at substantially the same time and at substantially the same price, have been or will be entered by or for the same or different persons with the intention of creating -

(i) a false or deceptive appearance of active public trading in connection with that security; or

(ii) an artificial market price for that security;

(c) approving or entering on a regulated market orders to buy a security traded on that market at successively higher prices or orders to sell a security listed on that market at successively lower prices for the purpose of unduly or improperly influencing the market price of such security;

(d) approving or entering on a regulated market an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of a security traded on that market;

(e) approving or entering on a regulated market an order to buy or sell a security traded on that market during any auctioning process or pre-opening session and cancelling such order immediately prior to the market opening for the purpose of creating or inducing a false or deceptive appearance of demand for or supply of such security;

(f) effecting or assisting in effecting a market corner;

(g) maintaining at a level that is artificial, the price for dealing in securities traded on a regulated market;

(h) employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the facilities of a regulated market; or

(i) engaging in any act, practice or course of business in respect of dealing in securities traded on a regulated market which is deceptive or which is likely to have such effect.

(3) Subsection (2)(a) does not apply to a purchase, sale or transfer made for legitimate estate planning purposes.

(4) For the purposes of subsection (2)(a), a purchase or sale of securities listed on a regulated market does not involve a change in the beneficial ownership if -

(a) a person who has a beneficial interest in those securities before the purchase or sale; or

(b) one or more associates of the person referred to in paragraph (a) in relation to those securities,

directly or indirectly holds a beneficial interest in those securities after the purchase or sale.

(5) The employment of price-stabilising mechanisms that are regulated under the rules or listing requirements of an exchange does not constitute a manipulative, improper, false or deceptive trading practice for the purposes of this section or insider trading for the purposes of sections 156 and 160.

(6) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

False, misleading or deceptive statements, promises and forecasts

159. (1) A person may not, directly or indirectly, make or publish in respect of securities or in respect of the past or future performance of an entity -

(a) any statement, promise or forecast which, at the time and in the light of the circumstances in which it is made, is false, misleading or deceptive in respect of any material fact and which the person knows or ought reasonably to know is false, misleading or deceptive; or

(b) any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the person knows or ought reasonably to know is rendered false, misleading or deceptive by reason of the omission of that fact.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such

imprisonment.

Civil liability resulting from insider trading

160. (1) An insider who knows that he or she has inside information and who -

(a) deals directly or indirectly or through an agent, for his or her own account in the securities traded on a regulated market to which the inside information relates or in securities which are likely to be affected by such information;

(b) makes a profit or would have made a profit if he or she had sold the securities at any stage or avoids a loss through such dealing; and

(c) fails to prove, on a balance of probabilities, any one of the defences set out in section 156(2),

is liable, at the instance of NAMFISA by way of proceedings in the High Court, to pay to NAMFISA the amounts set out in subsection (2).

(2) The amounts referred to in subsection (1) are -

(a) the equivalent of the profit or loss referred to in subsection (1)(b);

(b) a penalty for compensatory purposes, in a sum determined in the discretion of the High Court;

(c) a penalty for punitive purposes, in a sum determined in the discretion of the High Court;

(d) interest from the date of the illegal transaction as may be prescribed; and

(e) costs of the proceedings on such scale as may be determined by the High Court.

(3) An insider who knows that he or she has inside information and who -

(a) deals, directly or indirectly, for any other person in the securities listed on a regulated market to which the inside information relates or in securities which are likely to be affected by such information;

(b) makes a profit for that other person or would have made a profit if the securities had been sold at any stage or avoids a loss for that other person through such dealing; and

(c) fails to prove any one of the defences set out in section 156(4) on a balance of probabilities,

is, subject to subsection (8), liable, at the instance of NAMFISA by way of proceedings in the High Court, to pay to NAMFISA the amounts set out in subsection (4).

(4) The amounts referred to in subsection (3) are -

(a) the equivalent of the profit or loss referred to in subsection (3)(b);

(b) a penalty for compensatory purposes, in a sum determined in the discretion of the High Court;

(c) a penalty for punitive purposes, in a sum determined in the discretion of the High Court;

(d) interest from the date of the illegal transaction as may be prescribed;

(e) the commission or consideration received for such dealing; and

(f) costs of the proceedings on such scale as may be determined by the High Court.

(5) An insider who knows that he or she has inside information and who -

(a) discloses the inside information to any other person; and

(b) fails to prove on a balance of probabilities the defence set out in section 156(6);

is, subject to subsection (8), liable, at the instance of NAMFISA by way of proceedings in the High Court, to pay to NAMFISA the amounts set out in subsection (6).

(6) The amounts referred to in subsection (5) are -

(a) if the other person dealt in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by the inside information, the equivalent of the profit which that person made or would have made if the securities had been sold at any stage or the equivalent of the loss avoided, as a result of such dealing;

(b) a penalty for compensatory purposes, in a sum determined in the discretion of the High Court;

(c) a penalty for punitive purposes, in a sum determined in the discretion of the High Court;

(d) interest from the date of the illegal transaction as may be prescribed;

(e) the commission or consideration received for such disclosure; and

(f) costs of the proceedings on such scale as may be determined by the High Court.

(7) An insider who knows that he or she has inside information and who encourages or causes any other person to deal in the securities traded on a regulated market to which the inside information relates or which are likely to be affected by the inside information is, subject to subsection (8), liable, at the instance of NAMFISA by way of proceedings in the High Court, to pay to NAMFISA -

(a) if that other person dealt in such securities, the equivalent of the profit which that person made or would have made if the securities had been

sold at any stage or the equivalent of the loss avoided, as a result of such dealing;

(b) a penalty for compensatory purposes, in a sum determined in the discretion of the High Court;

(c) a penalty for punitive purposes in a sum determined in the discretion of the High Court;

(d) interest from the date of the illegal transaction as may be prescribed;

(e) the commission or consideration received for such encouragement; and

(f) costs of the proceedings on such scale as may be determined by the High Court.

(8) If the other person referred to in subsection (3), (5) or (7) is liable as an insider under subsection (1), the insider referred to in subsection (3), (5) or (7) is jointly and severally liable together with that other person to pay the amounts set out in subsection (4)(a), (d), (e) and (f), (6)(a), (d), (e) and (f) or (7)(a), (d), (e) and (f).

(9) The profit made or the profit that would have been made if the listed securities had been sold at any stage or the loss avoided is determined in the discretion of the High Court, which must have regard to factors such as the consideration for the dealings referred to in subsections (3), (5) and (7), the time between the relevant dealing and the publication of the inside information and any other relevant factors.

Disbursement of proceeds from civil claim

161. (1) For the purposes of this section, NAMFISA must appoint a person to be the claims officer.

(2) NAMFISA must deposit directly into a specially designated trust account any amount recovered by NAMFISA as a result of the proceedings contemplated in section 160 or as a result of an agreement of settlement and -

(a) NAMFISA, as a first charge against the trust account, is entitled to -

(i) reimbursement of all expenses reasonably incurred by it in bringing such proceedings and in administering the distributions made to claimants under subsection (3); and

(ii) any additional amount that may be prescribed,

less any amount of costs actually recovered from the other party prior to the finalisation of the distribution account;

(b) the balance, if any, must be distributed by the claims officer to the claimants referred to in subsection (3) in accordance with subsection (4); and

(c) any amount not paid out under paragraph (b) accrues to NAMFISA.

(3) The balance referred to in subsection (2)(b) must be distributed to all claimants who -

(a) submit claims to NAMFISA within 90 days from the date of publication by NAMFISA of a notice in two newspapers circulating nationally in Namibia inviting persons who are affected by the dealings referred to in section 160(1), (3), (5) or (7) to submit their claims; and

(b) prove to the reasonable satisfaction of the claims officer that they were affected by the dealings referred to in section 160(1), (3), (5) or (7), and -

(i) in the case where the inside information was made public within five trading days from the time the insider referred to in section 160(1) or (3) or the other person referred to in section 160(5) or (7) dealt, that they dealt in the same securities or a derivative, linked instrument or connected instrument to the securities, at the same time or any time after the insider or other person so dealt and before the inside information was made public; or

(ii) in every other case, they dealt in the same securities at the same time or any time thereafter on the same day, as the insider or other person referred to in subparagraph (i).

(4) Subject to subsection (5), a claimant is entitled to receive an amount -

(a) equal to the difference between the price at which the claimant dealt and the price, determined by the court or a settlement, at which the claimant would have dealt if the inside information had been published at the time of dealing; or

(b) equal to the *pro rata* portion of the balance referred to in subsection (2)(b), calculated according to the relationship which the amount contemplated in paragraph (a) bears to all amounts proved under subsection (3) by all claimants,

whichever is the lesser, unless the claims officer in his or her discretion determines that the claimant must receive a lesser or no amount.

(5) An amount awarded to any particular claimant in any proceedings referred to in section 165 must be deducted from any amount claimed under this section.

(6) The common law principles of vicarious liability apply to the civil liability established by this section.

Powers of NAMFISA in civil proceedings

162. (1) NAMFISA may withdraw, abandon or compromise any civil proceedings instituted under section 160, but any agreement of compromise entered into by NAMFISA and any other party or parties must be made an order of the High Court and the amount of any payment pursuant to such compromise must be made public.

(2) In the situation where civil proceedings have not been instituted NAMFISA may, in accordance with the rules of the relevant court, file with the clerk or registrar of a competent court any agreement of compromise entered into by NAMFISA and any other party or parties, and thereupon such agreement has all the effects of a civil judgment lawfully given in that court against the other party or parties in favour of NAMFISA for a liquid debt in the amount specified in the agreement and may be enforced as such, and the parties to the agreement and the amount of any payment made in terms of such agreement must be made public.

Assessment of fines and penalties

163. (1) In the assessment of any fine imposed pursuant to section 156, 158, 159 or 166, the High Court must consider any award previously made under section 160 which arises from the same cause.

(2) In the assessment of any award under section 160, the High Court must consider any penalty which arises from the same cause and which has previously been imposed under section 156, 158, 159 or 166.

Powers and duties of NAMFISA

164. (1) NAMFISA is responsible for the supervision of compliance with this Part.

(2) In addition to its other powers under this Act, NAMFISA may -

(a) investigate or instruct that an investigation take place regarding any alleged market abuse or matter relating to an offence referred to in section 156, 158, 159 or 166;

(b) institute any proceedings referred to in this Part;

(c) administer the proof of claims and distribution of payments under section 161;

(d) make market abuse rules -

(i) concerning the administration of this Part by NAMFISA;

(ii) concerning the manner in which investigations under this Chapter are to be conducted;

(iii) concerning the notification of amounts received under sections 160 and 161, the procedure for the lodging and proof of claims, the administration of trust accounts and the distribution of payments in respect of claims;

(iv) dealing with the manner in which inside information should be disclosed and, generally with the conduct expected of persons with regard to such information; and

(v) generally designed to ensure that NAMFISA is able to perform its functions under this Part; and

(e) after consultation with the relevant regulated markets in Namibia, require such markets to implement such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter.

(3) NAMFISA must publish in the *Gazette* of a notice of any proposed market abuse rule or amendment of such a rule, calling upon all interested persons who have any objections to the proposed rule or amendment to lodge their objections with NAMFISA within a period specified in the notice which may not be less than 21 days from the date of publication of the notice.

(4) If there are no such objections or if NAMFISA has considered any objections that have been received, and has decided to introduce the proposed rule or amendment in the form published in the *Gazette* under subsection (3), the rule or amendment comes into operation on a date determined by NAMFISA by further notice published in the *Gazette*.

(5) If NAMFISA, after considering any objections received, decides to amend the proposed rule or amendment as published in the *Gazette* under subsection (3), the proposed rule or amendment as amended by NAMFISA must be published by NAMFISA by notice in the *Gazette* and comes into operation on the date determined by NAMFISA and included in that notice.

(6) A rule made under subsection (2) is binding on all regulated persons and members of the public.

(7) The provisions of sections 418 to 429 apply with the changes required by the context to an investigation referred to in subsection (2)(a).

Protection of existing rights

165. Nothing in this Part prejudices the rights of any person aggrieved by any dealing or offence contemplated in this Chapter under any other law to claim any amount, save to the extent that any portion of such amount has been recovered by such person under sections 160 and 161.

Confidentiality and sharing of information

166. (1) Subject to section 149 and to subsections (2) and (4), a person may not disclose to any other person any information acquired in the performance of functions under this Chapter.

(2) Disclosure of the information referred to in subsection (1) does not constitute a contravention of that subsection if made by -

(a) a person for the purpose of performing functions under this Chapter;

(b) a person for the purpose of any legal proceedings under this Part;

(c) a person who is required to do so by a court or under this Act or any other law;

(d) NAMFISA, if it is necessary to achieve one or more of the objects of this Chapter referred to in section 79;

(e) NAMFISA, if it is in the public interest; or

(f) NAMFISA, by publishing the status and outcome of investigations under this Part.

(3) NAMFISA may share information concerning any matter dealt with under this Part with the Bank of Namibia, the Public Accountants' and Auditors' Board constituted under the Public Accountants' and Auditors' Act, self-regulatory organisations, the Ministry responsible for the administration of finance, the Minister and with all other persons, whether inside Namibia or elsewhere, responsible for regulating, investigating or prosecuting insider trading, prohibited trading practices and other market abuses.

(4) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 5000 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART 10
GENERAL PROVISION

Exemption from Act No. 34 of 1934

167. The Trust Moneys Protection Act does not apply to this Chapter.

CHAPTER 4
COLLECTIVE INVESTMENT SCHEMES

PART 1
PRELIMINARY

Definitions for this Chapter

168. In this Chapter, unless the context indicates otherwise -

"administration" means any function performed in connection with a collective investment scheme including -

(a) the management of a collective investment scheme;

(b) the receipt, payment or investment of money or other assets, including income accruals;

(c) the sale, repurchase, issue or cancellation of a participatory interest and giving financial advice or making disclosure of information on any of those matters to investors or potential investors; and

(d) the buying and selling of assets or the handing over the assets to a trustee or custodian for safe custody;

"administrative service" has the meaning given to it in section 78;

"assets" means the investments comprising or constituting a portfolio of a collective investment scheme and includes any income accruals derived or resulting from the

investments in the portfolio which are held on behalf of, or are due to, the investors in that portfolio;

"authorised representative" means a company or natural person that is registered under section 180 and authorised by a manager to solicit investments in a portfolio from members of the public or to give financial advice or make disclosure of information to investors or potential investors concerning the sale, repurchase, issue or cancellation of a participatory interest;

"collective investment scheme" means a scheme, in whatever form, including an open-ended investment company, pursuant to which members of the public are invited or permitted to invest money or other assets in a portfolio, and under the terms of which -

(a) two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; and

(b) the investors share the risk and the benefit of investment in proportion to their participatory interest in that portfolio or on any other basis determined in the deed,

and includes a collective investment scheme in securities, a collective investment scheme in property, a collective investment scheme in participation bonds, a collective investment scheme in unlisted securities, a collective investment scheme in money market instruments, a declared collective investment scheme and a foreign collective investment scheme, as defined respectively in Parts 4, 5, 6, 7, 8, 9 and 10 of this Chapter;

"custodian" means a custodian appointed under section 189;

"deed" means the agreement between a manager and a trustee or custodian or the document of incorporation whereby a collective investment scheme is established and under the terms of which it is administered, and includes the trust deed of a management company which immediately prior to the commencement of this Chapter was a management company pursuant to the Unit Trusts Control Act;

"designated representative" means a natural person employed by an authorised representative to solicit investments in a portfolio from members of the public or to give financial advice or make disclosure of information to investors or potential investors concerning the sale, repurchase, issue or cancellation of a participatory interest;

"exchange" means an exchange registered under section 85 or deemed to be registered under section 86 or a foreign exchange referred to in section 197;

"income accruals" means any dividends or interest or any other income for distribution received or accrued by the trustee, custodian or manager on behalf of investors in a portfolio in the course of any income distribution period or carried forward from any previous income distribution period or due to such investors in respect of dividends or interest or any other income declarations made but not yet distributed or any payment *in lieu* of income accruals, provided that the deed may determine that a portfolio is a non-distributing fund and that income accruals are not distributed;

"investment manager" means an investment manager registered under section 85;

"investor" means the holder of a participatory interest in a portfolio of a collective investment scheme in Namibia;

"listed securities" has the meaning given to it in section 78;

"manager" means a public company which is registered under section 176 to operate a collective investment scheme;

"members of the public" include -

(a) members of any section of the public, whether selected as clients, members, shareholders, employees or ex-employees of the person issuing an invitation to acquire a participatory interest in a portfolio; and

(b) a banking institution, prudential and financial markets institution or financial institution,

but excludes persons confined to a restricted circle of individuals with a common interest who receive an invitation referred to in paragraph (a) in circumstances which can properly be regarded as a domestic or private business venture between those persons and the person issuing the invitation;

"money market instruments" has the meaning given to it in section 78;

"nominee company" means a company which has been approved by NAMFISA as a nominee company pursuant to section 184;

"open-ended investment company" means a company with an authorised share capital, which is structured in such a manner that it provides for the issue of different classes of shares to investors, each class of share representing a separate portfolio with a distinct investment policy;

"participatory interest" means any interest, unit, undivided share or share -

(a) by whatever name called; and

(b) regardless of whether its value remains constant or varies from time to time,

which may be acquired by an investor in a portfolio;

"payment in lieu of income accruals" means, on the creation of new units in a unit portfolio, the amount which the manager must record in a notional income accrual account, in order to acquire for those new units equal participation in the income accruals and notional income accruals accounts, including such amounts carried forward from any previous income distribution period, and the amount per unit is calculated by dividing the total number of issued units in the unit portfolio immediately prior to the issue of the new units, into the total amount of the income accruals and notional income accruals accounts;

"portfolio" means a group of assets including any amount in cash in which, pursuant to a collective investment scheme, members of the public are invited or permitted by a manager to acquire a participatory interest or a participatory interest of a specific class which as a result of its specific characteristics differs from another class of participatory interests;

"prudential and financial markets institution" has the meaning given to it in section 78;

"sell" or "repurchase" includes an exchange of a participatory interest in a collective investment scheme;

"solicit" means any act to promote investment by members of the public in a collective investment scheme;

"trustee" means a trustee appointed under section 189; and

"Unit Trusts Control Act" means the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), repealed by this Act.

Principles for operation of collective investment scheme

169. (1) A manager must operate a collective investment scheme honestly and fairly, with skill, care, prudence and diligence and in the interest of investors and the collective investment scheme industry.

(2) The assets of an investor must be properly protected by application of the principle of segregation and identification.

(3) For purposes of subsection (2), the principle of segregation and identification requires that assets of an investor must be distinct and identifiable to that specific investor and must be separate and distinguishable from those of the manager or any other person.

Duties of manager

170. (1) A manager must avoid conflict between the interests of the manager and the interests of an investor.

(2) A manager must disclose to investors any interests of its directors or management that could conflict with the interests of investors.

(3) A manager must maintain adequate financial resources to meet its commitments and to manage the risks to which the collective investment scheme managed by the manager is exposed.

(4) A manager must -

(a) organise and control the collective investment scheme in a responsible manner;

(b) keep proper records;

(c) employ adequately trained staff and ensure that they are properly supervised;

(d) have well-defined compliance procedures;

(e) maintain an open and cooperative relationship with NAMFISA and must promptly inform NAMFISA about anything that might reasonably be expected to be disclosed; and

(f) promote investor education, either directly or indirectly, through initiatives undertaken by industry associations or others.

Appointment of investment manager

171. A manager may appoint an investment manager to assist in the investment of the assets of a collective investment scheme or of one or more portfolios of the collective scheme.

Disclosure of information

172. (1) Before entering into a transaction with an investor, a manager, an authorised representative or designated representative must -

(a) disclose to the investor information about the investment objectives of the collective investment scheme, the calculation of the net asset value and dealing prices, charges, risk factors and distribution of income accruals; and

(b) give to the investor in a timely fashion and comprehensible manner, information that is necessary to enable the investor to make an informed decision, including any information specified for this purpose in the standards.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Limitations

173. (1) With the exception of a manager or an operator of a foreign collective investment scheme approved under section 219, a person, other than a public company which has been registered or is deemed to be registered as a manager by NAMFISA under this Chapter and in accordance with the requirements of Part 2, may not operate a collective investment scheme.

(2) A person other than -

(a) a registered manager;

(b) a registered investment manager;

(c) a registered linked investment service provider;

(d) a registered authorised representative;

(e) a registered designated representative;

(f) a registered trustee or custodian; or

(g) a person performing only administrative services for a person referred to in paragraphs (a) to (f),

may not carry on any aspect of the business of administering a collective investment scheme or perform any act or enter into any agreement or transaction for that purpose.

(3) Only a public company which has capital and reserves available for employment in its collective investment scheme, as determined in accordance with the standards, may be or may remain registered as a manager.

(4) A registered investment manager or registered linked investment service provider may only operate a collective investment scheme described in Parts 4 to 9.

(5) A manager must carry on the business of the collective investment scheme in accordance with this Act.

(6) Only a registered manager, registered authorised representative, registered designated representative, registered investment manager, registered linked investment service provider or a manager or an operator of a foreign collective investment scheme approved under section 219 may solicit investments in a portfolio from members of the public or give financial advice or make disclosure of information to investors or potential investors concerning the sale, repurchase, issue or cancellation of a participatory interest.

(7) A person who contravenes or fails to comply with subsection (1), (2), (4) or (6) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 2
REGISTRATION

Application for registration as manager

174. (1) Only a public company may, in accordance with subsection (2), make an application to NAMFISA for registration as the manager of a collective investment scheme.

(2) An application for registration pursuant to subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) include the information with respect to the principal office and principal officer required by the standards;

(c) accompanied by the documents and other information required by the standards;

(d) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(e) made subject to and in accordance with any other applicable provision of this Act; and

(f) accompanied by the required fee.

Registration requirements

175. Before approving an application and registering the applicant as a manager of a collective investment scheme, NAMFISA must be satisfied on reasonable grounds that -

(a) in relation to the applicant public company -

(i) every shareholder or other owner that controls the applicant and every director, the principal officer and other officers of the applicant, and where applicable, members of the board, are fit and proper within the meaning of the standards;

(ii) the memorandum, articles or other founding documents of the applicant are not inconsistent with the provisions of this Act;

(iii) the direct or indirect control of the company is not likely to be contrary to the interest of consumers of the financial services concerned;

(iv) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;

(b) doing so is not contrary to -

(i) this Act; or

(ii) the public interest;

(c) the applicant has the attributes reasonably necessary and adequate to -

(i) provide the financial services concerned with professional integrity, prudence, proper skill and due diligence;

(ii) maintain a sound financial position and not cause or further instability in the financial system of Namibia; and

(iii) comply with this Act;

(d) the name under which the applicant proposes to conduct business, or a translation, shortened form or derivative of that name is not in contravention of section 391;

(e) the applicant has submitted all other information which, in the opinion of NAMFISA, is necessary to assess the application, and such information has been found satisfactory by NAMFISA; and

(f) the applicant has complied and will continue to comply with any other requirements contained in this Act or in the standards which apply to the applicant.

Registration

176. (1) If NAMFISA is satisfied that the applicant complies with the requirements of section 175, NAMFISA must register the applicant as a manager of a collective investment scheme, subject to any conditions which NAMFISA may consider appropriate pursuant to subsection (4), and must issue a certificate of registration pursuant to subsection (3).

(2) The registration referred to in subsection (1) must specify -

(a) the principal office of the applicant in Namibia; and

(b) the places in Namibia from which the applicant may operate.

(3) Upon registration of an applicant NAMFISA must issue to the applicant a certificate of registration in a form provided by the standards.

(4) NAMFISA may impose such conditions on the registration of the applicant as it considers necessary having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant and any guidelines issued by NAMFISA under this Act**.**

(5) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions, and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(6) A manager must comply with the conditions subject to which it was registered.

Existing management companies

177. (1) A person that was registered under section 4(3) or 30(3) of the Unit Trusts Control Act on the date of commencement of this Chapter is, subject to subsection (2), deemed to be registered as a management company under section 176(1).

(2) Despite subsection (1), a person referred to in that subsection must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to section 174 for registration as a manager.

(3) If a person referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (2), the deemed registration of that person is cancelled.

Application for cancellation or variation of registration

178. (1) A manager may at any time apply to NAMFISA for cancellation of a registration granted pursuant to section 176 or for a variation to the conditions subject to which that registration was granted.

(2) An application made under subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) accompanied by the documents and other information required by the standards;

(c) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case; and

(d) accompanied by the required fee.

(3) Before making an application pursuant to subsection (1), the applicant must give prior notice of the proposed application in two newspapers circulating nationally in Namibia, at the expense of the applicant, stating -

(a) the name of the applicant;

(b) either -

(i) the reasons for the proposed cancellation; or

(iii) the nature of the proposed variation; and

(c) the period within which objections to the application may be lodged with NAMFISA.

(4) Section 176 applies with the changes required by the context to an application for a variation of conditions referred to in subsection (1).

(5) If, after consideration of any objection received as a result of the notice referred to in subsection (3), NAMFISA is of the opinion that it is reasonable to do so and not against the public interest, NAMFISA may, by notice to the manager concerned -

(a) cancel the registration; or

(b) vary the conditions of registration, including the imposition of additional conditions.

(6) NAMFISA must make public any cancellation of registration or variation of conditions of registration under subsection (5) and the reasons for the cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

Cancellation or variation of registration

179. (1) NAMFISA may take any of the actions set out in subsection (3), if NAMFISA acting reasonably, finds that any of the following circumstances with respect to a manager:

(a) it has made a material misrepresentation or failed to provide information that was materially relevant in its application for registration;

(b) it has failed to comply with this Act;

(c) it no longer meets the requirements for registration;

(d) it has provided financial services without professional integrity, prudence, proper skill and due diligence;

(e) it is in an unsound financial position;

(f) it has failed to comply with a directive, request or requirement of NAMFISA issued under this Act;

(g) it has failed to give effect to a decision of the Appeal Board;

(h) it has ceased to operate or has failed to commence operating within a reasonable time after being registered;

(i) it is involved in a financial crime; or

(j) any shareholder or director, the principal officer or other officer or member of a board of the manager no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct.

(2) In addition to the reasons set out in subsection (1), NAMFISA may take any of the actions set out in subsection (3) if, in the opinion of NAMFISA, such action is warranted because -

(a) the manager has failed to give effect to a decision of the Appeal Board, and such failure has defeated the objects of this Chapter or is likely to defeat them; or

(b) after an inspection or investigation of the manager's affairs under this Act, NAMFISA is satisfied on reasonable grounds that the manner in which it is operating is -

(i) not in the best interests of the collective investment scheme or investors in that scheme; or

(ii) defeating the objects of this Chapter.

(3) If NAMFISA is satisfied that any of the circumstances described in subsection (1) or (2) exist, NAMFISA may take any of the following actions with respect to the manager -

(a) cancel its registration;

(b) vary the conditions of its registration, including the imposition of additional conditions; or

(c) take any other steps that NAMFISA may considers necessary or advisable.

(4) NAMFISA must give notice to the manager of the intention of NAMFISA to take any action referred to in subsection (3), together with the reasons for taking the action, and must give the manager a reasonable opportunity to be heard

by specifying a period of not less than 21 days during which the manager may make representations to NAMFISA on the matter.

(5) Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of a manager without giving notice and an opportunity to be heard pursuant to subsection (4), if NAMFISA is satisfied on reasonable grounds that it is urgently necessary to do so in order to prevent or mitigate damage to the interests of financial institutions, financial intermediaries, their clients or the financial system of Namibia, but NAMFISA must -

(a) give the manager the notice and an opportunity to be heard and make representations as soon as reasonably possible; and

(b) having considered any representations received, determine whether the provisional suspension should be continued until further conditions can be imposed or registration cancelled.

(6) On the cancellation of the registration of a manager under section 177(3), 178(5)(a), subsection (3)(a) or any other applicable provision of this Act, the manager must be wound-up in accordance with the requirements of Chapter 10, and NAMFISA must take such steps and may impose such conditions as are necessary in the circumstances, which steps may include the transfer of the business of the manager to another registered manager, but no distribution of the assets of the manager may be made without the prior approval of NAMFISA.

(7) NAMFISA must make public any suspension or cancellation of registration, variation of conditions of registration or any other steps taken under this section and the reasons for the suspension, cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

(8) A person who -

(a) continues to operate, or engage in, the business of a manager after the cancellation of registration under section 177(3), section 178(5)(a), subsection (3)(a) or any other applicable provision of this Act or after suspension of registration under subsection (5); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (5),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Registration as authorised representative of manager and renewal of registration

180. (1) A manager registered under this Chapter may authorise a company or an individual to act as an authorised representative of that manager, and may apply to NAMFISA for the registration of such company or individual as an authorised representative by submitting a copy of the list maintained by the manager of those companies or individuals, together with any required registration fee for each such company or individual.

(2) A manager must have in place a code of conduct and applicable systems relevant to its authorised representatives who are individuals in order to be reasonably satisfied with respect to each such authorised representative that -

(a) the individual is at least 18 years of age;

(b) the individual has met the requirements for authorised representatives that may be included in the standards from time to time;

(c) the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure business;

(d) the individual has not been refused registration, authorisation or acceptance or had such registration, authorisation or acceptance suspended or revoked under this Act or any other applicable financial services law;

(e) the individual has not been convicted of an offence the nature of which renders him or her, in the opinion of NAMFISA, unfit to hold a registration under this Act;

(f) the individual is fit and proper within the meaning of the standards;

(g) there are reasonable grounds for believing that the individual will carry on with integrity and honesty the activities of an authorised representative;

(h) the individual has met, and there is no reason to believe that the individual will not be able to meet, any other requirements of this Chapter, and any instructions and guidelines issued by NAMFISA under this Chapter or issued by the manager concerned that apply to authorised representatives;

(i) there is no reason to believe that the individual is likely to engage in conduct of a kind identified in the standards as misconduct;

(j) the individual is ordinarily resident in Namibia and is in a position to comply with the law relating to his or her residency in Namibia and with any other applicable laws of Namibia; and

(k) any required fee has been paid.

(3) If the list submitted to NAMFISA pursuant to subsection (1) is in respect of an authorised representative that is a company, the manager must ensure that the authorised representative has a code of conduct and applicable systems in place with respect to the designated representatives of that authorised representative.

(4) A manager must provide NAMFISA with such other information and material regarding its authorised representatives as may be specified in the standards.

(5) NAMFISA must register each person whose name appears on the list of authorised representatives maintained by the manager.

(6) A manager that has submitted a list to NAMFISA pursuant to subsection (1), must submit to NAMFISA an update of that list when there has been an addition or deletion, together, in the case of additional persons to be registered as authorised representatives, with the required fee for each additional person and the information and material referred to in subsection (4), and upon receipt by NAMFISA of an updated list containing the names of additional persons, the provisions of subsection (5) do apply.

(7) If a manager removes a company or an individual from the list referred to in subsection (1), it must, at the same time as submitting the update of the list as required by subsection (6), provide NAMFISA with a statement indicating the reason that the company or individual has been removed from the list.

(8) A manager may not remove a company or an individual from the list as described to in subsection (7) unless the manager has given the company or individual concerned the reasons for the proposed removal and a reasonable opportunity to be heard.

(9) The term of registration as an authorised representative under this section expires on March 31 of each year or on such other date as NAMFISA may specify, but if the appropriate renewal fee as determined by NAMFISA in respect of each authorised representative is paid to NAMFISA in the manner set out in the standards, the registration must, subject to compliance with any requirements that may be set out in the standards, be renewed for a period of 12 months as from the expiry date.

(10) The renewal fee is payable within the period set out in the standards, and any payment received after that period bears interest at a rate determined by NAMFISA in the standards, which rate may not exceed the rate prescribed for this purpose.

(11) If -

(a) the renewal fee is not received within the period contemplated in subsection (10); or

(b) the requirements of the standards referred to in subsection (9) have not been complied with,

NAMFISA may not renew the registration of the authorised representative and must remove or direct the registered manager to remove the name of the authorised representative whose renewal fee was not paid or in respect to whom the requirements of the standards have not been complied with from the list kept by NAMFISA or submitted to NAMFISA.

(12) A person who continues to operate, or to engage in, the business of an authorised representative after the non-renewal of registration under subsection (11), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Remedial action

181. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to registered authorised representative:

(a) any of the requirements referred to in section 180(2) have not been met;

(b) the copy of the list submitted under section 180 or the accompanying information and material contained information concerning the person that was not materially accurate or omitted information that was materially relevant;

(c) the person no longer meets the requirements for an authorised representative;

(d) the person has suspended the activities for which he, she or it was registered for a period of at least 12 months;

(e) the person is not in compliance with a requirement of this Act; or

(f) the person has engaged in conduct of a kind that has been identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take or direct the manager to take remedial action including, without limitation -

(a) directing the manager to provide further information with respect to the person;

(b) directing the manager to provide further training for the person;

(c) directing the manager to take disciplinary action against the person;

(d) directing the manager to make changes to the code of conduct and systems referred to in section 180(2) or (3);

(e) requiring an undertaking from the person pursuant to section 436;

(f) requiring an undertaking from the manager pursuant to section 436;

(g) directing the person to undertake specific actions or refrain from specific actions pursuant to section 439(4)(c);

(h) directing the manager to undertake specific actions or refrain from specific actions pursuant to section 439(4)(c); or

(i) imposing on the manager any penalty that may be specified in the standards, if the manager has been negligent in satisfying itself with respect to the provisions of section 180(2) or (3).

(3) If on receipt of evidence that the required action has been taken pursuant to subsection (2), NAMFISA acting reasonably, finds that any of the circumstances referred to in subsection (1) continue to exist, NAMFISA may direct the manager to remove the name of the person from the list referred to in section 180(1) or (6).

(4) Before directing that the name of a person be removed from a list pursuant to subsection (3), NAMFISA must give both parties the reasons for the proposed removal and a reasonable opportunity to be heard.

(5) If a manager fails to remove the name of a person from the list when required to do so by NAMFISA, NAMFISA may, after giving the authorised representative a reasonable opportunity to be heard, itself remove the name of the person from the list.

(6) If the name of a person is removed from a list by a manager or by NAMFISA, the registration of that person as an authorised representative is cancelled, and that person may not act as an authorised representative or be included on any list a copy of which is submitted under section 180 for such period as NAMFISA may determine.

(7) A person who continues to operate, or to engage in, the business of an authorised representative after the cancellation of registration under subsection (6) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Registration as designated representative of authorised representative and renewal of registration

182. (1) An authorised representative that is a company must submit to the manager of which it is an authorised representative a copy of the list maintained by that authorised representative of its employees who are its designated representatives.

(2) An authorised representative that is a company must have in place a code of conduct and applicable systems relevant to designated representatives in order to be reasonably satisfied with respect to each of its designated representatives that -

(a) the individual is at least 18 years of age;

(b) the individual has met the requirements for designated representatives that may be included in the standards or the requirements of the manager from time to time;

(c) the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure business;

(d) the individual has not been refused registration, authorisation or acceptance or had such registration, authorisation or acceptance suspended or revoked under this Act or any other applicable financial services law;

(e) the individual has not been convicted of an offence the nature of which renders him or her, in the opinion of NAMFISA, unfit to hold a registration under this Act;

(f) the individual is fit and proper within the meaning of the standards;

(g) there are reasonable grounds for believing that the individual will carry on with integrity and honesty the activities of a designated representative;

(h) the individual has met, and there is no reason to believe that the individual will not be able to meet, any other requirements of this Act

and any instructions and guidelines issued by NAMFISA under this Act or issued by the manager that apply to designated representatives;

(i) there is no reason to believe that the individual is likely to engage in conduct of a kind identified in the standards as misconduct;

(j) the individual is ordinarily resident in Namibia and is in a position to comply with the law relating to his or her residency in Namibia and with any other applicable laws of Namibia; and

(k) any required fee has been paid.

(3) An authorised representative that is a company must provide the manager with such other information and material regarding its designated representatives as the manager may require.

(4) The manager must forward the copy of the list to NAMFISA together with any required fee and NAMFISA must register each person whose name appears on the list as a designated representative.

(5) An authorised representative that is a company and that has submitted a list to the manager pursuant to subsection (1) must submit to the manager an update of that list when there has been an addition or deletion, together, in the case of additional designated representatives, with the required fee for each additional designated representative and the information and material referred to in subsection (3).

(6) An authorised representative that is a company may not remove an individual from the list referred to in subsection (1) unless the authorised representative has given the individual concerned the reasons for the proposed removal and a reasonable opportunity to be heard.

(7) If an authorised representative that is a company removes an individual from the list, it must, at the same time as submitting the update of the list as required by subsection (5), provide the manager with a statement indicating the reason that the individual has been removed from the list.

(8) The manager must forward any updated list received pursuant to subsection (5) to NAMFISA, together with any statement referred to in subsection (7), and in the case of any addition, the provisions of subsection (4) do apply.

(9) The term of registration as a designated representative under this section expires on March 31 of each year or on such other date as NAMFISA may specify, but if the appropriate renewal fee as determined by NAMFISA in respect of each designated representative is paid to NAMFISA in the manner set out in the standards, the registration must, subject to compliance with any requirements that may be set out in the standards, be renewed for a period of 12 months as from the expiry date.

(10) The renewal fee is payable within the period set out in the standards, and any payment received after that period bears interest at a rate determined by NAMFISA in the standards, which rate may not exceed the rate prescribed for this purpose.

(11) If -

(a) the renewal fee is not received within the period contemplated in subsection (10); or

(b) the requirements of the standards referred to in subsection (9) have not been complied with,

NAMFISA may not renew the registration of the designated representative and must remove or direct the manager to remove the name of the designated representative whose renewal fee was not paid or in respect to whom the requirements of the standards have not been complied with from the list kept by NAMFISA or submitted to NAMFISA.

(12) A person who continues to operate, or engage in, the business of a designated representative after the non-renewal of registration under subsection (11), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Remedial action

183. (1) A manager may take any of the actions set out in subsection (2), if the manager acting reasonably, finds that any of the following circumstances exist with respect to a designated representative -

(a) any of the requirements referred to in section 182(2) have not been met;

(b) the copy of the list submitted under section 182 or the accompanying information and material contained information concerning the individual that was not materially accurate or omitted information that was materially relevant;

(c) the individual no longer meets the requirements for a designated representative;

(d) the individual has suspended activities for which the individual was registered for a period of at least 12 months;

(e) the individual is not in compliance with a requirement of this Act; or

(f) the individual has engaged in conduct of a kind that has been identified in the standards as misconduct.

(2) If the manager is satisfied that any of the circumstances described in subsection (1) exist, the manager may take or direct the authorised representative that is a company to take remedial action including, without limitation -

(a) directing the authorised representative that is a company to provide further information with respect to the designated representative;

(b) directing the authorised representative that is a company to provide further training for the designated representative;

(c) directing the authorised representative that is a company to take disciplinary action against the designated representative;

(d) directing the authorised representative to make changes to the code of conduct and systems referred to in section 182(2);

(e) requiring an undertaking from the authorised representative or from the designated representative or from both;

(f) directing the authorised representative or the designated representative or both to take specific actions or refrain from specific actions; or

(g) refer the matter to NAMFISA.

(3) If on receipt of evidence that the required action has been taken pursuant to subsection (2), the manager acting reasonably, finds that any of the circumstances referred to in subsection (1) continue to exist, the manager may direct the authorised representative to remove the name of the designated representative from the list referred to in section 182(1) or (5).

(4) Before directing that the name of a person be removed from a list pursuant to subsection (3), the manager must give the authorised representative and the designated representative the reasons for the proposed removal and a reasonable opportunity to be heard.

(5) If an authorised representative fails to remove the name of a designated representative from the list when required to do so by the manager, the manager may, after giving the designated representative a reasonable opportunity to be heard, itself remove the name of the person from the list.

(6) The manager must inform NAMFISA forthwith of any direction to an authorised representative to remove the name of a designated representative from the list pursuant to subsection (3) or of the removal of the name of a designated representative from the list by the manager pursuant to subsection (5) and in that case, or in the case that the manager refers a matter to NAMFISA pursuant to subsection (2)(g), the provisions of section 181 do apply with any changes made required by the context.

(7) If the name of a person is removed from a list by a manager or by the authorised representative, the registration of that person as a designated representative is cancelled, and that person may not act as a designated representative or be included on any list a copy of which is submitted under section 182 for such period as NAMFISA may determine.

(8) A person who continues to operate, or engage in, the business of a designated representative after the cancellation of registration under subsection (7), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Approval of nominee company

184. (1) NAMFISA may, on application made to it, approve a company as a nominee company if that company -

(a) has as its principal object to act as nominee for or representative of any person in the holding of any property in trust for such person;

(b) is precluded by its memorandum, articles or rules from incurring any liabilities except for those persons on whose behalf it holds property to the extent of their respective rights to and interests in such property; and

(c) has entered into an irrevocable agreement with a manager pursuant to which such manager has undertaken to pay all the expenses of and incidental to its formation, operations, management and liquidation and has appointed directors responsible for the management and control of the nominee company of whom more than 50 per cent are independent, within the meaning of the standards, from -

(i) the manager;

(ii) any holding company of the manager;

(iii) any subsidiary of such holding company; and

(iv) any other affiliate of the manager.

(2) An application for approval pursuant to subsection (1) must be made in the manner and form required by the standards.

(3) NAMFISA may set out additional requirements for an application for approval as a nominee company and the granting of such approval by NAMFISA in the standards.

(4) A person that was approved as a nominee company pursuant to section 37(2)(a) of the Unit Trusts Control Act on the date of commencement of this Chapter is, subject to subsection (5), deemed to be approved as a nominee company under this section.

(5) Despite subsection (4), a person referred to in that subsection must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to this section for approval as a nominee company.

(6) If a person referred to in subsection (4) fails to make an application to NAMFISA for approval within the period referred to in subsection (5), the deemed approval of that person is cancelled.

(7) A person who continues to operate, or engage in, the business of a nominee company after the cancellation of registration under subsection (6), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Principal office and principal officer

185. (1) Every manager of a collective investment scheme and every authorised representative that is a company must -

(a) have a principal office in Namibia where it must hold and maintain the documents referred to in the standards; and

(b) appoint to be its principal officer in Namibia, a fit and proper person within the meaning of the standards, who is -

(i) a Namibian citizen or permanent resident; and

(ii) resident in Namibia.

(2) Despite subsection (1)(b)(i), NAMFISA may, in exceptional circumstances, grant permission that a principal officer referred to in that subsection may, subject to the Immigration Control Act, 1993 (Act No. 7 of 1993), for such period as may be determined by NAMFISA, be a person other than a Namibian citizen or permanent resident.

(3) After the appointment of a principal officer pursuant to subsection (1)(b), the registered manager or authorised representative referred to in subsection (1) must, within the period set out in the standards, in writing NAMFISA notify of the appointment.

(4) NAMFISA may, on the grounds that a principal officer is not a fit and proper person within the meaning of the standards, and after giving the registered manager or authorised representative referred to in subsection (1) and the principal officer a reasonable opportunity to be heard, direct the registered manager or authorised representative to appoint some other person to be the principal officer of that registered manager or authorised representative.

(5) Whenever a principal officer resigns or the appointment of a principal officer is terminated by a registered manager or authorised representative referred to in subsection (1) or by the expiry of a contract of employment, the registered manager or authorised representative must, within the period set out in the standards, in writing notify NAMFISA and submit to NAMFISA a written statement of the reasons for the termination or, in the opinion of the registered manager or authorised representative, the reasons for the resignation.

(6) The principal officer referred to in subsection (1)(b) must be an *ex officio* member of the board of the manager of a collective investment scheme or authorised representative referred to in subsection (1), but the principal officer may not serve as chairperson of the board.

(7) The principal officer of the manager of a collective investment scheme or authorised representative referred to in subsection (1) is authorised to act on behalf of the manager of the collective investment scheme or authorised representative referred to in subsection (1) to ensure compliance with this Act, and in any case where a person, including NAMFISA, communicates with that manager of a collective investment scheme or authorised representative referred to in subsection (1), that person may do so by addressing the communication to the principal officer.

(8) Process in any legal proceedings may be served on the manager of a collective investment scheme or authorised representative referred to in subsection (1) by serving a copy of the process at its principal office.

(9) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Appointment of auditor

186. (1) A manager must, in accordance with section 401, appoint and at all times have an auditor or firm of auditors to be the auditor for the collective investment scheme operated by the manager.

(2) The manager may not appoint as auditor of a collective investment scheme -

(a) an auditor who is; or

(b) a firm of auditors any member of which is,

a director, an officer or employee or a shareholder of the manager or of a trustee or custodian of the collective investment scheme.

(3) NAMFISA may direct the manager of a collective investment scheme to change the auditor of the collective investment scheme if NAMFISA is satisfied that the auditor or any member of the firm of auditors appointed as auditor is a director, an officer, an employee or a shareholder of the manager or of a trustee or custodian of the collective investment scheme.

(4) An auditor appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

an auditor by section 401.

Limitation on investments

187. (1) NAMFISA may provide in the standards the manner in which and the limits and conditions subject to which investments may be included in a portfolio of a collective investment scheme.

(2) NAMFISA may provide in the standards different manners, limits and conditions for different types or classes of investments or different portfolios of a collective investment scheme.

(3) Without limiting the generality of subsections (1) and (2), NAMFISA may provide in the standards for -

(a) the minimum size of portfolios;

(b) the mandatory purchase of units by managers; and

(c) restrictions and conditions on the use of leverage and derivatives in or in connection with a portfolio.

Rules

188. NAMFISA may make rules in the standards for the operation and administration of collective investment schemes under one or more of Parts 4 to 9, and for the solicitation of investments in a foreign collective investment scheme under Part 10.

PART 3
TRUSTEES AND CUSTODIANS

Appointment and termination of trustee or custodian

189. (1) A manager must appoint either a trustee or a custodian for its collective investment scheme depending on the structure of the collective investment scheme.

(2) A person may not become or act as a trustee or custodian unless that person is registered under section 190 or deemed to be registered under section 191.

(3) When the appointment of a trustee or custodian is terminated, otherwise than pursuant to section 190(5), that trustee or custodian must as soon as possible submit a report to NAMFISA stating -

(a) whether any irregularity or undesirable practice is being considered, has taken place or is taking place in the conduct of the affairs of the collective investment scheme which has caused or is likely to cause financial loss to investors in a portfolio of the collective investment scheme;

(b) particulars of any such irregularity or undesirable practice; and

(c) the reason, if known, for the termination of the appointment.

(4) A trustee or custodian intending to resign from an appointment made under this section must give the manager and NAMFISA not less than six months' notice of such intention, and during the said period of six months the manager must take steps to appoint as trustee or custodian some other person competent to act as such pursuant to section 190.

(5) If a manager fails to take the steps referred to in subsection (4) within the said period of six months NAMFISA may, after consultation with the manager, direct the manager to appoint a competent person as trustee or custodian.

(6) When it is impracticable for a trustee or custodian to perform any or all its duties under section 192, the trustee or custodian may appoint a representative who is independent, within the meaning of the standards, from the manager and any of its authorised representatives, to perform such duties.

(7) A trustee or custodian of a collective investment scheme who has appointed a representative under subsection (6) is not divested of the functions referred to in this Part.

(8) A person who contravenes or fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000

or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Registration

190. (1) A person may not become or act as a trustee or as a custodian unless that person is -

(a) a public company;

(b) any other entity or institution, which is not a close corporation, established by or incorporated under any legislation in Namibia;

(c) a banking institution;

(d) a foreign entity or a branch of a foreign entity which is entitled to carry on the business of a banking institution; or

(e) an insurer registered for long term insurance under section 11.

(2) NAMFISA, on application made to it, may register an entity referred to in subsection (1) as a trustee or custodian as long as that entity complies with the requirements of the standards including, but not limited to -

(a) capital and reserves requirements;

(b) requirements relating to the general financial and commercial standing of the entity; and

(c) the experience, independence and operational ability of each person who manages the entity that makes that person fit and proper within the meaning of the standards.

(3) An application for registration pursuant to subsection (2) must be made in the manner and form required by the standards.

(4) NAMFISA may not register an entity referred to in subsection (1) pursuant to subsection (2), if the entity is an affiliate of the manager.

(5) NAMFISA may cancel or, subject to such conditions as NAMFISA may impose, suspend the registration of a trustee or custodian if at any time NAMFISA is satisfied that the trustee or custodian no longer meets the requirements contained in subsection (1), (2) or (4).

(6) NAMFISA must, before cancelling or suspending a registration pursuant to subsection (5), notify the trustee or custodian and the manager of the grounds upon which such action is contemplated, and must give it a reasonable opportunity to be heard and to show cause why the proposed action should not be taken.

(7) NAMFISA may, subject to such conditions as NAMFISA may impose, suspend a registration pursuant to subsection (5) without complying with subsection (6), if NAMFISA is satisfied that it is necessary to act expeditiously in order to protect the interests of clients of the manager or the interests of the Namibian financial system,

but must give notice to the trustee or custodian and the manager as soon as practicable thereafter and consider any representations made by them on the matter.

(8) The trustee or custodian has the right to present its case to NAMFISA and in doing so, to be represented by any other person.

(9) A person who -

(a) continues to operate, or engage in, the business of trustee or custodian after the cancellation of registration under subsection (5) or any other applicable provision of this Act or after suspension of registration under subsection (5) or (7); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (5) or (7),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Existing trustees

191. (1) A person that was registered as a trustee under section 20(2)(b) of the Unit Trusts Control Act on the date of commencement of this Chapter is, subject to subsection (2), deemed to be registered as a trustee or custodian under section 190(2).

(2) Despite subsection (1), a person referred to in that subsection must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to section 190 for registration as a trustee or custodian.

(3) If a person referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (2), the deemed registration of that person is cancelled.

(4) A person who continues to operate, or engage in, the business of trustee or custodian after the cancellation of registration under subsection (3), commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Duties of trustee or custodian

192. (1) A trustee or custodian must -

(a) ensure that the basis on which the sale, issue, repurchase or cancellation of participatory interests effected by or on behalf of a collective investment scheme is carried out in accordance with this Act and the deed;

(b) ensure that the selling or repurchase price of participatory interests is calculated in accordance with this Act and the deed;

(c) carry out the instructions of the manager unless they are inconsistent with this Act or the deed;

(d) verify that in transactions involving the assets of a collective investment scheme any consideration is remitted to the collective investment scheme within time limits which are acceptable market practice in the context of a particular transaction;

(e) verify that the income accruals of a portfolio are applied in accordance with this Act and the deed;

(f) enquire into and prepare a report on the operation of the collective investment scheme by the manager during each annual accounting period, in which it must be stated whether the collective investment scheme has been operated in accordance with -

(i) the limitations imposed on the investment and borrowing powers of the manager by this Chapter; and

(ii) the provisions of this Act and the deed;

(g) if the manager does not comply with the limitations and provisions referred to in paragraph (f), state the reason for the non-compliance and outline the steps taken by the manager to rectify the situation;

(h) send the report referred to in paragraph (f) to NAMFISA and to the manager in good time to enable the manager to include a copy of the report in its annual report; and

(i) ensure that -

(i) there is a legal separation of assets held under custody and that the legal entitlement of investors to such assets is assured; and

(ii) appropriate internal control systems are maintained and that records clearly identify the nature and value of all assets under custody, the ownership of each asset and the place where documents of title pertaining to each asset are kept.

(2) A trustee or custodian must report to the manager any irregularity or undesirable practice concerning the collective investment scheme, whether or not such practice has been declared as irregular or undesirable under this Act, of which it is aware and if steps to rectify the irregularity or practice in question are not taken to the satisfaction of the trustee or custodian, it must as soon as possible report such irregularity or undesirable practice to NAMFISA.

(3) The trustee or custodian must satisfy itself that every financial statement, balance sheet or other return prepared by the manager pursuant to this Act fairly represents the assets and liabilities, as well as the income and distribution of income, of every portfolio of the collective investment scheme operated by the manager.

(4) At the request of the trustee or custodian, every director, officer and employee of the manager must submit to the trustee or custodian any book or document or other information relating to the operation by the manager of its collective investment scheme which is in the possession or at the disposal of that person, and which the trustee or custodian may consider necessary to perform its functions.

(5) A person who interferes with the performance by a trustee or custodian of its functions commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(6) A trustee or custodian of a collective investment scheme which fails to perform any of its duties referred to in this section commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Status of assets

193. For purposes of this Chapter -

(a) money or other assets received from an investor; and

(b) assets of a portfolio,

are regarded as being trust property and a manager, its authorised representative, a designated representative of that authorised representative and a trustee or custodian must deal with such money or other assets in conformity with this Act and the deed in the best interests of investors and in accordance with the instructions, if any, of such investors.

Liability for loss of assets

194. A trustee or custodian must indemnify the manager and investors against any loss or damage suffered in respect of money or other assets in the custody of the trustee or custodian, which is caused by a wilful or negligent act or omission by the trustee or custodian.

PART 4
COLLECTIVE INVESTMENT SCHEMES IN SECURITIES

Definitions for this Part

195. In this Part, unless the context otherwise indicates -

"collective investment scheme in securities" means a scheme the portfolio of which consists mainly of listed securities or units of a collective investment scheme in listed securities.

Determination of fair value

196. A security must be valued at its fair value, calculated in accordance with the standards.

Foreign securities

197. (1) A manager may, subject to this Act, invest assets of a portfolio of a collective investment scheme in securities in foreign equity securities if such foreign equity securities -

(a) are traded on a foreign exchange approved by NAMFISA pursuant to the standards; and

(b) are listed on a foreign exchange to which the manager has applied the due diligence requirements provided for in the standards.

(2) A manager may, subject to this Act, invest assets of a portfolio of a collective investment scheme in securities in foreign non-equity securities if such foreign non-equity securities -

(a) are securities permitted for collective investment schemes in securities by the standards; and

(b) are securities to which the manager has applied the due diligence requirements for issuers provided for in the standards.

PART 5
COLLECTIVE INVESTMENT SCHEMES IN PROPERTY

Definitions for this Part

198. (1) In this Part unless the context indicates otherwise -

"collective investment scheme in property" includes a scheme the portfolio of which consists of property shares, immovable property, assets determined under subsection (2) or any investment permitted under section 199;

"fixed property company" means a company all the issued shares of which are included in a portfolio, and the principal business of which consists in the acquisition and holding of -

(a) immovable property or any undivided share or interest therein or leasehold in respect of the property;

(b) a participatory interest in any collective investment scheme where the portfolio consists predominantly of property shares, immovable property or other assets determined by the standards referred to in subsection (2); or

(c) such other immovable property or any undivided share or interest therein or leasehold in respect of the property as NAMFISA has approved;

"property shares" means shares in and of -

(a) a fixed property company; or

(b) a holding company which has no subsidiaries other than fixed property companies which are its wholly owned subsidiaries;

"immovable property" means any piece of land registered as an erf, lot or stand in a deeds registry, which erf, lot or stand is situated in a township as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance No. 11 of 1963), and, for the purposes of section 199, any piece of land registered as an erf, lot or stand in a foreign deeds registry.

(2) For the purposes of this Part, NAMFISA may provide for, in the standards, assets in addition to those referred to in the definition of "collective investment scheme in property" which may be included in a portfolio of a collective investment scheme in property.

Foreign country in which collective investment scheme in property may invest

199. A manager may, subject to this Act, invest assets of a portfolio of a collective investment scheme in property in -

(a) immovable property in a foreign country; and

(b) property shares or participatory interests in a collective investment scheme in property in a foreign country,

if such foreign country has a foreign currency sovereign rating by a securities rating agency as defined in section 78, which rating and rating agency must be acceptable pursuant to the standards, and if the country has been rated by more than one agency the lower of the ratings must apply.

Listing of participatory interests by exchange

200. (1) The manager of a collective investment scheme in property may apply to NAMFISA for permission for the participatory interests in a collective investment scheme in property to be dealt in on an exchange.

(2) Chapter 5 of the Companies Act applies to the repurchase of a participatory interest by a collective investment scheme in property and for the purposes of this section, "shares" as referred to in that Chapter must be regarded as including participatory interests in a collective investment scheme in property.

PART 6
COLLECTIVE INVESTMENT SCHEMES IN PARTICIPATION BONDS

Definitions for this Part

201. In this Part, unless the context indicates otherwise -

"collective investment scheme in participation bonds" means, subject to the provisions of this Part, a scheme of which the portfolio consists predominantly of -

(a) assets in the form of participation bonds pursuant to which members of the public are invited or permitted to acquire a participatory interest in all the participation bonds included in the scheme; or

(b) a participatory interest in a collective investment scheme of which the portfolio consists predominantly of assets referred to in paragraph (a);

"participation bond" means a mortgage bond over immovable property -

(a) which is described as a participation bond and is registered as such in the name of a nominee company and is included in a collective investment scheme in participation bonds; and

(b) which is a first mortgage bond or which ranks equally with another first participation bond and has the same mortgagor; and

"principal debt" means the cash amount in money actually received by or on behalf of the mortgagor in terms of the money-lending transaction secured by a participation bond.

Transitional provisions

202. (1) From the date of the commencement of this Part, a person carrying on or managing a scheme or arrangement permitting of participation in specified mortgage bonds who was exempted by NAMFISA under section 37(2)(a) of the Unit Trusts Control Act is deemed to be registered under this Chapter as a manager of a collective investment scheme in participation bonds and a nominee company approved by NAMFISA under that subsection is deemed to be approved under section 184(1).

(2) NAMFISA must issue a certificate of registration in a form provided by the standards to a person referred to in subsection (1).

(3) Within 90 days after the commencement of this Part, a person referred to in subsection (1) must exchange participations in a participation bond registered under the Participation Bonds Act, 1981 (Act No. 55 of 1981) for a participatory interest of equal value in a collective investment scheme in participation bonds under this Part.

Capacity of manager

203. (1) The manager of a collective investment scheme in participation bonds may in respect of any business conducted by such manager act as principal or as agent.

(2) When acting as a principal in respect of a credit transaction which is subject to the provisions of the Credit Agreements Act, 1980 (Act No. 75 of 1980) the manager is entitled to charge such charges as may be charged in terms of that Act in connection with such credit transaction.

Registration of participation bonds in name of nominee company

204. (1) Despite any law to the contrary, a participation bond clearly described as such must be registered in a deeds registry in the name of a nominee company as nominee for or representative of the investors.

(2) The names of the investors need not be listed in a participation bond.

Rights of investor

205. The debt secured by a participation bond, to the extent of the participatory interest granted to any investor, is a debt owing by the mortgagor to such investor and not to the nominee company, and the rights conferred by the registration of any such bond are deemed to be held by the investor despite the registration of the bond in the name of the nominee company.

Minimum investment period

206. An agreement pursuant to the terms of which a manager accepts money for investment in a collective investment scheme in participation bonds must ensure that such money is invested in such scheme for a period of not less than the period specified in the standards.

Participatory interests rank in preference concurrently

207. All participatory interests granted in any participation bond, whenever granted, rank in preference concurrently with one another as from the date of registration of the bond.

Restrictions on rights of nominee company

208. A nominee company may not transfer, cede or in any way encumber any of its own rights under a participation bond without the prior consent of NAMFISA.

Collateral security in respect of participation bonds

209. (1) Any collateral security, including a surety mortgage bond, collateral mortgage bond, notarial bond, suretyship, guarantee, cession, pledge or lien accepted by a manager in addition to a participation bond in order to secure -

(a) the debt secured by a participation bond;

(b) the due performance by a mortgagor of the obligations under a participation bond; or

(c) the due performance by a surety of the obligations under a contract of suretyship relating to such debt or to the obligations of the mortgagor,

must be registered in the name of the nominee company as nominee for or representative of the investors, and any contract relating to such security must be drawn and executed in favour of that nominee company.

(2) Despite any law to the contrary, a contract of suretyship relating to a debt secured by a participation bond and accepted by a manager pursuant to subsection (1), is enforceable by the nominee company in its own name against the surety on behalf of the investors.

(3) Sections 204(2), 205, 206 and 207 apply with the changes required by the context in respect of collateral security accepted by a manager for the purposes referred to in subsection (1), and a reference to a participation bond in those provisions must be construed to include a reference to a participation bond and collateral security, and a reference to a mortgagor must be construed to include a reference to a mortgagor and the grantor of collateral security.

PART 7
COLLECTIVE INVESTMENT SCHEMES IN UNLISTED SECURITIES

Definitions for this Part

210. In this Part, unless the context indicates otherwise -

"collective investment scheme in unlisted securities" means, subject to the provisions of this Part, a scheme of which the portfolio consists predominantly of -

(a) assets, in the form of unlisted investments in Namibia or which qualify as such under the regulations, pursuant to which members of the public are invited or permitted to acquire a participatory interest in all the unlisted investments included in the scheme; or

(b) a participatory interest in a collective investment scheme of which the portfolio consists predominantly of assets referred to in paragraph (a).

Minimum investment period

211. An agreement in terms of which a manager accepts money for investment in a collective investment scheme in unlisted securities must provide that such money is invested in such scheme for a period of not less than the period specified in the standards.

Listing by exchange

212. (1) At any time when no investor in a particular collective investment scheme in unlisted securities has money invested which is still subject to a minimum investment period pursuant to section 211, the manager of the collective investment scheme in unlisted securities may apply to NAMFISA for approval to allow the participatory interests in the scheme to be dealt with on a registered exchange.

(2) Chapter 5 of the Companies Act applies to the repurchase of a participatory interest by a collective investment scheme in unlisted securities, and for the purposes of this section, "shares" referred to in that Chapter must be regarded as including participatory interests in a collective investment scheme in listed securities.

PART 8
COLLECTIVE INVESTMENT SCHEMES IN MONEY MARKET INSTRUMENTS

Definitions for this Part

213. In this Part, unless the context indicates otherwise -

"collective investment scheme in money market instruments" means a scheme the portfolio of which consists mainly of money market instruments.

Determination of fair value

214. A money market instrument must be valued at its fair value, calculated in accordance with the standards.

Foreign money market instruments

215. A manager may, subject to this Act, invest assets of a portfolio of a collective investment scheme in money market instruments in foreign money market instruments if such foreign money market instruments are money market instruments -

(a) permitted for collective investment schemes in money market instruments by the standards; and

(b) to which the manager has applied the due diligence requirements for issuers provided for in the standards.

PART 9
DECLARED COLLECTIVE INVESTMENT SCHEMES

Definitions for this Part

216. In this Part, unless the context indicates otherwise -

"declared collective investment scheme" means a collective investment scheme which has been declared to be a collective investment scheme under section 217.

Declaration of specific type of business as collective investment scheme

217. (1) The Minister, after consultation with NAMFISA, may by notice in the *Gazette* declare a collective investment scheme or type of collective investment scheme carrying on a specific business or investment programme or type of business or investment programme to be a collective investment scheme to which this Chapter or any Part or provision of this Chapter applies.

(2) In a notice issued under subsection (1), the Minister may, without limitation on other matters specified in the notice -

(a) define the business activity or investment programme of a declared collective investment scheme; and

(b) specify the matters that must be included in the deed of a declared collective investment scheme.

(3) The Minister may under subsection (1) issue different notices for different types of declared collective investment schemes.

(4) NAMFISA may issue standards to give effect to a collective investment scheme declared under this section.

PART 10
FOREIGN COLLECTIVE INVESTMENT SCHEMES

Definitions for this Part

218. In this Part, unless the context indicates otherwise -

"foreign collective investment scheme" means a scheme, in whatever form, carried on in a country other than Namibia, in pursuance of which members of the public -

(a) are invited or permitted to invest money or other assets in one or more groups of assets, whether called a portfolio or by any other name, of such scheme;

(b) acquire an interest or undivided share, whether called a unit or by any other name, in such group of assets upon such investment; and

(c) participate proportionately in the income or profits and the risk derived from such investment.

Restrictions on foreign collective investment scheme

219. (1) NAMFISA may approve, subject to terms and conditions set out in the standards, an application by the manager or operator of a foreign collective investment scheme to solicit investments in such scheme from members of the public in Namibia if -

(a) the application is in the form required by, and the applicant complies with the requirements set out in, the standards;

(b) a copy of the approval or registration by the relevant foreign authority authorising the manager or operator and the foreign collective investment scheme to act as such is submitted with the application; and

(c) the application is accompanied by the required fee set out in the standards.

(2) A scheme approved under subsection (1) must, for the purposes of section 443, be regarded as a financial institution and the provisions of that section apply to such a scheme with any changes made necessary by the context.

(3) A person who solicits investments in a foreign collective investment scheme when he or she or it is not approved under subsection (1) or who does not comply with the terms and conditions of an approval pursuant to that subsection, commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Reciprocity

220. (1) If pursuant to any -

(a) law of a foreign country; or

(b) regulatory or supervisory action taken by any authority or body in a foreign country,

a manager connected with Namibia is suspended, disqualified or restricted from operating a collective investment scheme in that country although meeting the same requirements under which persons connected with that country are able to operate such a scheme, NAMFISA may, by notice served on a person connected with that country who is operating or intends to operate a collective investment scheme in Namibia, take such action as may be set out in the standards.

(2) For the purposes of subsection (1) a manager or person is connected with Namibia or a foreign country if -

(a) in the case of an individual, he or she is a national of, or resident in Namibia or in that country and operates a collective investment scheme from a principal place of business in Namibia or in that country;

(b) in the case of a corporate body, it is incorporated or has a principal place of business in Namibia or in that country or is controlled by a person or persons connected with Namibia or that country;

(c) in the case of a partnership, it has a principal place of business in Namibia or in that country or any partner is connected with Namibia or that country; or

(d) in the case of an unincorporated entity which is not a partnership, it is formed under the law of Namibia or of that country, has a principal place of business in Namibia or in that country or is controlled by a person connected with Namibia or with that country.

Withdrawal of approval

221. (1) NAMFISA may at any time withdraw an approval granted under section 219 if -

(a) it is in the interest of investors or potential investors;

(b) the manager or operator has submitted inaccurate or misleading information in its application; or

(c) any of the requirements set out in the standards or referred to in section 219(1) are no longer met.

(2) A person affected by a decision of NAMFISA under subsection (1) has the right to appeal against the decision to the Appeal Board.

(3) NAMFISA must give notice to the manager or operator of a foreign collective investment scheme of the intention of NAMFISA to take any action referred to in subsection (1), together with the reasons for taking the action, and must give the manager or operator of a foreign collective investment scheme a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the manager or operator may make representations to NAMFISA about the matter.

PART 11
CONVERSION OF COLLECTIVE INVESTMENT SCHEME

Definitions for this Part

222. (1) In this Part, unless the context indicates otherwise -

"collective investment scheme" includes one or more portfolios under such scheme and may, depending on the structure of the scheme, include a manager;

"conversion" means a conversion of a collective investment scheme to any other format of a collective investment scheme permissible under this Chapter;

"conversion scheme" means a scheme regulating a conversion and governing the reciprocal rights and obligations of the parties to the conversion; and

"qualifying interest", in relation to a collective investment scheme which is converted, means any participatory interest in such scheme which was issued before the conversion.

(2) A conversion scheme must -

(a) specify the basis, terms, conditions and cost of the conversion;

(b) provide for the issue of participatory interests in a collective investment scheme established by the conversion;

(c) provide for an offer, to persons who immediately before the conversion date were investors with a qualifying interest in the collective investment scheme and to members of the public, to take up participatory interests in the collective investment scheme established by the conversion, except that participatory interests may be offered to members of the public only to the extent to which they are not taken up by persons holding a qualifying interest in the collective investment scheme concerned immediately before the conversion date; and

(d) provide for payment of the value of the participatory interest of any investor who chooses not to take up a participatory interest in the collective investment scheme established by the conversion or who holds a qualifying interest of a lesser value than the value determined in the conversion scheme as the minimum for a qualifying interest.

Limitations on conversion of collective investment scheme

223. A manager may not convert a collective investment scheme unless -

(a) the prior approval of NAMFISA to the conversion has been obtained; and

(b) the conversion has been authorised by a resolution of the investors adopted in accordance with, and in the manner described by the standards.

Application for approval of NAMFISA

224. (1) A manager must apply to NAMFISA in the manner and form provided by the standards, for approval of a conversion before a resolution on the matter is passed by investors.

(2) An application referred to in subsection (1) must be accompanied by the documents required by the standards.

(3) A manager must furnish any additional particulars in connection with the conversion that NAMFISA may require.

Consideration of application

225. (1) NAMFISA may approve an application for a conversion made under section 224, if NAMFISA is satisfied that the application complies with the requirements of subsection (2).

(2) NAMFISA may not approve a conversion if -

(a) any of the documents referred to in section 224(2) are inconsistent with this Act or contain a provision which, in the opinion of NAMFISA, is undesirable;

(b) the basis or conditions on which a participatory interest in the proposed collective investment scheme is offered only to investors or to investors and members of the public referred to in section 222(2)(c) are not reasonable or fair or might have the effect that a participatory interest in the proposed scheme may be acquired contrary to this Act or any other law; or

(c) the application does not comply with a requirement of this Act or any other law.

(3) For the purposes of considering the basis or conditions on which a participatory interest in any proposed collective investment scheme is offered to investors or to investors and members of the public, NAMFISA may, after consultation with the manager, designate a person to investigate and advise NAMFISA on the reasonableness and fairness of the proposed basis and conditions.

(4) The costs of an investigation under subsection (3) must be borne by the manager.

(5) NAMFISA may not refuse an application made under section 224 without having afforded the manager a reasonable opportunity to amend the relevant documents in accordance with NAMFISA's requirements.

Resolution by investors

226. (1) As soon as NAMFISA has approved a conversion, the manager must obtain a resolution passed by investors authorising the conversion.

(2) If the investors pass a resolution authorising the conversion, NAMFISA must, at the request of the manager, issue a certificate to the manager confirming NAMFISA's approval of the conversion.

(3) For the purposes of subsection (1) it must be presumed that holders of a majority in value of participatory interest certificates in an original scheme or portfolio have given their consent to the proposed conversion, unless the holders of a majority in value of participatory interest certificates in such scheme or portfolio have notified the manager in writing on or before a date determined by NAMFISA that they refuse their consent to the proposed conversion and such refusal has been disclosed by the manager to all investors.

Registration of memorandum and articles by Registrar of Companies

227. (1) If a collective investment scheme that is not a company is to be converted into a collective investment scheme that is a company, that new company must be incorporated under the Companies Act with its memorandum and articles complying with that Act, and subject to the requirements of that Act and any requirement of NAMFISA, the conversion is deemed to have taken place upon the registration of the memorandum and articles under that Act.

(2) The Registrar of Companies may not register the memorandum and articles of a company pursuant to subsection (1) unless the application for registration is accompanied by a certificate issued under section 226(2).

(3) For the purposes of the registration of the memorandum and articles, the persons designated to act as the first directors of the company after the conversion must, if they accept their appointment as the first directors, sign the memorandum and articles as if they were the subscribers of such company under section 61(2) of the Companies Act.

Certificate of registration of conversion and notification

228. (1) Within 14 days after the conversion date, the manager must forward four certified copies of its deed to NAMFISA and NAMFISA must issue the manager with a certificate of registration as a manager of the converted collective investment scheme upon payment of the registration fee set out in the standards.

(2) NAMFISA must at the expense of the manager, give notice in the *Gazette* of any conversion and the conversion date under this Part.

Effects of conversion

229. (1) The business of a converted collective investment scheme which existed before the conversion continues thereafter but in the converted format and from and after the conversion date -

(a) a reference in any document to the former collective investment scheme must be construed, unless inconsistent with the context or otherwise clearly inappropriate, as a reference to the collective investment scheme in its converted format;

(b) if applicable, the persons who immediately before the conversion were directors of the manager must vacate their offices and the persons referred to in section 227(3) become the directors of the manager of the converted collective investment scheme;

(c) the investors holding a qualifying interest become investors in the converted collective investment scheme; and

(d) all participatory interests issued by the former collective investment scheme and which were not repurchased or cancelled before the conversion become participatory interests in the converted collective investment scheme.

(2) Except in so far as this section provides otherwise, a conversion does not derogate from the obligations of the collective investment scheme or the rights of any creditor of the collective investment scheme before the conversion.

Issue of participatory interests to former investors

230. (1) An offer to investors holding a qualifying interest to take up a participatory interest in a collective investment scheme established by a conversion under this Part must be made in writing to each individual investor, and such offer must be accompanied by a statement issued by the manager and must contain particulars in connection with -

(a) the offer, the conversion and the converted collective investment scheme's potential profit;

(b) the scheme's business prospects;

(c) the scheme's general state of affairs; and

(d) such other affairs of the scheme as NAMFISA may require.

(2) The provisions of the Companies Act with respect to the issue of a prospectus or an offer of shares do not apply to an offer referred to in subsection (1).

(3) On a request by an investor holding a qualifying interest made in writing to a manager, other than a manager of a collective investment scheme in property, to apply the proceeds of such interest for the payment of a participatory interest in a converted collective investment scheme -

(a) such qualifying interest may be redeemed immediately despite the conditions attached to it; and

(b) such proceeds may be applied for the payment of such participatory interest.

PART 12
GENERAL

Change of name of scheme or portfolio

231. (1) A manager may not, without the prior approval of NAMFISA, change the name of its collective investment scheme or a portfolio.

(2) The provisions of section 391 do apply to a change of name of a collective investment scheme or a portfolio by a manager with such changes as may be made necessary by the context.

(3) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Prohibition of misleading names and acts

232. (1) Subject to subsection (2) a person may not -

(a) use or include in or have, as part of the name of his or her business or any description of his or her business, any reference to a collective investment scheme, open-ended investment company, participatory interest, portfolio, unit, unit trust or mutual fund or any derivative that description, unless registered as a manager under this Chapter or approved as a manager or operator of a foreign collective investment scheme under section 219; and

(b) perform any act calculated to lead the public to believe that any business carried on by such person consists of or is connected with the operation or administration of a collective investment scheme, unless registered as a manager, trustee or custodian, an authorised representative or a designated representative under this Chapter or approved under section 219.

(2) NAMFISA may, on application by a person who is required to change his or her name by virtue of subsection (1), allow such person to effect such change on the conditions and within the period, not exceeding six months, determined by NAMFISA.

(3) If at the commencement of this Chapter any person was using, in connection with that person's business, any name or description referred to in subsection (1) and that person -

(a) subsequently changes that name;

(b) produces any deed or document, bearing the previous name which was registered in any deeds registry or in any other office where a register or record of the ownership of, or entitlement to, any property is kept, to the person charged with the registration of deeds in that registry or to the officer in charge of that other office; and

(c) satisfies that person or officer that the name was changed as a result of the prohibition contained in subsection (1),

that person or officer must, without any charge, substitute the new name for the previous name on such deed or document and in all the relevant registers.

(4) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Restrictions on sale or lending of assets

233. (1) A manager may not sell or offer for sale any participatory interest in a portfolio of a collective investment scheme unless at the time of such offer the portfolio includes assets in the manner, within the limits and on the conditions set out in the standards.

(2) A manager may, subject to section 237, lend or offer to lend assets included in a portfolio in the manner, within the limits and on the conditions determined in the standards and the deed.

(3) Different manners, limits and conditions for different assets or portfolios may be determined or provided for in any standards issued under subsection (1) or (2).

(4) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Other business of manager

234. (1) A manager may conduct business other than the operation of a collective investment scheme subject to the prior approval of NAMFISA.

(2) NAMFISA may on such conditions as NAMFISA may determine approve the application of a manager to conduct other business, if the investors in the collective investment scheme operated by the manager are not likely to be prejudiced.

(3) Any person who carries on business without approval contrary to subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Exercise of voting power by manager

235. A manager or its nominee exercising the voting power conferred on it by the assets held in a portfolio must, in accordance with the requirements of the standards, exercise such power in the best interest of the investors.

Unauthorised gain

236. (1) A person who controls a manager or a director, officer or employee of a manager may not, directly or indirectly, have a personal interest in or derive any pecuniary advantage from the acquisition or sale by that manager or director, officer or employee of a manager of any assets of a portfolio except if such advantage accrues in the ordinary course of business by virtue of -

(a) any difference between the price at which a participatory interest is acquired and the price at which it is subsequently sold; or

(b) any underwriting of participatory interests undertaken by the manager, or a director, officer or employee of that manager.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Permissible deductions

237. The amounts which may be deducted from a portfolio must be as set out in the standards.

Calculation of price

238. (1) Subject to subsection (2), a manager may not sell any participatory interest at a price which exceeds or is less than the net asset value, within the meaning of the standards, of that participatory interest.

(2) Where participatory interests in a new portfolio are offered to the public for the first time, the manager may make an initial offer -

(a) on a specified date;

(b) for a specified period; and

(c) of a specific number of participatory interests at a fixed price based on the price of the participatory interests on a previous date not more than 28 days prior to the closing date of the offer.

(3) In making payment to the investors in a portfolio of a distribution of income accruals on the participatory interests belonging to them, a manager must round off to the nearest fourth decimal, any amount so paid in respect of such number of participatory interests as represents the minimum number which, in terms of the portfolio's deed, must be purchased at any one time, but any amount which, by virtue of such rounding-off, is left in the portfolio must be carried forward to the credit of investors in the next ensuing distribution.

(4) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Payment of full purchase price

239. (1) A manager may not -

(a) sell or offer for sale any participatory interest except on terms requiring payment of the full selling price to be made upon the acceptance of an investor's or prospective investor's offer for the purchase of the participatory interest by the manager, an authorised representative or designated representative; or

(b) lend or otherwise advance any money to the investor or prospective investor with respect to the selling price.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Power of manager to borrow

240. (1) A manager, other than a manager of a collective investment scheme in securities, may for the account of a portfolio borrow money for the purposes and subject to the limits and conditions determined in the deed.

(2) The manager of a collective investment scheme in securities may, in the case where insufficient liquidity exists in a portfolio or where assets cannot be realised to repurchase or cancel participatory interests, borrow the necessary funds for such repurchase or cancellation on security of the assets and for the account of the portfolio in question from a banking institution, prudential and financial markets institution or financial institution at the best commercial terms available and until assets can be realised to repay such a loan.

(3) The maximum amount that may be borrowed under subsection (2) must not exceed 10 per cent of the market value of the portfolio at the time of borrowing.

(4) Any person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Matters to be provided in deed

241. (1) Every deed must set out the requirements for the operation and administration of a portfolio and must contain provisions to regulate the matters detailed in the standards.

(2) NAMFISA may by notice in the *Gazette* exempt a particular type or category of collective investment scheme from the provisions of subsection (1) and determine the matters to be complied with or to be provided for in a deed governing such type or category of collective investment scheme.

(3) NAMFISA may by notice in the *Gazette* suspend a provision of any deed and may determine matters in respect of which any deed must be amended.

Void provisions and amendment

242. (1) A provision in a deed which is inconsistent with this Act is void.

(2) The parties to a deed may by supplemental deed amend the deed, but such amendment of a deed is not valid unless the consent of a majority in value of investors has been obtained in the manner determined in the deed.

(3) If NAMFISA is satisfied that any amendment referred to in subsection (2) -

(a) is required only to enable the provisions of this Chapter or of the deed to be given effect more conveniently or economically;

(b) will benefit the investors;

(c) will not prejudice the interests of investors;

(d) does not amend the fundamental provisions or objects of the deed; and

(e) does not release the trustee, custodian or the manager from any responsibility to the investors,

NAMFISA may direct that such consent be dispensed with.

(4) Subject to subsection (3), the parties to a deed which immediately prior to the date of commencement of this Chapter was a deed pursuant to any law repealed by this Act, must within 12 months from the date of commencement of this Chapter amend, supplement or replace the deed in order to comply fully with the requirements of this Chapter.

Postponement of realisation of assets on winding-up

243. (1) If it appears to NAMFISA that it would be in the interests of investors to continue a collective investment scheme for a period of time, NAMFISA may, with the approval of the court which has issued an order for the winding-up of the collective investment scheme under Part 7 of Chapter 10, issue a directive to the manager and trustee or custodian of the collective investment scheme or to the manager or operator of a foreign collective investment scheme referred to in section 219 -

(a) to postpone the realisation of any assets for one or more periods, each period not to exceed five years, as NAMFISA may determine; and

(b) pending such realisation, to carry on the scheme in accordance with the directives of NAMFISA and to collect and deal with all income accruals, bonuses and other distributions in accordance with the provisions of Part 7 of Chapter 10.

(2) A manager, trustee or custodian or a manager or operator referred to in section 219 acting in accordance with a directive of NAMFISA under subsection (1) may, on six month's written notice to NAMFISA, terminate the appointment of the manager, trustee or custodian or of the manager or operator under section 219 and NAMFISA must thereupon appoint some other fit and proper person within the meaning of the standards to take over the functions of such person, subject to any conditions that NAMFISA may stipulate.

(3) As remuneration for any services rendered under this section, a manager, trustee or custodian, a manager or operator referred to in section 219 or a person appointed by NAMFISA to take over the functions of such person pursuant to subsection (2), is entitled to a fee, calculated at such rate as NAMFISA may determine, on all moneys received in carrying out duties under this section, and NAMFISA may authorise the amount of such fee to be deducted, in such proportions as NAMFISA may determine, from income accruals or any moneys realised by the sale of assets pursuant to a winding-up order issued under Part 7 of Chapter 10.

Separation of assets

244. For the purposes of a claim against a manager, trustee or custodian by a person who has the legal right to make that claim, there must be excluded from the assets of the manager, trustee or custodian -

(a) any money or other assets handed to that manager, trustee or custodian or to an authorised representative of that manager or to a designated representative of that authorised representative by an investor for the sale or repurchase of a participatory interest; and

(b) the assets of a portfolio.

Segregation of funds

245. (1) A manager must -

(a) open and maintain at a banking institution a separate operational trust account controlled by the trustee or custodian for each or for all the portfolios administered under the collective investment scheme; and

(b) on the date of receipt of any payment, whether in cash or by draft or other instrument of payment from or on behalf of an investor or on the first business day thereafter, deposit in such account either the cash, draft or other instrument of payment or deposit for same day value in such account funds equal to the amount of such payment.

(2) Funds deposited into an operational trust account referred to in subsection (1) may only be withdrawn for the purposes of making payment -

(a) to the investor, person or manager entitled to such payment; or

(b) pursuant to this Act, any other law and the deed,

except that if subsequent to such withdrawal any deposited draft or other instrument of payment against which such withdrawal was made is not honoured, the manager must immediately pay the shortfall arising from such default into the operational trust account or cancel any participatory interest issued in respect of such defaulting payment.

(3) Any excess remaining in the operational trust account after payment of or provision for all claims of investors whose funds have or should have been deposited in such account is not trust property as determined in section 193.

(4) The court may on application by NAMFISA or by any other person having a financial interest in or claim against an operational trust account, on good cause shown, prohibit the manager from operating the account in any way and may appoint a person to control and administer such account with such duties and powers in relation to the account as the court may consider fit.

Identity and source to be disclosed

246. (1) A person may not publish or issue to the public or circulate any written comment which may influence the value of any participatory interest unless such comment is accompanied by -

(a) the name of the person who compiled the comment or the name of the person on the editorial staff of a newspaper or periodical whom the editor regards as having compiled the comment; and

(b) disclosure of the source from which the comment was obtained or the information on which it was based.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Application of Companies Act to manager

247. (1) Except where this Chapter expressly provides otherwise, the application of the Companies Act to a manager is not affected by this Chapter.

(2) Despite subsection (1), no provision of the Companies Act precludes the establishment and operation of an open-ended investment company under this Chapter.

Exemption from Act No. 34 of 1934

248. The Trust Moneys Protection Act does not apply to a collective investment scheme operated and administered under this Act.

CHAPTER 5
RETIREMENT FUNDS

PART 1
PRELIMINARY

Definitions for this Chapter

249. (1) In this Chapter, unless the context indicates otherwise -

"active member", in relation to a fund, means a member who at any relevant time is accruing benefits in the fund as a result of continuing employment or service;

"beneficiary fund" means any association of persons or any business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying, on behalf of beneficiaries, benefits as contemplated in, or in accordance with, section 276(2)(c) or payable on the death of one or more member or members of one or more funds;

"board" means the board of trustees of a fund or, where applicable, the trustees of a fund;

"defined benefit fund" means a retirement fund in which each member receives a benefit that is determined in accordance with a pre-determined formula that incorporates the member's salary as provided in the rules of the fund, pensionable service and a defined accrual rate on the date of the retirement, death, disability, withdrawal or termination of employment of that member;

"defined contribution fund" means a retirement fund in which -

(a) each member receives a benefit the amount of which is determined by the balance in that member's individual account on the date of the

retirement, death, disability, withdrawal or termination of employment of that member;

(b) any benefit payable on retirement must be fully secured through an annuity policy owned by the fund or purchased in the name of the member or paid to the member in accordance with such other form of payment that is permitted under the standards;

(c) no reserves for guarantees in respect of capital, investment income or rates of return, longevity or other contingency affecting the amount or duration of benefits or of annuity purchase rates or adequacy of expense charges or amounts held in such respect are required to be held by the fund; and

(d) only an expense reserve required by the terms of the fund is held or is required to be held as stipulated in the standards or by generally acceptable actuarial practice;

"dependant", in relation to a member, means -

(a) a person in respect of whom the member is legally liable for maintenance;

(b) a person in respect of whom the member is not legally liable for maintenance, if that person -

(i) was, in the opinion of the board, at the death of the member in fact dependent on the member for maintenance;

(ii) is the spouse of the member; or

(iii) is a child, who has not attained the age of of 18 years, of the member, including a posthumous child, an adopted child and a child born out of marriage; and

(c) a person for whom the member would have become legally liable to maintain had the member not died;

"employer", in relation to a fund, means an employer who is either -

(a) contributing to the fund; or

(b) participating in the fund;

"fair value", in relation to an asset of a fund, means the fair value of that asset determined in accordance with generally accepted accounting practice;

"fund" means a retirement fund or a beneficiary fund, and includes any other fund or class of funds as may be prescribed;

"fund administrator" means a fund administrator as defined in section 363 and appointed pursuant to section 265(3);

"Maintenance Act" means the Maintenance Act, 2003 (Act No. 9 of 2003);

"member", in relation to a fund, means an individual with a right to future benefits payable from the fund, and includes an active member and a retired member;

"member's individual account" means the account operated for the member as defined in the rules of the fund, where the account is -

(a) credited with -

(i) fixed-rate contributions paid, or amounts transferred, into the fund by or on behalf of the member and where the fixed-rate contributions are defined in the rules;

(ii) amounts allocated by the board for the benefit of the member;

(iii) additional contributions paid voluntarily by the member or the employer on the member's behalf; and

(iv) investment income and capital gains, as determined by the board; and

(b) debited with expenses and capital losses, as determined by the board;

"nominee", in relation to a member, means a person whom the member has designated to the fund, by means of a beneficiary nomination form, to receive all or a portion of any benefit payable by that fund on the death of that member as specified on the beneficiary nomination form;

"prescribed fund" means a fund as may be prescribed;

"retired member", in relation to a retirement fund, means a member who at any relevant time is in receipt of retirement benefits from the fund;

"retirement" means the period commencing on the member's retirement date;

"retirement benefits" means benefits payable to individuals on or after their retirement or on their disability, death or termination of employment prior to retirement or on separation from a retirement fund or to their survivors, dependants or nominees;

"retirement date" means the date on which a member becomes entitled to retirement benefits pursuant to the rules of a fund;

"retirement fund" means an association of persons established with the objects of receiving, holding and investing contributions of individuals and their employers for the purpose of providing retirement benefits in accordance with the rules of the fund adopted for such purposes and includes such other funds as the Minister may prescribe;

"rules" means the rules of a fund referred to in section 271; and

"sponsor" means the person who established a fund or who proposes to establish a fund.

Prohibitions

250. (1) A person may not carry on the business of a fund in Namibia unless the fund is registered pursuant to section 254 or deemed to be registered under section 255 or, in the case of a beneficiary fund, where section 256 applies.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Restriction on use of designation "retirement fund" or "beneficiary fund"

251. (1) A person may not, in connection with a business, use a name which includes the words "retirement fund", "beneficiary fund" or any other name which is intended to indicate or is likely to lead other persons to believe that the person carries on the business of a retirement fund or beneficiary fund, unless that business is registered or is deemed to be registered as a retirement fund or beneficiary fund under this Chapter or, in the case of a beneficiary fund, where section 256 applies.

(2) If at the commencement of this Chapter any person was using, in connection with that person's business, any name or description referred to in subsection (1) and that person -

(a) subsequently changes that name;

(b) produces any deed or document, bearing the previous name which was registered in any deeds registry or in any other office where a register or record of the ownership of, or entitlement to, any property is kept, to the person charged with the registration of deeds in that registry or to the officer in charge of that other office; and

(c) satisfies the person so charged or officer that the name was changed as a result of the prohibition contained in subsection (1),

that person so charged or officer must, without any charge, substitute the new name for the previous name on such deed or document and in all the relevant registers.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 2
REGISTRATION

Application for registration

252. (1) An application for registration as a fund must be made to NAMFISA in accordance with subsection (2).

(2) An application for registration as a fund must be -

(a) made in the manner and form required by the standards;

(b) include the information with respect to the principal office and principal officer required by the standards;

(c) accompanied by the proposed rules of the fund;

(d) accompanied by the documents and other information required by the standards;

(e) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(f) made subject to and in accordance with any other applicable provision of this Act; and

(g) accompanied by the required fee.

Registration requirements

253. (1) Before approving the application and registering the fund, NAMFISA must be satisfied on reasonable grounds that the requirements of subsection (2) have been met and that -

(a) the board complies with the requirements of section 261 or 262;

(b) the rules of the fund are not inconsistent with this Act and are based on sound financial principles; and

(c) the fund does not and will not unfairly discriminate directly or indirectly against any person.

(2) Before approving an application referred to in subsection (1) and registering a fund NAMFISA must be satisfied that -

(a) in relation to the proposed fund -

(i) every member of the board of trustees, the principal officer and other officers of the proposed fund are fit and proper within the meaning of the standards;

(ii) the rules or act, charter, deed of settlement, memorandum of association or other founding documents of the proposed fund are not inconsistent with the provisions of this Act;

(iii) the direct or indirect control of the proposed fund is not likely to be contrary to the interest of consumers of the financial services concerned; and

(iv) the proposed fund will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;

(b) doing so is not contrary to -

(i) this Act; or

(ii) the public interest;

(c) the proposed fund has the attributes reasonably necessary and adequate to -

(i) provide the financial services in question with professional integrity, prudence, proper skill and due diligence;

(ii) maintain a sound financial position and not cause or further instability in the financial system of Namibia; and

(iii) comply with this Act;

(d) the name under which the proposed fund proposes to conduct business, or a translation, shortened form or derivative of that name is not in contravention of section 391;

(e) the applicant has submitted all other information which, in the opinion of NAMFISA, is necessary to assess the application and such information has been found satisfactory by NAMFISA; and

(f) the applicant has complied and will continue to comply with any other requirements contained in this Act or in the standards which apply to the proposed fund.

Registration

254. (1) If NAMFISA is satisfied that the proposed fund complies with the requirements of section 253, NAMFISA must register the fund, subject to any conditions which NAMFISA may consider appropriate pursuant to subsection (4), and must issue a certificate of registration pursuant to subsection (3).

(2) The registration referred to in subsection (1) must specify -

(a) the principal office of the applicant in Namibia; and

(b) the places in Namibia from which the applicant may operate.

(3) Upon registration of an applicant NAMFISA must issue to the applicant a certificate of registration in a form provided by the standards.

(4) NAMFISA may impose such conditions on the registration of the applicant as it considers necessary having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant and any guidelines issued by NAMFISA under this Act.

(5) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(6) A fund must comply with the conditions subject to which it was registered.

Existing pension funds

255. (1) A pension fund that was registered under the Pension Funds Act, 1956 (No. 24 of 1956) is deemed to be a retirement fund registered under this Act.

(2) Despite subsection (1), a pension fund referred to in that subsection must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to section 252 for registration as a retirement fund.

(3) If a pension fund referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (2), NAMFISA may take action that NAMFISA considers appropriate against the pension fund pursuant to section 259, 412 or 439.

Existing beneficiary funds

256. (1) An association or business that is operating as a beneficiary fund on the date of commencement of this Chapter may continue to transact business for a period of 12 months from that date, but before the end of that period, it must make an application for registration as a beneficiary fund pursuant to section 252.

(2) If a beneficiary fund fails to make an application to NAMFISA for registration before the end of the period referred to in subsection (1), then that association or business must cease operating as a beneficiary fund.

(3) A person who continues to carry on or operate the business of a beneficiary fund in contravention of subsection (2) or fails to comply with that subsection commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Effect of registration

257. (1) On registration of a fund under section 254, in so far as is applicable -

(a) it has the powers of a juristic person to the extent that it is capable of suing and being sued under the name by which it is registered and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions pursuant to its rules;

(b) despite anything to the contrary contained in any law or the act, charter, deed of settlement, memorandum of association, rules or other founding documents or the articles or rules of the fund or of any corporate body or unincorporated entity that controls the business of that fund -

(i) all the assets, rights, liabilities and obligations pertaining to the business of the fund will be assets, rights, liabilities and obligations of that registered fund to the exclusion of any other person; and

(ii) no person will have any claim on the assets or rights or be responsible for any liabilities or obligations of the fund, except

in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of that fund; and

(c) any assets, rights, liabilities and obligations, which are held by any person in trust for the fund as it existed immediately prior to its registration will vest in and devolve upon the registered fund without any formal transfer or cession.

(2) The person in charge of the deeds registry or any other officer in charge of any other office where a register or record of the ownership of, or entitlement to, any property is kept in which is registered a deed or other document relating to an asset or right which under subsection (1) vests in or devolves upon a fund, must, on production by the fund of its certificate of registration and of the deed or other document, without payment of transfer duty, stamp duty, registration fees or other charges, make the endorsements upon that deed or other document and the alterations in the registers in order to reflect that vesting or devolution.

Application for cancellation or variation of registration

258. (1) A registered fund may at any time make an application to NAMFISA for cancellation of the registration granted pursuant to this Act or a variation of the conditions subject to which that registration was granted.

(2) An application made under subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) accompanied by the documents and other information required by the standards;

(c) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case; and

(d) accompanied by the required fee.

(3) Before making an application for the cancellation of a registration or a variation of its conditions, the applicant must give prior notice of the proposed application in two newspapers circulating nationally in Namibia, at the expense of the applicant, stating -

(a) the name of the applicant;

(b) either -

(i) the reasons for the proposed cancellation; or

(ii) the nature of the proposed variation; and

(c) the period within which objections to the application may be lodged with NAMFISA.

(4) Section 254 applies with the changes required by the context to an application for a variation of conditions referred to in subsection (1).

(5) If after consideration of any objection received as a result of the notice referred to in subsection (3), NAMFISA is of the opinion that it is reasonable to do so and not against the public interest, NAMFISA may, by notice to the registered fund concerned -

(a) cancel the registration; or

(b) vary the conditions of registration, including the imposition of additional conditions.

(6) NAMFISA must make public any cancellation of registration or variation of conditions of registration under subsection (5) and the reasons for the cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

Cancellation or variation of registration

259. (1) NAMFISA may take any of the actions set out in subsection (2), in the event that NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to a registered fund:

(a) it has made a material misrepresentation or failed to provide information that was materially relevant in its application for registration;

(b) it has failed to comply with this Act;

(c) it no longer meets the requirements for registration;

(d) it has provided financial services without professional integrity, prudence, proper skill and due diligence;

(e) it is in an unsound financial position;

(f) it has failed to comply with a directive, request or requirement of NAMFISA issued under this Act;

(g) it has failed to give effect to a decision of the Appeal Board;

(h) it has ceased to operate or has failed to commence operating within a reasonable time after being registered;

(i) it is involved in a financial crime; or

(j) a member of the board of trustees, the principal officer or other officer of the registered fund no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take any of the following actions with respect to the registered fund:

(a) cancel its registration;

(b) vary the conditions of its registration, including the imposition of additional conditions; or

(c) take any other steps that NAMFISA may consider necessary or advisable.

(3) NAMFISA must give notice to the registered fund of the intention of NAMFISA to take any action referred to in subsection (2), together with the reasons for taking the action, and must give the registered fund a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the registered fund may in writing make representations to NAMFISA on the matter.

(4) Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of a registered fund.

(5) On the cancellation of the registration of a fund under section 258(5)(a), subsection (2)(a) or any other applicable provision of this Act -

(a) the fund must, be dissolved in accordance with the requirements of section 278 or wound-up in accordance with the requirements of section 279, as applicable, and the rules of the fund; and

(b) NAMFISA must take such steps and may impose such conditions as are necessary in the circumstances, which steps may include the transfer of the business of the fund to another fund, as appropriate, but no distribution of the assets of the fund may be made without the prior approval of NAMFISA.

(6) NAMFISA must make public any suspension or cancellation of registration, variation of conditions of registration or any other steps taken under this section and the reasons for the suspension, cancellation, variation or steps, by notice in the *Gazette* or by means of any other appropriate public statement.

(7) A person who -

(a) continues to operate, or carry on, the business of a fund after the cancellation of registration under section 258(5)(a), subsection (2)(a) or any other applicable provision of this Act or after suspension of registration under subsection (4); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (4),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 3
ADMINISTRATION AND POWERS

Principal office and principal officer

260. (1) Every registered fund must -

(a) have a principal office in Namibia where it must hold and maintain the documents referred to in the standards; and

(b) appoint to be its principal officer in Namibia, a fit and proper person within the meaning of the standards who -

(i) is a Namibian citizen or permanent resident;

(ii) is resident in Namibia; and

(iii) must be an *ex officio* member of the board of the fund, but the principal officer may not serve as chairperson of the board.

(2) Despite subsection (1)(b)(i), NAMFISA may, in exceptional circumstances, grant permission that a principal officer referred to in that subsection may, subject to the Immigration Control Act, 1993 (Act No. 7 of 1993), for such period as may be determined by NAMFISA, be a person other than a Namibian citizen or permanent resident.

(3) After the appointment of a principal officer pursuant to subsection (1)(b), the registered fund must, within the period set out in the standards, in writing notify NAMFISA of the appointment.

(4) NAMFISA may, on the grounds that a principal officer is not a fit and proper person within the meaning of the standards, and after giving the registered fund and the principal officer a reasonable opportunity to be heard, direct the registered fund to appoint some other person to be the principal officer of that registered fund.

(5) Whenever a principal officer resigns or the appointment of a principal officer is terminated by a registered fund or by the expiry of a contract of employment, the registered fund must, within the period set out in the standards, in writing notify NAMFISA and submit to NAMFISA a written statement of the reasons for the termination or, in the opinion of the registered fund, the reasons for the resignation.

(6) The principal officer of a registered fund is authorised to act on behalf of the fund to ensure compliance with this Act, and in any case where a person, including NAMFISA, communicates with that fund, that person may do so by addressing the communication to the principal officer.

(7) Process in any legal proceedings may be served on a registered fund by serving a copy of the process at its principal office.

(8) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Board of fund

261. (1) A registered fund must have a board consisting of persons who are fit and proper within the meaning of the standards.

(2) Despite any rule to the contrary in the rules of the fund but subject to section 262, the board of a registered fund must consist of a minimum of four members.

(3) The active and the retired members of the registered fund have the right to elect, whether directly or indirectly, at least half of the number of board members of the registered fund.

(4) Subsections (1), (2) and (3) come into force on the date which is 90 days after the date of commencement of this Chapter.

(5) A person may not be a member of the board of trustees of a registered fund if that person is -

(a) a director or an officer or employee of the fund administrator of the registered fund or of the holding company, subsidiary, joint venture or associate of the fund administrator;

(b) a consultant to, or contractor under, an agreement with the fund administrator; or

(c) a financial institution or financial intermediary that renders financial services to the registered fund or its board of trustees.

(6) Subject to subsections (1), (2) and (3), the rules of a fund must -

(a) set out the constitution of the board, the election and appointment procedure for its members, the terms of office of the members, the procedures at meetings, the voting rights of members, the quorum for a meeting and the breaking of deadlocks;

(b) provide a code of conduct for the members of the board;

(c) require that the board meets at least four times a year; and

(d) provide that all meetings of the board are held in Namibia.

(7) The rules of a registered fund must be amended in accordance with section 272 to comply with subsections (1), (2), (3), (5) and (6) within 90 days after the date of coming into force referred to in subsection (4).

(8) Where a board consists of four members or pursuant to section 262 less than four members, all the members of the board constitute a quorum for a meeting of that board.

(9) If a board member is removed from office for reasons other than the expiration of that member's term of appointment or voluntary resignation -

(a) that board member must within 21 days of the removal submit a written statement to NAMFISA of the reasons, in the opinion of the board member, for the termination and must in addition comply with subsection (10);

(b) the board must within 21 days of the removal submit a written statement to NAMFISA of the reasons, in the opinion of the board, for the termination.

(10) A board member must at any time inform NAMFISA in writing on becoming aware of any material matter relating to the affairs of the fund which, in the opinion of the board member, may seriously prejudice the financial viability of the fund or the benefits or rights of its members.

(11) A person who contravenes or fails to comply with subsection (10) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Exemptions

262. (1) NAMFISA may on written application by the board of a registered fund and subject to such conditions as may be determined by NAMFISA -

(a) authorise a fund to have a board consisting of less than four members if that number is impractical or unreasonably expensive, provided that the active and retired members of the fund have the right to elect at least 50 percent of the board members; or

(b) exempt a fund that is a prescribed fund or a beneficiary fund from the requirement that the active and retired members of the fund have the right to elect members of the board.

(2) NAMFISA may withdraw an exemption granted under subsection (1) if a fund no longer qualifies for such exemption or if NAMFISA regards such exemption no longer to be in the public interest.

Replacement of member of board

263. (1) On the termination of office for any reason of a member of the board of a registered fund a person to replace such member must, subject to section 261(1) and (2), be elected or appointed in the manner set out in the rules of the fund and the board must notify NAMFISA forthwith of the termination and replacement.

(2) A person who is elected or appointed as a member of the board of the fund pursuant to subsection (1) or (3) must be a fit and proper person within the meaning of the standards and such election or appointment must comply with the provisions of section 261 or 262.

(3) NAMFISA may at any time, on the grounds that any member of the board of a registered fund is not a fit and proper person within the meaning of this Act, the regulations and the standards and after giving the board and the member of the board in question a reasonable opportunity to be heard, direct -

(a) that such member of the board be removed from office; and

(b) in case the remaining number of members is less than the number required by section 261 or 262 or by the rules of the fund, that some other person who complies with the provisions of subsection (2) be elected or appointed to the board of the fund.

Objects of board

264. (1) The objects of the board of a registered fund are to direct, control and oversee the operations of the fund in accordance with this Act and the rules of the fund.

(2) In pursuing its objects the board must -

(a) take all reasonable steps to ensure that the interests of members under the rules of the fund are protected and that the fund complies with the provisions of this Act and the rules;

(b) act with due care, diligence, prudence and good faith;

(c) avoid conflicts of interest wherever possible and, if not possible, manage the conflicts;

(d) disclose any conflict of interest of a member of the board; and

(e) act with impartiality in respect of all members and beneficiaries.

(3) The members of the board of trustees must, within 30 days of the end of each financial year, disclose in writing to NAMFISA any payments or other considerations made, whether directly or indirectly, to them in that particular year by the fund or by a contractor with the fund.

(4) A member of the board of trustees who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Duties of board

265. (1) In addition to the duties of a board of a registered fund set out in the rules of the fund and in section 395, the board of a registered fund must -

(a) ensure that proper registers, books and records of the operations of the fund are kept, including proper minutes of all resolutions passed by the board;

(b) ensure that membership records, contributions and benefit payments are administered in accordance with the rules;

(c) ensure that the assets of the fund are invested in accordance with the investment policy established by the board which is appropriate to the nature and financial circumstances of the fund, and which the board implements and regularly reviews after taking expert advice;

(d) ensure that the risks of the fund are appropriately managed, including ensuring that proper control systems and functional separation of duties are employed by or on behalf of the fund;

(e) ensure that adequate and appropriate information is communicated to members of the fund, employers and sponsors pursuant to a

communication strategy consistent with the standards issued by NAMFISA;

(f) take all necessary steps to ensure that contributions are paid in a timely manner to the fund in accordance with this Chapter;

(g) obtain expert advice on matters where board members lack sufficient expertise;

(h) ensure that the rules and the operation and administration of the fund comply with this Act and other applicable laws;

(i) ensure that the board meets at least four times each year;

(j) continuously monitor the compliance of the members of the board with the requirement that they be fit and proper within the meaning of the standards as required by sections 261 and 263;

(k) prepare an annual report, which must be submitted to NAMFISA, that summarises -

(i) the financial position of the fund;

(ii) the investment policy of the fund;

(iii) the activities of the board during the year; and

(iv) any other matters required by the standards; and

(l) comply with such other duties as NAMFISA may require in the standards.

(2) If, despite the steps taken by the board of a registered fund pursuant to subsection (1)(f), contributions to the fund remain outstanding for such period as is specified by NAMFISA in the standards the board must, within the period specified in the standards, notify all active and retired members of the fund and NAMFISA of this fact.

(3) The board of a fund may, in accordance with a system of delegation set out in the rules of the fund, which system must maximise administrative and operational efficiency and provide adequate checks and balances, appoint a fund administrator to exercise any of its powers of administration or to perform any of its administrative duties or functions as long as -

(a) the fund administrator is registered by NAMFISA as a fund administrator pursuant to section 368;

(b) the board has determined, after taking expert advice, that the fund administrator has qualifications and experience relevant to the administration of the fund in question; and

(c) the board has entered into a contract with the fund administrator that complies with the rules of the fund and the policies of the board.

(4) The board is not divested or relieved of any power or duty or function delegated or assigned under subsection (3) and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.

(5) As soon as possible after a contract referred to in subsection (3)(c) has been entered into the board must file a copy of the contract with NAMFISA.

(6) A fund administrator that enters into a contract with the board of a fund pursuant to subsection (3)(c) has a fiduciary duty and responsibility to the fund and must exercise the powers delegated or perform the duty or function assigned to it with the standard expected of an expert.

(7) Where a board delegates a power or assigns a duty or function pursuant to this section, the board must monitor the performance of the fund administrator with respect to the standards described in the contract and take remedial action if that performance fails to achieve those standards.

(8) Administration in respect of a fund means the rendering of any form of administration service, as defined in section 363, to the fund.

(9) A fund administrator must, in relation to a fund, perform the functions and duties entrusted to the fund administrator by section 374.

Appointment of auditor

266. (1) Except where the accounts of a fund are to be audited by the Auditor-General pursuant to another law of Namibia, the board of a registered fund must, in accordance with section 401 and in the manner set out in the rules of the fund, appoint and at all times have an auditor or firm of auditors to be the auditor of the fund.

(2) The board of a fund may not appoint as the auditor of the fund -

(a) an auditor who is; or

(b) a firm of auditors, any member of which is,

an employee or officer of the fund or of an administrator of the fund, a member of the board of the fund or of a fund administrator of the fund or an employee, or officer of the board, of a participating employer or an employee, or officer of the board, of the sponsor of the fund.

(3) NAMFISA may direct the board of a fund to change the auditor of the fund if NAMFISA is satisfied that the auditor or any member of the firm of auditors appointed as auditor is an employee or officer of the fund or of a fund administrator of the fund, a member of the board of the fund or of a fund administrator of the fund or an employee, or officer of the board, of a participating employer or an employee, or officer of the board, of the sponsor of the fund.

(4) An auditor appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

an auditor by section 401.

Appointment of valuator

267. (1) The board of a registered fund must, in accordance with section 402 and in the manner set out in the rules of the fund, appoint and at all times have a valuator.

(2) Each board of a fund referred to in section 255 or 256 must, if the fund concerned does not have a valuator on the date of commencement of this Part, appoint a valuator within 90 days of that date.

(3) The board of a fund may not appoint as the valuator of the fund an employee or officer of the fund or of a fund administrator of the fund, a member of the board of the fund or of a fund administrator of the fund, an employee, or officer of the board, of a participating employer or an employee, or officer of the board, of the sponsor of the fund.

(4) NAMFISA may direct the board of a fund to change the valuator of the fund if NAMFISA is satisfied that the person appointed as valuator is an employee or officer of the fund or of a fund administrator of the fund, a member of the board of the fund or of a fund administrator of the fund or an employee, officer of the board, of a participating employer or an employee, or officer of the board, of the sponsor of the fund.

(5) A valuator appointed under subsection (1) or (2) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

a valuator by section 402.

Investigations by valuator

268. (1) The board of a registered fund must in accordance with the provisions of the standards -

(a) at least once in every three years, cause the financial position of the fund to be investigated by the valuator of the fund and a valuation report thereon to be prepared by the valuator as at the end of the third financial year; and

(b) in the case of a defined benefit fund, once every year, cause the financial position of the fund to be investigated by the valuator of the fund, and a valuation report thereon to be prepared by the valuator as at the end of each financial year.

(2) Despite subsection (1), if NAMFISA has reason to believe that an investigation would show that the fund is not in a sound financial position NAMFISA

may, after not less than 30 days' notice in writing to the board of a fund, require the board to cause the financial position of the fund to be investigated by the valuator of the fund as at the end of any financial year as specified by NAMFISA and a valuation and report thereon to be prepared by the valuator.

(3) The report of the valuator referred to in subsection (1) or (2) must include any particulars set out in the standards.

(4) The board of a fund must, within 180 days from the end of the valuation period and subject to section 402(10)(b), deposit a copy of the valuation and report referred to in subsection (1) or (2) with NAMFISA and the board must send a copy of such report or a summary of the report prepared by the valuator in the form required by the standards, to every employer who contributes to that fund.

(5) Whenever the board of a fund deposits with NAMFISA a copy of a report made by a valuator under this section it must also deposit with NAMFISA a certificate of the board and of the principal officer of the fund that to the best of their knowledge and belief the information furnished to the valuator for the purposes of the report was correct and complete in every material respect and, where applicable, that a copy of the report or a summary of the report referred to in subsection (4) was sent to every employer contributing to the fund.

(6) If the rules of a fund provide that the benefits which may become payable to members are subject to the discretion of the board of the fund, the board must determine and inform NAMFISA what amount or scale of benefits were taken into consideration for the purpose of the valuation.

(7) Despite the provisions of this section, NAMFISA may, on such conditions as are set out in the standards, exempt a defined contribution fund from requiring regular investigations by a valuator, but a valuator must, at least once in every three years certify that -

(a) the fund fulfils the conditions of exemption set out in the standards; and

(b) the assumptions that will be used to project the benefits that the fund will pay to a member at normal retirement date are appropriate.

(8) The board of a fund may, subject to such terms and conditions as may be prescribed, after it receives a report of the valuator and the report reveals an actuarial surplus as provided for in the standards, distribute some or all of that actuarial surplus.

(9) Any person who contravenes or fails to comply with subsection (4) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART 4
CONDUCT OF BUSINESS AND MEMBER CONTRIBUTIONS

Business which may be carried on

269. (1) A registered fund or the board of the fund may not carry on any business other than the business of a fund.

(2) Despite subsection (1) NAMFISA may, on written application by the board of a fund, approve and allow the board and the fund to carry on such other business on such conditions and for such period as NAMFISA may determine, if NAMFISA is satisfied that it is necessary in order to safeguard an investment made by the fund.

(3) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Payment of contributions

270. (1) Despite any provision in the rules of a registered fund, the employer of any member of that fund must pay in full the following to the fund:

(a) any contribution which, under the rules of the fund, must be deducted from the member's remuneration; and

(b) any contribution for which the employer is liable under those rules.

(2) NAMFISA must set out in the standards the minimum information to be furnished to the fund by an employer with respect to the payment of contributions made by that employer, and if that information does not accompany the payment of a contribution, the employer must transmit that information to the fund not more than 15 days after the end of the month in respect of which the payment was made.

(3) Any contribution to a fund under its rules, whether a contribution referred to in subsection (1), a contribution for the payment of which a member of the fund is responsible personally or a contribution to be paid on a member's behalf -

(a) must be deposited directly into the fund's account with a banking institution not more than seven days after the end of the month for which such contribution is payable;

(b) must be forwarded directly to the fund in such a manner that the fund receives the contribution not more than seven days after the end of the month; or

(c) in the case of a fund the assets of which consist exclusively of one or more policies of insurance with a registered insurer carrying on long-term insurance business under Chapter 2, must be forwarded to the registered insurer concerned in such manner that the insurer receives the contribution not more than seven days after the end of the month.

(4) The board of a fund must deposit or cause to be deposited into the bank account of the fund any contribution forwarded to and received by the fund in the circumstances described in subsection (3)(b) on the first business day following the day of receipt.

(5) An amendment to the rules of a fund relating to the reduction of contributions or the suspension or discontinuation of the payment of contributions does not affect any liability to pay any contribution which became payable at any time before the date on which the amendment takes effect under section 272.

(6) When a person who for any reason, other than the occurrence of an event referred to in section 278, 279 or 441 -

(a) has ceased to be a member of a fund (in this subsection and subsection (9)(c) called the "first fund"); and

(b) is, under the rules of another fund, admitted as a member of that other fund and allowed to transfer to that other fund any benefit or any right to any benefit to which such person had become entitled under the rules of the first fund,

that first fund must, not more than 60 days from the date that the person so requests in writing, or, if applicable, within any longer period determined by NAMFISA on application by the first fund, transfer that benefit or right to that other fund in full, which transfer is subject to the rules of the first fund as at the date of transfer and to the deductions referred to in section 277.

(7) For the purpose of monitoring and ensuring compliance with this section, the principal officer of the fund or any other person authorised pursuant to subsection (8) must submit reports to the categories of persons having an interest in such compliance, as specified in the standards, at the times and in the manner and format required by the standards.

(8) For the purposes of subsection (7), the board of a fund may authorise a person to perform the functions described in that subsection, and the board must, within the period set out in the standards, notify NAMFISA in writing of any such authorisation.

(9) Interest at a rate as prescribed by the Minister is payable to the fund -

(a) by the employer, member of the fund or any other person who is responsible for transmission of the contributions to the fund on the amount of any contribution not transmitted into the bank account of a fund before the expiration of the period referred to in subsection (3)(a);

(b) by the employer, member of the fund or any other person who is responsible for transmission of the contributions to the fund on the amount of any contribution not received -

(i) by a fund before the expiration of the period determined under subsection (3)(b); or

(ii) by the registered insurer concerned in the circumstances referred to in subsection (3)(c) before the expiration of the period determined under that subsection; and

(c) by the first fund on the value of any benefit, or right to any benefit, not transferred by the first fund to the other fund referred to in subsection (6) before the expiration of the period of 60 days referred to in that subsection or any longer period determined by NAMFISA.

(10) For the purposes of this section, the following persons are personally liable for compliance with this section and for the payment of any contributions referred to in subsection (1):

(a) where an employer is a corporate body, every director of that corporate body, including the principal officer, who is regularly involved in the management of the overall financial affairs of the corporate body; and

(b) where an employer is not a corporate body, every person including, without limitation, every trustee or partner, who directs or instructs the governing body of the employer or who controls or is regularly involved in the management of the overall financial affairs of that employer.

(11) Despite any provision of the Companies Act, the Insolvency Act or any other law, if a contribution by an employer or on behalf of the employer and any employee or employees is not received by the due date and the employer becomes insolvent or any claim is made against, or a statutory manager, judicial manager, liquidator or trustee is appointed, for the employer, an amount equal to the unpaid contribution must be set aside from the assets or estate of the employer, and constitutes a first charge against such assets or estate and takes precedence over -

(a) any claim of or payment to any creditor, other than a creditor holding security on specific and identified moveable or immoveable property to the extent of that property, including any special mortgage, legal hypothec, pledge or right of retention; and

(b) any payment to shareholders or other owners,

including, without limitation, those claims and payments referred to in sections 95 to 104 of the Insolvency Act.

(12) The Minister may make regulations and NAMFISA may issue standards with respect to the protection of unpaid contributions referred to in subsection (11).

(13) Any person who contravenes or fails to comply with subsection (1) or (3) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART 5
RULES OF RETIREMENT FUND

Rules

271. (1) The rules of a registered fund must comply with the requirements of this Act and must contain matters that may be set out in the regulations or in the standards.

(2) Where the rules of a fund are inconsistent with any provision of this Act, those rules are invalid to the extent of the inconsistency.

(3) Where the rules of a fund are inconsistent with any provision of this Act and have not been amended, NAMFISA must direct the board of the fund to amend the rules of the fund and the board must comply with the direction forthwith.

(4) Despite subsections (2) and (3), the board of a fund has a period of 12 months within which to amend any rules of the fund which are inconsistent with this Act which period commences, as applicable, on the date -

(a) of commencement of this Act;

(b) on which a regulation relating to the rules comes into effect; or

(c) on which a standard relating to the rules comes into effect.

(5) A registered fund must provide any person who becomes a member or beneficiary of the fund with a copy of the rules of the fund, free of charge, at the time that the person becomes a member.

(6) Any person who contravenes or fails to comply with subsection (5) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Amendment of rules

272. (1) The board of a registered fund may, in the manner directed by the rules of the fund, amend or rescind any rule or make any additional rule, but no such amendment, rescission or addition will be valid if it purports to affect any right of a creditor of the fund, other than as a member of the fund.

(2) The board of the fund must send a copy of any amended, rescinded or additional rule to NAMFISA not less than 30 days before its implementation, together with the particulars set out in the standards.

(3) If any such amendment, rescission or addition affects the financial position of the fund the board must also send to NAMFISA a report by -

(a) the valuator of the fund; or

(b) a valuator retained by the fund for this purpose, if no valuator has been appointed,

as to the soundness of the financial position of the fund, determined in accordance with the standards, having regard to the rate of contributions by the employer and members and, if the fund is not in a sound financial position, what arrangements will be made to bring the fund into a sound financial position.

(4) In the case of any amended, rescinded or additional rule of a fund that is a defined contribution fund or a beneficiary fund, the board must also send to NAMFISA a report confirming that the amended, rescinded or additional rule has no effect on the current or prospective financial position of the fund.

(5) If NAMFISA is not satisfied with a report referred to in subsection (3) or (4), NAMFISA may, at the cost of the fund, require a report by an independent valuator that complies with the conditions set out in the standards and as may be specified by NAMFISA.

(6) The board of a fund may at any time consolidate the rules of the fund, and in that case the board must forward to NAMFISA, a copy of the consolidated rules, but if the consolidated rules differ from the original rules, NAMFISA must direct the board to amend the consolidated rules so that they do not differ from the original rules.

(7) With respect to the rules of a fund, NAMFISA may request additional information regarding any amendment, rescission, addition or consolidation submitted to NAMFISA, as NAMFISA may consider necessary, and any such amendment, rescission, addition or consolidation is void if the fund fails to furnish the information requested by NAMFISA under this subsection within 30 days from the date of that request.

(8) If at any time NAMFISA is of the opinion that the rules of a fund do not comply with the requirements of this Act, NAMFISA may direct the board of the fund to amend the rules.

(9) The registered fund must send or cause to be send a copy of any amendment to, rescission of, or addition to, the rules of a fund to every member of the fund free of charge.

(10) Any person who contravenes or fails to comply with subsection (9) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Binding force of rules

273. Subject to the provisions of this Chapter, the rules of a registered fund are binding on the fund, the employer or employers who subscribe to the fund, the sponsor, the board, officers of the fund, members of the fund and on any person who claims any benefit under the rules or whose claim is derived from a person so claiming.

PART 6
SPECIAL PROVISIONS RELATING TO BENEFITS

Benefits not reducible, transferable or executable

274. (1) Except where permitted by this Chapter, the Income Tax Act or the Maintenance Act, a benefit which is provided for in the rules of a registered fund, including an annuity purchased or to be purchased by the fund in the name of the fund, the member or a beneficiary from a registered financial institution authorised by NAMFISA for the purpose of providing income benefits payable in respect of funds originating from a registered fund or a right to such benefit or a right in respect of contributions made by or on behalf of a member, despite anything to the contrary contained in the rules of the fund -

(a) is not capable of being reduced, transferred or otherwise ceded;

(b) is not capable of being pledged or hypothecated;

(c) is not liable to be attached or subjected to any form of execution under a judgment or order of a court; or

(d) may not be taken into account in a determination of a debtor's financial position under section 65 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(2) If a member or beneficiary attempts to transfer or otherwise cede, pledge or hypothecate a benefit or a right referred to in subsection (1), the board of the fund may withhold or suspend payment of the benefit.

(3) Subsections (1) and (2) do not apply to a transfer, other cession, pledge or hypothecation to secure a housing loan made to the member or beneficiary or to an attachment or execution referred to in paragraph (c) of subsection (1) or a determination referred to in paragraph (d) of that subsection in connection with such loan.

(4) Subsection (1) does not apply to anything done towards reducing or obtaining settlement of a debt which -

(a) in the case of a fund to which the Financial Institutions Amendment Act, 1976 (Act No.101 of 1976) applies, arose before the commencement of that Act;

(b) in the case of a fund to which the Financial Institutions Amendment Act, 1976 (Act No. 101 of 1976) does not apply, arose before the commencement of the Financial Institutions Amendment Act, 1977 (Act No. 94 of 1977);

(c) the board of a fund may reduce or settle under section 277; or

(d) is owed to a fund by a member in respect of contributions in arrears, but excluding amounts which are in arrears due to the failure of the employer to pay the member's contributions to the fund after deduction of the contribution from the member's remuneration.

Disposition of benefits upon insolvency

275. If the estate of any person entitled to a benefit payable under the rules of a registered fund, including an annuity purchased by the fund for that person from a registered financial institution authorised by NAMFISA for the purpose of providing income benefits payable in respect of funds originating from a registered fund, is sequestrated or surrendered such benefit or any part of it which became payable after the commencement of the Financial Institutions Amendment Act, 1976 (Act No. 101 of 1976) -

(a) is, subject to the provisions of section 274(4) and section 277, deemed not to form part of the assets of the insolvent estate of that person; and

(b) may not in any way be attached or appropriated by the trustee in the insolvent estate or by the creditors of that person, despite anything to the contrary in any law relating to insolvency.

Disposition of benefits upon death

276. (1) Despite anything to the contrary contained in any law or in the rules of a registered fund, any benefit payable by that fund upon the death of a member does not, subject to the provisions of section 274(4) and section 277, form part of the assets of the estate of that member, but must be dealt with as follows:

(a) the board of a fund must, after being notified of the death of the member, pay not more than such percentage of the benefit as the board considers

prudent to the dependants or nominees designated on the beneficiary nomination form in the proportions specified by the member on that form, but if the member had not, on the beneficiary nomination form, apportioned the benefit among the dependants or nominees, the benefit must be paid to the member's dependants or nominees in the proportion that the board of the fund considers equitable;

(b) if the board of the fund within 12 months of the notification of the death of the member becomes aware of or traces one or more dependants or one or more nominees of the member, the remaining portion of the benefit after the payment referred to in paragraph (a), must be paid to such dependants or nominees in the proportion that the board of the fund considers equitable, taking into account the amounts that may already have been paid to dependants or nominees under paragraph (a);

(c) if the board of the fund does not become aware of or cannot trace any more dependants or nominees of the member within 12 months of the notification of the death of the member, the board must pay the remaining portion of the benefit referred to in paragraph (b) to the dependants or nominee or nominees referred to in paragraph (a) in such proportions as the board considers equitable;

(d) if a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member, the board of the fund must within 12 months of the notification of the death of such member pay the benefit or such portion of the benefit to that dependant or nominee in such proportion as the board may consider equitable, except that this paragraph does not prohibit a fund from paying the benefit either to a dependant or to a nominee referred to in this paragraph or, if there is more than one such dependant or nominee, proportionately to any or all of those dependants and nominees; or

(e) if the board of the fund does not become aware of or cannot trace any dependant of the member within 12 months of the notification of the death of the member and if the member has not designated a nominee or in a case where the beneficiary nomination form is not completed and returned to the board or if the form is illegible or incomprehensible, or mutilated beyond repair or otherwise invalid, the automatic beneficiaries, in order of preference are -

(i) children of the member who have attained the age of 18 years in equal shares; and if none exist

(ii) parents of the member in equal shares; and if none exist

(iii) siblings of the member in equal shares; and if none exist

(iv) the estate of the member, and if no inventory relating to the estate of the member has been received by the Master of the High Court under the Administration of Estates Act, 1965 (Act No. 66 of 1965), into the Guardian's Fund.

(2) For the purpose of this section, payment by the board of a fund for the benefit of a dependant or nominee will be considered to be a payment to such dependant or nominee, if payment is made to -

(a) a trustee under the Trust Moneys Protection Act, nominated by -

(i) the member;

(ii) subject to paragraph (iii), a major dependant or nominee; or

(iii) a person recognised in law or appointed by the court as a curator responsible for managing the affairs of a minor dependant or nominee or a major dependant or nominee not able to manage his or her own affairs;

(b) a person recognised in law or appointed by the court as the person responsible for managing the affairs of a dependant or a nominee; or

(c) a registered beneficiary fund.

(3) Any benefit dealt with under this section that is payable to a minor dependant or minor nominee may be paid in more than one payment in such amounts as the board of the fund may from time to time consider appropriate and in the best interests of such dependant or nominee, except that -

(a) interest at a reasonable rate, having regard to the investment return earned by the fund in respect of the outstanding balance, must be added to the balance at such times as the board may determine; and

(b) any balance owing to the dependant or nominee at the date on which he or she attains majority or dies, whichever occurs first, must be paid in full.

(4) A benefit referred to in this section, which must be paid to a major dependant or major nominee, may be paid in more than one payment if the dependant or nominee has consented to that in writing, except that -

(a) the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a written agreement; and

(b) the agreement may be cancelled by either party on written notice not exceeding 90 days.

(5) If the agreement referred to in subsection (4) is cancelled the balance of the benefit must be paid to the dependant or nominee in full.

(6) The provisions of subsections (3) and (4) do not apply to a registered beneficiary fund and any remaining assets held for the benefit of the deceased beneficiary in such a fund must be paid -

(a) into the estate of such beneficiary; or

(b) if no inventory relating to the estate of the beneficiary has been received by the Master of the High Court pursuant to section 9 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), into the Guardian's Fund.

Deductions from benefits

277. (1) The board of a registered fund may deduct from a benefit to which a member or a beneficiary becomes entitled under the rules of the fund any amount -

(a) due and payable by the member as tax in accordance with the Income Tax Act;

(b) due on the benefit in question by the member in respect of -

(i) a prescribed loan granted to the member; or

(ii) any amount for which the fund becomes liable under a guarantee furnished in respect of a member for such a loan granted by some other person to the member not exceeding the amount which, under the Income Tax Act may be taken by a member or beneficiary as a lump sum benefit;

(c) due by the member to his or her employer on the date of his or her retirement or on which the member ceases to be a member of the fund, in respect of -

(i) a loan granted by the employer to the member for any purpose referred to in the regulations; or

(ii) any amount for which the employer is liable under a guarantee furnished in respect of a loan by some other person to the member for any purpose referred to in the regulations not exceeding the amount which, under the Income Tax Act, may be taken by a member or beneficiary as a lump sum benefit; or

(d) which the fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of -

(i) that member's or beneficiary's subscription to a medical aid fund registered under Chapter 7;

(ii) funeral expenses associated with the death of the member; or

(iii) any insurance premium payable by such member or beneficiary to an insurer registered under Chapter 2;

and that amount must be paid to the medical aid fund, insurer or person concerned.

(2) The board of a fund may deduct from a benefit or interest of a member or from the capital value of the retirement benefit of a former member any amount -

(a) payable pursuant to a maintenance order as defined in section 1 of the Maintenance Act; or

(b) required to be deducted or withheld as employee's tax under the Fourth Schedule to the Income Tax Act as a result of a deduction referred to in this subsection or subsection (1).

(3) The board of a fund may reduce a member's individual account in a defined contribution fund or the member's benefit in any other fund with an actuarial equivalent reduction in the benefits payable by such a fund in future in order to pay such amount to the relevant person in respect of -

(a) a loan granted to a member pursuant to the regulations;

(b) an amount for which the fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to the member; or

(c) an amount payable pursuant to a maintenance order as defined in section 1 of the Maintenance Act,

if the -

(i) member is transferring to another fund and the board of the fund is satisfied that it is not otherwise reasonably possible to negotiate repayment or to transfer the loan guarantee to the transferee fund;

(ii) member has defaulted on the repayment of the loan granted to the member by the fund pursuant to the regulations or in respect of which the fund has provided a guarantee pursuant to the regulations in circumstances where his or her membership of the fund is not terminated, and such reduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the repayment can be made; or

(iii) board is ordered by a court to make such a deduction.

(4) For the purposes of subsection (3)(a) and (b), the amounts so deducted will be considered to be a benefit to which the member becomes entitled on termination of his or her membership of the fund for reasons other than as a result of retirement or death arising at the date of the transfer, default or court order.

(5) Any amount that may be deducted pursuant to subsection (2)(a) or (3)(c) may only be deducted after the amount of any benefit available has been reduced by any loan amount or guarantee amount referred to in subsection (1)(b), (3)(a) or (3)(b) where the loan or guarantee was provided prior to the granting of the maintenance order, irrespective of whether or not that amount is due and payable, provided that the aggregate of all amounts deducted under this subsection must not exceed the member's benefit available at any given time.

PART 7
GENERAL

Voluntary dissolution of fund

278. Subject to the requirements of any regulations made by the Minister and standards issued by NAMFISA under this Act, a registered fund may be terminated or dissolved wholly or in part in such circumstances, if any, as may be specified for that purpose in its rules and in the manner provided by such rules, and subject to the prior approval of NAMFISA, the assets of the fund must in that case be distributed in the manner provided by the rules.

Winding-up by court

279. (1) If -

(a) NAMFISA is satisfied that a fund is in such an unsound financial condition that any scheme as contemplated by Part 7 of Chapter 10 would be ineffective, impracticable or unsatisfactory; or

(b) a fund is required under any provision of this Act to be wound-up under this section,

NAMFISA or a person acting with the approval of NAMFISA may, if the fund has assets and liabilities equal to or exceeding the values that are set out in the standards, apply to the High Court for an order that the whole or any part of the business of the fund be wound-up.

(2) An application for the winding-up, and the winding-up, of a fund pursuant to subsection (1) must be done accordance with the regulations made by the Minister and standards issued by NAMFISA under this Act.

Special provisions relating to liquidation of funds

280. When applying the provisions of the Companies Act in a voluntary dissolution or winding-up of a registered fund, the members of the fund must be treated as preferred creditors, and their claims against the fund in their capacity as members must be settled before the debts owed to ordinary creditors of the fund.

Right to obtain and inspect documents

281. (1) The board of a registered fund must on request by a member or a person authorised by a member provide that member or authorised person on payment of such fee as may be determined by the standards and reflected in the rules of the fund -

(a) with a copy, additional to the one provided under section 271(5), of the rules of the fund;

(b) with a copy of the most recent financial statements of the fund; and

(c) with a copy of the most recent report by a valuator prepared pursuant to section 268.

(2) A member or a person authorised by a member may without charge, at the principal office of a fund, inspect a copy of any of the following documents and make extracts there from -

(a) the documents referred to in subsection (1);

(b) any scheme which is being carried out by the fund in accordance with the provisions of this Act;

(c) such other documents as NAMFISA may direct.

(3) NAMFISA may issue standards with respect to any reports and other information that the board of a registered fund must provide to members of the fund free of charge.

(4) Any person who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Investments

282. (1) Subject to the provisions of this section and the regulations made by the Minister and standards issued by NAMFISA, a fund may invest its funds in any manner provided by its rules and investment policy.

(2) A fund may, where its rules so provide, by way of investment of its funds, grant loans secured by first mortgages of immovable property to any of its members, if the mortgaged property is property on which a dwelling house has been or is to be erected, but the loans may not exceed the percentage of the fair value of the immovable property concerned as provided in the standards.

(3) NAMFISA may, under exceptional circumstances, and on such conditions and for such periods as NAMFISA may determine, temporarily exempt a fund from compliance with the provisions of subsection (2).

(4) Despite subsection (1), a registered fund may not invest any of its assets in the business of an employer who participates in the scheme or arrangement whereby the fund has been established or in any subsidiary of that employer's business or lend any of its assets to the employer or subsidiary, but -

(a) the Minister may, in accordance with the regulations, exempt wholly or in part any fund established or conducted by the State, by a public enterprise as defined in section 1 of the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019) or by any statutory body or utility undertaking established by or under any law from complying with the provisions of this subsection; and

(b) NAMFISA may, subject to such conditions that may be set in the standards, on application made to it in accordance with the standards, exempt a fund from complying with the provisions of this subsection.

(5) The Minister may make regulations and NAMFISA may issue standards in respect of the investments by, or of, a fund.

(6) Any person who contravenes or fails to comply with any condition on which an exemption has been granted pursuant to subsection (4) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Exemption from Act No. 34 of 1934

283. With the exception of section 276(2)(a), the Trust Moneys Protection Act does not apply to a fund registered under this Chapter.

CHAPTER 6
FRIENDLY SOCIETIES

PART 1
PRELIMINARY

Definitions for this Chapter

284. (1) In this Chapter, unless the context indicates otherwise -

"assets", in relation to a friendly society, means the assets of that society as they would be reflected in any statement of its assets prepared in accordance with the requirements of the standards;

"board of trustees" or "board" means the board of trustees charged with managing the affairs of a friendly society, which has been elected or appointed under its rules;

"fair value", in relation to an asset of a friendly society, means the fair value of that asset determined in accordance with generally accepted accounting practice;

"friendly society" means -

(a) an association of individuals established for any of the objects referred to in section 285; or

(b) a business carried on under a scheme or arrangement for any of the objects referred to in section 285;

"liabilities", in relation to a friendly society, means the liabilities of that society as they would be reflected in any statement of its liabilities prepared in accordance with the requirements of the standards;

"member" means a person who contributes to a friendly society in order to obtain any benefit referred to in section 285 either for that person or for any other person referred to in that section;

"rules" means the rules of a society referred to in section 307;

"society" means a friendly society;

"society administrator" means a society administrator as defined in section 363 and appointed pursuant to section 301(3); and

"sponsor" means the person who established a society or who proposes to establish a society.

(2) Any reference in this Chapter to a friendly society referred to in paragraph (b) of the definition of "friendly society" must be construed as a reference to that friendly society or to the individual or entity that controls the affairs of that friendly society.

Objects of friendly society

285. (1) Subject to subsection (2), a friendly society may be established for one or more of the following objects:

(a) the relief or maintenance during minority, old age or widowhood, or sickness or other infirmity, whether physical or mental, of members or their spouses, widows, widowers, children or other relatives or dependants;

(b) the granting of annuities, whether immediate or deferred, to members or their nominees or the endowment of members or their nominees;

(c) the payment of a sum of money or other benefit to be paid or provided -

(i) on the birth of a child of a member;

(ii) on the death of a member or any person referred to in paragraph (a), which may be in the form of an endowment insurance on the life of the member or that person;

(iii) towards the expenses incurred in connection with the death or funeral of a member or any person referred to in paragraph (a); or

(iv) during a period of mourning by a member or any person referred to in paragraph (a);

(d) the insurance against fire or other contingencies of the implements of trade or calling of members;

(e) the payment of a sum of money when a member leaves the service of his or her employer due to dismissal, resignation or otherwise, unless the principal object is the payment of a sum of money on a member leaving such service because of marriage or intended marriage;

(f) the relief or maintenance of members or any group of members, when unemployed or in distressed circumstances otherwise than in consequence of the existence of a strike or lockout as defined in the Labour Act, 2007 (Act No. 11 of 2007);

(g) the payment of sums of money for the advancement of the education or training of members or of the children of members; and

(h) such other objects as the Minister may by notice under subsection (3) declare to be objects in respect of which a friendly society may be established.

(2) An association or business is not a friendly society if -

(a) the persons entitled to the benefits referred to in subsection (1) do not contribute to that association or business;

(b) any of the activities of the association or business are those of a retirement fund governed by Chapter 5;

(c) under the rules of the association or business, each member is entitled at all times to withdraw the full amount of the member's contributions, on such notice as may be required in those rules; or

(d) the benefits referred to in subsection (1) are provided exclusively by way of loans which under the rules of the association or business must be repaid.

(3) The Minister may for the purposes of subsection (1)(h) by notice in the *Gazette* declare other objects in respect of which a friendly society may be established.

(4) The Minister may, by notice in the *Gazette,* declare that any monetary benefit paid under subsection (1) may not exceed such amounts as the Minister determines in that notice.

Application of Chapter

286. (1) This Chapter does not apply to a friendly society if the aggregate value of the income of that society does not exceed the amount prescribed by the Minister, but that society must nevertheless comply with the provisions of any standard that may be made by NAMFISA in relation to such societies.

(2) NAMFISA may in its discretion and subject to any conditions provided by the standards exempt a friendly society from the operation of any or all of the provisions of this Chapter.

(3) NAMFISA may at any time by notice to a society referred to in subsection (2), withdraw, wholly or in part and on any grounds which NAMFISA considers sufficient, any exemption granted under subsection (2).

(4) Any person who contravenes or fails to comply with any condition on which an exemption has been granted pursuant to subsection (2) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Prohibitions

287. (1) A person may not carry on the business of a friendly society in Namibia unless that person is registered as a society pursuant to section 291 or deemed to be registered under section 292 or section 286(1) or (2) applies.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Restriction on use of designation "friendly society"

288. (1) A person may not use, in connection with a business, a name which includes the words "friendly society" or any other name which is intended to indicate or is likely to lead other persons to believe that the person carries on the business of a friendly society, unless that business is registered or deemed to be registered as a friendly society under this Chapter or section 286(1) or (2) applies.

(2) If at the commencement of this Chapter any person was using, in connection with that person's business, any name or description referred to in subsection (1) and that person -

(a) subsequently changes that name;

(b) produces any deed or document, bearing the previous name which was registered in any deeds registry or in any other office where a register or record of the ownership of, or entitlement to, any property is kept, to the person charged with the registration of deeds in that registry or to the officer in charge of that other office; and

(c) satisfies the person so charged or officer that the name was changed as a result of the prohibition contained in subsection (1),

that person or officer must, without any charge, substitute the new name for the previous name on such deed or document and in all the relevant registers.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 2
REGISTRATION

Application for registration

289. (1) An application for registration as a friendly society must be made to NAMFISA in accordance with subsection (2).

(2) An application for registration as a friendly society must be -

(a) made in the manner and form required by the standards;

(b) include the information with respect to the principal office and principal officer required by the standards;

(c) accompanied by the documents and other information required by the standards;

(d) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(e) made subject to and in accordance with any other applicable provision of this Act; and

(f) accompanied by the required fee.

(3) In addition to the requirements of subsection (2), an application for registration referred to in subsection (1) must include -

(a) the rules of the friendly society; and

(b) such financial guarantees as may be set out in the standards and that NAMFISA may demand from the person who will manage the business of the society, to ensure the future financial stability of the friendly society.

Registration requirements

290. (1) Before approving the application and registering the applicant as a friendly society, NAMFISA must be satisfied on reasonable grounds that the requirements of subsection (2) have been met and that -

(a) the rules of the society are not inconsistent with this Act and are based on sound financial principles;

(b) the society has a sufficient number of members who will contribute to the society, as required by the standards;

(c) the society does not and will not unfairly discriminate directly or indirectly against any person; and

(d) the guarantee referred to in section 289(3)(b) is satisfactory.

(2) Before approving an application referred to in subsection (1) and registering a society NAMFISA must be satisfied that -

(a) in relation to the proposed society -

(i) every member of the board of trustees, the principal officer and other officers of the proposed society, are fit and proper within the meaning of the standards;

(ii) the constitution and rules or other founding documents of the proposed society are not inconsistent with the provisions of this Act;

(iii) the direct or indirect control of the proposed society is not likely to be contrary to the interest of consumers of the financial services concerned; and

(iv) the proposed society will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;

(b) doing so is not contrary to -

(i) this Act; or

(ii) the public interest;

(c) the proposed society has the attributes reasonably necessary and adequate to -

(i) provide the financial services in question with professional integrity, prudence, proper skill and due diligence;

(ii) maintain a sound financial position and not cause or further instability in the financial system of Namibia; and

(iii) comply with this Act;

(d) the name under which the proposed society proposes to conduct business, or a translation, shortened form or derivative of that name is not in contravention of section 391;

(e) the applicant has submitted all other information which, in the opinion of NAMFISA, is necessary to assess the application, and such information has been found satisfactory by NAMFISA; and

(f) the applicant has complied and will continue to comply with any other requirements contained in this Act or in the standards which apply to the proposed society.

Registration

291. (1) If NAMFISA is satisfied that the applicant complies with the requirements of section 290, NAMFISA must register the applicant as a friendly society, subject to any conditions which NAMFISA may consider appropriate pursuant to subsection (4), and must issue a certificate of registration pursuant to subsection (3).

(2) The registration referred to in subsection (1) must specify -

(a) the principal office of the applicant in Namibia;

(b) the places in Namibia from which the applicant may operate.

(3) Upon registration of an applicant NAMFISA must issue to the applicant a certificate of registration in a form provided by the standards.

(4) NAMFISA may impose such conditions on the registration of the applicant as it considers necessary, having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant and any guidelines issued by NAMFISA under this Act.

(5) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions, and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(6) A friendly society must comply with the conditions subject to which it was registered.

Existing friendly societies

292. (1) A friendly society that was registered in Namibia prior to the commencement of this Chapter under any law repealed by this Act is deemed to be a society registered under this Act.

(2) Despite subsection (1), a friendly society referred to in that subsection must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to section 289 for registration as a friendly society.

(3) If a friendly society referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (2), NAMFISA may take action that NAMFISA considers appropriate against the friendly society pursuant to section 295, 412 or 439.

Effect of registration

293. (1) On registration of a friendly society under section 291, in so far as is applicable -

(a) it has the powers of a juristic person to the extent that it is capable of suing and being sued under the name by which it is registered, and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions pursuant to its rules;

(b) despite anything to the contrary contained in any law or in the constitution, rules or other founding documents or of any corporate body or unincorporated entity that controls the business of the society -

(i) all the assets, rights, liabilities and obligations pertaining to the business of the society will be assets, rights, liabilities and obligations of that registered society to the exclusion of any other person; and

(ii) no person will have any claim on the assets or rights or be responsible for any liabilities or obligations of the society, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the society; and

(c) any assets, rights, liabilities and obligations, which are held by any person in trust for the society as it existed immediately prior to its

registration will vest in and devolve upon the registered society without any formal transfer or cession.

(2) The person in charge of the deeds registry or any other officer in charge of any other office where a register or record of the ownership of, or entitlement to, any property is kept in which is registered a deed or other document relating to an asset or right which under subsection (1) vests in or devolves upon a friendly society must, on production by the fund of its certificate of registration and of the deed or other document, without payment of transfer duty, stamp duty, registration fees or other charges, make the endorsements upon that deed or other document and the alterations in the registers in order to reflect that vesting or devolution.

Application for cancellation or variation of registration

294. (1) A registered society may at any time make an application to NAMFISA for cancellation of the registration granted pursuant to this Act or a variation of the conditions subject to which that registration was granted.

(2) An application made under subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) accompanied by the documents and other information required by the standards;

(c) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case; and

(d) accompanied by the required fee.

(3) Before making an application for the cancellation of a registration or a variation of its conditions, the applicant must give prior notice of the proposed application in two newspapers circulating nationally in Namibia, at the expense of the applicant, stating -

(a) the name of the applicant;

(b) either the -

(i) reasons for the proposed cancellation; or

(ii) nature of the proposed variation; and

(c) the period within which objections to the application may be lodged with NAMFISA.

(4) Section 291 applies with the changes required by the context to an application for a variation of conditions referred to in subsection (1).

(5) If after consideration of any objection received as a result of the notice referred to in subsection (3), NAMFISA is of the opinion that it is reasonable to do so and not against the public interest, NAMFISA may, by notice to the registered fund concerned -

(a) cancel the registration; or

(b) vary the conditions of registration, including the imposition of additional conditions.

(6) NAMFISA must make public any cancellation of registration or variation of conditions of registration under subsection (5) and the reasons for the cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

Cancellation or variation of registration

295. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to a registered friendly society:

(a) it has made a material misrepresentation or failed to provide information that was materially relevant in its application for registration;

(b) it has failed to comply with this Act;

(c) it no longer meets the requirements for registration;

(d) it has provided financial services without professional integrity, prudence, proper skill and due diligence;

(e) it is in an unsound financial position;

(f) it has failed to comply with a directive, request or requirement of NAMFISA issued under this Act;

(g) it has failed to give effect to a decision of the Appeal Board;

(h) it has ceased to operate or has failed to commence operating within a reasonable time after being registered;

(i) it is involved in a financial crime; or

(j) a member of the board of trustees, the principal officer, other officer of the society no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take any of the following actions with respect to the registered fund:

(a) cancel its registration;

(b) vary the conditions of its registration, including the imposition of additional conditions; or

(c) take any other steps that NAMFISA may consider necessary or advisable.

(3) NAMFISA must give notice to the registered friendly society of the intention of NAMFISA to take any action referred to in subsection (2), together with the reasons for taking the action, and must give the registered friendly society a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the registered friendly society may make representations to NAMFISA on the matter.

(4) Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of a registered friendly society.

(5) On the cancellation of the registration of a friendly society under section 294(5)(a), subsection (2)(a) or any other applicable provision of this Act -

(a) the friendly society must be dissolved in accordance with the requirements of section 316 or wound-up in accordance with the requirements of section 317, as applicable, and the rules of the fund; and

(b) NAMFISA must take such steps and may impose such conditions as are necessary in the circumstances, which steps may include the transfer of the business of the friendly society to another friendly society, as appropriate, but no distribution of the assets of the friendly society may be made without the prior approval of NAMFISA.

(6) NAMFISA must make public any suspension or cancellation of registration, variation of conditions of registration or any other steps taken under this section and the reasons for the suspension, cancellation, variation or steps, by notice in the *Gazette* or by means of any other appropriate public statement.

(7) A person who -

(a) continues to operate, or carry on, the business of a friendly society after the cancellation of registration under section 294(5)(a), subsection (2)(a) or any other applicable provision of this Act or after suspension of registration under subsection (4); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (4),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 3
ADMINISTRATION AND POWERS

Principal office and principal officer

296. (1) Every registered friendly society must -

(a) have a principal office in Namibia where it must hold and maintain the documents referred to in the standards; and

(b) appoint to be its principal officer in Namibia, a fit and proper person within the meaning of the standards who -

(i) is a Namibian citizen or permanent resident;

(ii) is resident in Namibia; and

(iii) must be an *ex officio* member of the board of the friendly society, but the principal officer may not serve as chairperson of the board.

(2) Despite subsection (1)(b)(i), NAMFISA may, in exceptional circumstances, grant permission that a principal officer referred to in that subsection may, subject to the Immigration Control Act, 1993 (Act No. 7 of 1993), for such period as may be determined by NAMFISA, be a person other than a Namibian citizen or permanent resident.

(3) After the appointment of a principal officer pursuant to subsection (1)(b), the registered fund must, within the period set out in the standards, in writing notify NAMFISA of the appointment.

(4) NAMFISA may, on the grounds that a principal officer is not a fit and proper person within the meaning of the standards, and after giving the registered society and the principal officer a reasonable opportunity to be heard, direct the registered society to appoint some other person to be the principal officer of the registered society.

(5) Whenever a principal officer resigns or the appointment of a principal officer is terminated by a registered society or by the expiry of a contract of employment, the registered society must, within the period set out in the standards, in writing notify NAMFISA and submit to NAMFISA a written statement of the reasons for the termination or, in the opinion of the registered society, the reasons for the resignation.

(6) The principal officer of registered friendly society is authorised to act on behalf of the friendly society to ensure compliance with this Act, and in any case where a person, including NAMFISA, communicates with that friendly society, that person may do so by addressing the communication to the principal officer.

(7) Process in any legal proceedings may be served on a registered friendly society by serving a copy of the process at its principal office.

(8) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Board of friendly society

297. (1) A registered friendly society must have a board consisting of persons who are fit and proper within the meaning of the standards.

(2) Despite any rule of the friendly society, but subject to section 298, the board of a registered friendly society must consist of a minimum of three members all of whom are elected or appointed, whether directly or indirectly, by the members of the friendly society in accordance with the rules of that society.

(3) Subsections (1) and (2) come into force on the date which is 90 days after the date of commencement of this Chapter.

(4) A person may not be a member of the board of a registered friendly society, if that person is -

(a) a director or an officer or employee of the friendly society or an administrator of the friendly society or of the holding company, subsidiary, joint venture or associate of the friendly society or of the society administrator;

(b) a consultant to or contractor under an agreement with the society administrator; or

(c) a financial institution or financial intermediary that renders financial services to the registered friendly society or its board of trustees.

(5) Subject to subsection (1), the rules of a friendly society must -

(a) set out the constitution of the board, the election and appointment procedure for its members, the terms of office of the members, the procedures at meetings, the voting rights of members, the quorum for a meeting and the breaking of deadlocks;

(b) provide a code of conduct for the members of the board;

(c) require that the board meet at least four times a year; and

(d) provide that all meetings of the board are held in Namibia.

(6) The rules of a registered friendly society must be amended in accordance with section 308 to comply with subsections (1), (2), (4) and (5) within 90 days after the date of coming into force referred to in subsection (3).

(7) Where a board consists of three members or pursuant to section 298, less than three members, all the members of the board constitute a quorum for a meeting of that board.

(8) If a board member is removed from office for reasons other than the expiration of that member's term of appointment or voluntary resignation -

(a) that board member must within 21 days of the removal submit a written statement to NAMFISA of the reasons, in the opinion of the board member, for the termination;

(b) the board must within 21 days of the removal submit a written statement to NAMFISA of the reasons, in the opinion of the board, for the termination.

(9) A board member must at any time inform NAMFISA in writing on becoming aware of any material matter relating to the affairs of the friendly society which, in the opinion of the board member, may seriously prejudice the financial viability of the friendly society or the benefits or rights of its members.

(10) A person who contravenes or fails to comply with subsection (9) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Exemptions

298. (1) NAMFISA may on written application by the board of a registered friendly society and subject to such conditions as may be determined by NAMFISA authorise the friendly society to have a board consisting of less than three members if that number is impractical or unreasonably expensive.

(2) NAMFISA may withdraw an exemption granted under subsection (1) if a friendly society no longer qualifies for such exemption or if NAMFISA regards such exemption no longer to be in the public interest.

Replacement of member of board

299. (1) On the termination of office for any reason of a member of the board of a registered friendly society a person to replace such member must, subject to section 297(1) and (2), be elected or appointed in the manner set out in the rules of the friendly society and the board must notify NAMFISA forthwith of the termination and replacement.

(2) A person who is elected or appointed as a member of the board of the friendly society pursuant to subsection (1) or (3) must be a fit and proper person within the meaning of the standards and such election or appointment must comply with the provisions of section 297 or 298.

(3) NAMFISA may at any time, on the grounds that any member of the board of a registered friendly society is not a fit and proper person within the meaning of the standards and after giving the board and the member of the board in question a reasonable opportunity to be heard, direct -

(a) that such member of the board be removed from office; and

(b) in case the remaining number of members is less than the number required by section 297 or 298, as applicable, or by the rules of the friendly society, that some other person who complies with the provisions of subsection (2) be elected or appointed to the board of the friendly society.

Objects of board

300. (1) The objects of the board of a registered friendly society are to direct, control and oversee the operations of the friendly society in accordance with this Act and the rules of the society.

(2) In pursuing its objects the board must -

(a) take all reasonable steps to ensure that the interests of members under the rules of the friendly society are protected and that the friendly society complies with the provisions of this Act and the rules;

(b) act with due care, diligence, prudence and good faith;

(c) avoid conflicts of interest wherever possible and, if not possible, manage the conflicts;

(d) disclose any conflict of interest of a member of the board; and

(e) act with impartiality in respect of all members and beneficiaries.

(3) The members of the board of the friendly society must, within 30 days of the end of each financial year, disclose in writing to NAMFISA any payments or other considerations made, whether directly or indirectly, to them in that particular year by the friendly society or by a contractor with the friendly society.

(4) A member of the board of trustees who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Duties of board

301. (1) In addition to the duties of a board of a registered friendly society set out in the rules of the friendly society and in section 395, the board of a registered friendly society must -

(a) ensure that proper registers, books and records of the operations of the friendly society are kept, including proper minutes of all resolutions passed by the board;

(b) ensure that membership records, contributions and benefit payments are administered in accordance with the rules;

(c) ensure that the assets of the friendly society are invested in accordance with the investment policy established by the board which is appropriate to the nature and financial circumstances of the friendly society, and which the board implements and regularly reviews after taking expert advice;

(d) ensure that the risks of the friendly society are appropriately managed including ensuring that proper control systems and functional separation of duties are employed by or on behalf of the friendly society;

(e) ensure that adequate and appropriate information is communicated to members of the friendly society, employers and sponsors pursuant to a communication strategy consistent with the standards issued by NAMFISA;

(f) take all necessary steps to ensure that contributions are paid in a timely manner to the friendly society in accordance with this Chapter;

(g) obtain expert advice on matters where board members lack sufficient expertise;

(h) ensure that the rules and the operation and administration of the friendly society comply with this Act and other applicable laws;

(i) ensure that the board meets at least four times each year;

(j) continuously monitor the compliance of the members of the board with the requirement that they be fit and proper within the meaning of the standards as required by sections 297 and 299;

(k) prepare an annual report, which must be submitted to NAMFISA, that summarises -

(i) the financial position of the friendly society;

(ii) the investment policy of the friendly society;

(iii) the activities of the board during the year; and

(iv) any other matters required by the standards; and

(l) comply with such other duties as NAMFISA may require in the standards.

(2) If, despite the steps taken by the board of a registered friendly society pursuant to subsection (1)(f), contributions to the friendly society remain outstanding for such period as is specified by NAMFISA in the standards the board must, within the period specified in the standards, notify all active and retired members of the friendly society and NAMFISA of this fact.

(3) The board of a friendly society may, in accordance with a system of delegation set out in the rules of the friendly society, which system must maximise administrative and operational efficiency and provide adequate checks and balances, appoint a society administrator to exercise any of its powers of administration or to perform any of its administrative duties or functions as long as -

(a) the society administrator is registered by NAMFISA as a society administrator pursuant to section 368;

(b) the board has determined, after taking expert advice, that the society administrator has qualifications and experience relevant to the administration of the friendly society in question; and

(c) the board has entered into a contract with the society administrator that complies with the rules of the friendly society and the policies of the board.

(4) The board is not divested or relieved of any power or duty or function delegated or assigned under subsection (3), and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.

(5) As soon as possible after a contract referred to in subsection (3)(c) has been entered into, the board must file a copy of the contract with NAMFISA.

(6) A society administrator that enters into a contract with the board of a friendly society pursuant to subsection (3)(c) has a fiduciary duty and responsibility to the friendly society and must exercise the powers delegated or perform the duty or function assigned to it with the standard expected of an expert.

(7) Where a board delegates a power or assigns a duty or function pursuant to this section, the board must monitor the performance of the society administrator with respect to the standards described in the contract and take remedial action if that performance fails to achieve those standards.

(8) Administration in respect of a friendly society means the rendering of any form of administration service, as defined in section 363, to the society.

(9) A society administrator must, in relation to a friendly society, perform the functions and duties entrusted to the society administrator by section 374.

Appointment of auditor

302. (1) Except where the accounts of a friendly society are to be audited by the Auditor-General pursuant to another law of Namibia, a registered friendly society must, in accordance with section 401 and in the manner set out in the rules of the society, appoint and at all times have an auditor or firm of auditors to be the auditor of the society.

(2) The friendly society may not appoint as the auditor of the society -

(a) an auditor who is; or

(b) a firm of auditors, any member of which is,

an -

(i) employee or officer of the society, an individual who controls the affairs of the society or an employee, officer or member of the board of an entity that controls the affairs of the society; or

(ii) employee or officer of a society administrator of the society or a member of the board of a society administrator of the society.

(3) NAMFISA may direct a friendly society to change the auditor of the society if NAMFISA is satisfied that the auditor or any member of the firm of auditors appointed as auditor is an -

(a) employee or officer of the society, an individual who controls the affairs of the society or an employee, officer or member of the board of an entity that controls the affairs of the society; or

(b) employee or officer of a society administrator of the society or a member of the board of a society administrator of the society.

(4) An auditor appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

an auditor by section 401.

Appointment of valuator

303. (1) A friendly society which, pursuant to section 304, is required to have its financial position investigated and reported upon by a valuator must, in accordance with section 402 and in the manner set out in the rules of the fund, appoint and at all times have a valuator.

(2) A board of a society referred to in section 292 must, if that society does not have a valuator on the date of commencement of this Part, appoint a valuator within 90 days of that date.

(3) A friendly society may not appoint as the valuator of the society an -

(a) employee or officer of the society, an individual who controls the affairs of the society or an employee, officer or member of the board of an entity that controls the affairs of the society; or

(b) employee or officer of a society administrator of the society or a member of the board of a society administrator of the society.

(4) NAMFISA may direct a friendly society to change the valuator of the society if NAMFISA is satisfied that the person appointed as valuator is an -

(a) employee or officer of the society, an individual who controls the affairs of the society or an employee, officer or member of the board of an entity that controls the affairs of the society; or

(b) employee or officer of a society administrator of the society or a member of the board of a society administrator of the society.

(5) A valuator appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

a valuator by section 402.

Investigations by valuator

304. (1) A registered society carrying on any business which under its rules is subject to actuarial scrutiny must in accordance with the provisions of the standards, at least once in every three years, cause -

(a) a valuation of the liabilities of the society in respect of that business to be made; and

(b) the assets of the society to be valuated, monitored and assessed,

and to be reported on by the valuator of the society as at the end of the third financial year.

(2) Despite subsection (1), if NAMFISA has reason to believe that an investigation would show that the society is not in a sound financial position, NAMFISA may, after not less than 30 days' notice in writing to the board of a society, require the board to cause the financial position of the society to be investigated by the valuator of the society as at the end of any financial year as specified by NAMFISA and a valuation report thereon to be prepared by the valuator.

(3) The report of the valuator referred to in subsection (1) or (2) must include any particulars set out in the standards.

(4) The board of a society must, within 180 days from the end of the valuation period, and subject to section 402(10)(c), deposit a copy of the valuation report referred to in subsection (1) or (2) with NAMFISA.

(5) Whenever the board of a fund deposits with NAMFISA a copy of a report made by a valuator under this section, it must also deposit with NAMFISA a certificate of the board and of the principal officer of the society that to the best of their knowledge and belief the information furnished to the valuator for the purposes of the report was correct and complete in every material respect.

(6) If the rules of a society provide that the benefits which may become payable to members are subject to the discretion of the board of the society, the board must determine and inform NAMFISA what amount or scale of benefits were taken into consideration for the purpose of the valuation.

(7) The board of a friendly society may, subject to such terms and conditions as may be prescribed, after it receives a report of the valuator and the report reveals an actuarial surplus as provided for in the standards, distribute some or all of that actuarial surplus.

(8) Any person who contravenes or fails to comply with subsection (4) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Business which may be carried on

305. (1) A registered society may not carry on any business other than the business connected with the objects for which a friendly society may be established as set out in section 285, but NAMFISA may, on written application by a society, approve and allow the society to carry on such other business on such conditions and for such period as NAMFISA may determine, if NAMFISA is satisfied that it is necessary in order to safeguard an investment made by the society.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Investments

306. (1) Subject to the provisions of this section and the regulations, a friendly society may invest its funds in any manner provided by its rules.

(2) A society may, where its rules so provide, by way of investment of its funds, grant loans secured by first mortgages of immovable property to any of its members, if the mortgaged property is property on which a dwelling house has been or is to be erected, but the loans may not exceed the percentage of the fair value of the immovable property concerned as provided in the standards.

(3) NAMFISA may, under exceptional circumstances, and on such conditions and for such periods as NAMFISA may determine, temporarily exempt a society from compliance with the provisions of subsection (2).

(4) The Minister may make regulations and NAMFISA may issue standards in respect of the investments by, or of, a friendly society.

(5) Any person who contravenes or fails to comply with subsection (2) or any condition on which an exemption has been granted pursuant to subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART 4
RULES OF FRIENDLY SOCIETY

Rules

307. (1) The rules of a friendly society must comply with the requirements of this Act and must contain matters that may be set out in the regulations or in the standards.

(2) Where the rules of a society are inconsistent with any provision of this Act the rules are invalid to the extent of the inconsistency.

(3) Where the rules of a society are inconsistent with any provision of this Act and have not been amended, NAMFISA must direct the principal officer of the society to amend the rules of the society and the principal officer must comply with the direction forthwith.

(4) Despite subsections (2) and (3), the principal officer of a society has a period of 12 months within which to amend any rules of the society which are inconsistent with this Act, which period commences, as applicable, on -

(a) the date of commencement of this Act;

(b) the date on which a regulation relating to the rules comes into effect; or

(c) the date on which a standard relating to the rules comes into effect.

(5) A society must provide any person who becomes a member of the society with a copy of the rules of the society, free of charge, at the time that the person becomes a member.

(6) Any person who contravenes or fails to comply with subsection (5) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Amendment of rules

308. (1) A society may, in the manner directed by the rules of the society, amend or rescind any rule or make any additional rule, but no such amendment, rescission or addition will be valid if it purports to affect any right of a creditor of the society, other than as a member of the fund.

(2) The principal officer of a society must send a copy of any amended, rescinded or additional rule to NAMFISA not less than 30 days before its implementation, together with any particulars set out in the standards.

(3) If any such amendment, rescission or addition affects the financial position of the registered society, the principal officer must also send to NAMFISA a report by -

(a) the valuator of the society; or

(b) if no valuator has been appointed, by a valuator retained by the society for this purpose,

as to the soundness of the financial position of the society, determined in accordance with the standards, having regard to the rate of contributions by members and, if the society is not in a sound financial position, what arrangements will be made to bring the society into a sound financial position.

(4) If NAMFISA is not satisfied with the report referred to in subsection (3), NAMFISA may, at the cost of the society, require a report by an independent valuator that complies with the conditions set out in the standards and as may be specified by NAMFISA.

(5) The principal officer of a society may at any time consolidate the rules of the society, and in that case the principal officer must forward to NAMFISA a copy of the consolidated rules, but if the consolidated rules differ from the original rules, NAMFISA must direct the board to amend the consolidated rules so that they do not differ from the original rules.

(6) With respect to the rules of a society, NAMFISA may request that additional information regarding any amendment, rescission, addition or consolidation be submitted to NAMFISA, as NAMFISA may consider necessary, and any such amendment, rescission, addition or consolidation is void if the society fails to furnish the information requested by NAMFISA under this subsection within 30 days from the date of that request.

(7) If at any time NAMFISA is of the opinion that the rules of a society do not comply with the requirements of this Act, NAMFISA may direct the society to amend the rules.

(8) The society must send a copy of any amendment to, rescission of, or addition to, the rules of a society to every member of the society free of charge.

(9) Any person who contravenes or fails to comply with subsection (8) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Binding force of rules

309. Subject to the provisions of this Chapter, the rules of a registered society are binding on the society, its members and officers and on any person who claims any benefit under the rules or whose claim is derived from a person so claiming.

PART 5
MEMBERSHIP AND BENEFITS

Membership of minors

310. Where the rules of a registered society so provide, a person who is under the age of 18 years and is assisted by a parent or guardian may be a member of a society, and he or she may execute all necessary documents and give all necessary consents, but may not manage the affairs or be the principal officer of that society.

Membership of married persons

311. Despite the provisions of the Married Persons Equality Act, 1996 (Act No. 1 of 1996), a person who is married in community of property and who is a member of a friendly society may execute all necessary documents and give all necessary consents without the consent of his or her spouse and any benefit granted to him or her must, as between husband and wife, be his or her sole and separate property and may not form part of the joint estate.

Payment of benefits to nominees

312. (1) Where the rules of a society so provide and subject to any conditions or limitations that may be specified in the rules, a member or former member of a society may, in writing delivered or sent to the principal office of the society, nominate any person to whom any money payable by the society on the death of such member or former member must be paid, and may from time to time revoke or vary any such nomination in writing similarly delivered or sent.

(2) On proof of the death of a member or former member referred to in subsection (1), the society must pay to the nominee of the deceased the amount due and payable to the nominee under the nomination.

Restriction of payments on death of children under 16 years

313. (1) A society may not insure the life of a child who is under the age of 16 years for any sum of money which, either alone or together with any amount that to the knowledge of the society is payable on the death of that child by any other society or by an insurer, exceeds the amount set out in the standards.

(2) In circumstances where a society has insured the life of a child for a benefit not consisting of a sum of money, the society will for the purposes of this section be deemed to have insured the life of that child for a sum of money equal to the value of such benefit.

(3) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment

Protection of money due on cessation of membership

314. (1) Money due by way of a benefit under the rules of a friendly society on the cessation of membership of a member who was a member of the society for a period of at least three years or any other asset into which the member converted such money or part of the money is not, during a period of five years from the date upon which the money became due, liable to be attached in execution of a judgment or order of the court at the instance of his or her creditors and does not form part of his or her insolvent estate.

(2) Where the benefit referred to in subsection (1) was pledged, the provisions of that subsection will apply only to so much of the value of that benefit as exceeds the amount of the liability secured by the pledge.

Protection of money due on death of member

315. Money due by way of a benefit under the rules of a friendly society on the death of a member who was a member of the society for a period of at least three years and any money or other asset protected under section 314 is not, to the extent of such protection, available on the death of the member for the payment of his or her creditors as against the claim of -

(a) his or her surviving spouse, parent, child or stepchild, under his or her will; or

(b) his or her surviving spouse, parent or child or stepchild, by right of succession *ab intestatio.*

PART 6
GENERAL

Voluntary dissolution of society

316. Subject to the requirements of any regulations made by the Minister and standards issued by NAMFISA under this Act, a registered society may be terminated or dissolved wholly or in part in such circumstances, if any, as may be specified for that purpose in its rules and in the manner provided by such rules, and subject to the prior approval of NAMFISA, the assets of the society must in that case be distributed in the manner provided by the rules.

Winding-up by court

317. (1) If -

(a) NAMFISA is satisfied that a society is in such an unsound financial condition that any scheme as contemplated by Part 7 of Chapter 10 would be ineffective, impracticable or unsatisfactory; or

(b) a friendly society is required under any provision of this Act to be wound-up under this section,

NAMFISA or a person acting with the approval of NAMFISA may, if the society has assets and liabilities equal to or exceeding the values that are set out in the standards, apply to the High Court for an order that the whole or any part of the business of the society be wound-up.

(2) An application for the winding-up, and the winding-up, of a society pursuant to subsection (1) must be done accordance with the regulations made by the Minister and standards issued by NAMFISA under this Act.

Special provisions relating to liquidation of societies

318. When applying the provisions of the Companies Act in a voluntary dissolution or winding-up of a friendly society, the members of the society must be treated as preferred creditors, and their claims against the society in their capacity as members must be settled before the debts owed to ordinary creditors of the society.

Right to obtain and inspect documents

319. (1) A registered society must on request by a member or a person authorised by a member provide that member or authorised person, on payment of such fee as may be determined by the standards and reflected in the rules of the society -

(a) with a copy, additional to the one provided under section 307(5), of the rules of the society;

(b) with a copy of the most recent income statement and balance sheet of the society, prepared in accordance with this Act; and

(c) with a copy of the most recent valuation and report, if any, by a valuator prepared pursuant to section 304.

(2) A member or a person authorised by a member may without charge, at the principal office of a registered society, inspect a copy of any of the following documents and make extracts therefrom -

(a) the documents referred to in subsection (1);

(b) the most recent statement of liabilities prepared under this Chapter; and

(c) the most recent statement of assets prepared under this Chapter.

(3) NAMFISA may issue standards with respect to any reports and other information that a registered society must provide to members of the society free of charge.

(4) Any person who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Exemption from Act No. 34 of 1934

320. The Trust Moneys Protection Act does not apply to a society registered under this Chapter.

CHAPTER 7
MEDICAL AID FUNDS

PART 1
PRELIMINARY

Definitions for this Chapter

321. (1) In this Chapter, unless the context indicates otherwise -

"beneficiary" means a member or a person admitted to a medical aid fund as a dependant of a member;

"board of trustees" or "board" means the board of trustees charged with managing the affairs of a medical aid fund, which has been elected or appointed under its rules;

"business of a medical aid fund" means the business of undertaking liability in return for contributions -

(a) to make provision for obtaining any health service;

(b) to grant assistance in defraying expenditure incurred in connection with the rendering of any health service; and

(c) where applicable, in connection with the business referred to in paragraph (a) or (b), the rendering of a health service by any supplier or group of suppliers of a health service or by any person, in association with or in terms of an agreement with a medical aid fund,

but excludes the business of providing benefits under insurance policies as may be prescribed;

"condition-specific waiting period" means the period provided in the standards that immediately follows the date of application for membership, during which a beneficiary is not entitled to claim benefits in respect of a condition for which a health service was recommended or received, and which period ends on a date as specified in the standards;

"contribution" means the amount payable on a regular basis by or on behalf of a member of a medical aid fund;

"dependant" means -

(a) a person in respect of whom a member is legally liable for maintenance, if the person is -

(i) the spouse of the member; or

(ii) a child of the member, including a posthumous child, an adopted child and a child born out of marriage,

and is not a member of that member's fund or another medical aid fund; or

(b) any other person who, under the rules of a medical aid fund, is recognised as a dependant of a member unless that person is a member of that member's fund or another medical aid fund;

"fund" or "medical aid fund" means a fund that is in the business of a medical aid fund;

"fund administrator" means a fund administrator as defined in section 363 and appointed pursuant to section 344(3);

"general waiting period" means the period provided in the standards during which a beneficiary is not entitled to claim any benefits;

"health service" includes -

(a) a health care treatment administered to an individual by any person registered under any law, which treatment has as its object -

(i) the physical or mental examination of that individual;

(ii) the diagnosis, treatment or prevention of any physical or mental defect, illness or deficiency;

(iii) the giving of advice in relation to any such defect, illness or deficiency;

(iv) the giving of advice in relation to, or treatment of, any condition arising out of a pregnancy;

(v) the prescribing or supplying of any medicine, appliance or apparatus in relation to any such defect, illness or deficiency or a pregnancy; or

(vi) the rendering of nursing or midwifery services;

(b) an ambulance service;

(c) the supply of accommodation in an institution established or registered under any law as a hospital, maternity home, nursing home or similar institution where nursing is practised;

(d) the supply of accommodation in an institution where surgical or other medical activities are performed, and such accommodation is necessitated by any physical or mental defect, illness or deficiency or by a pregnancy; and

(e) any other service set out in the standards;

"medical aid fund broker" means a registered financial intermediary the business of which, or part of which, entails providing medical aid fund broker services and, where applicable, includes a corporate medical aid fund broker;

"medical aid fund broker services" means -

(a) service or advice in respect of the introduction or admission of a member to a medical aid fund;

(b) ongoing service or advice in respect of access to, or benefits offered by, a medical aid fund; and

(c) collection of contributions from members or prospective members on behalf of a medical aid fund;

"member" means a person who has been enrolled or admitted as a member of a medical aid fund or who is a member under the rules of that medical aid fund;

"restricted membership fund" means a medical aid fund the rules of which restrict the eligibility for membership by reference to -

(a) employment or former employment or both employment and former employment in any profession, trade, industry or calling;

(b) employment or former employment or both employment and former employment by a particular employer or by an employer included in a particular class of employers;

(c) membership or former membership or both membership and former membership of a particular profession, professional association or union; or

(d) any other matter provided for in the standards;

"rules" means the rules of a medical aid fund referred to in section 352; and

"sponsor" means the person who established a medical aid fund or who proposes to establish a medical aid fund.

(2) Any reference in this Chapter to a medical aid fund must be construed as a reference to that medical aid fund or to the board of trustees of that medical aid fund.

Application of Chapter to medical aid fund established by State

322. This Chapter does not apply to a medical aid fund established under section 34(1)(d) of the Public Service Act, 1995 (Act No. 13 of 1995).

Prohibitions

323. (1) A person may not carry on the business of a medical aid fund in Namibia unless that person is registered as a medical aid fund pursuant to section 328 or is deemed to be registered under section 329.

(2) A person may not carry on the business of a medical aid fund broker unless that person is registered as a medical aid fund broker pursuant to section 335 or is deemed to be registered under section 336.

(3) Any person who contravenes or fails to comply with the provisions of subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Restriction on use of designation "medical aid fund"

324. (1) A person may not, in connection with a business, use a name which includes the words "medical aid fund" or any other name which is intended to indicate or is likely to lead other persons to believe that the person carries on the business of a medical aid fund or medical aid fund broker, unless such business is registered or deemed to be registered as a medical aid fund or medical aid fund broker under this Chapter.

(2) If at the commencement of this Chapter any person was using, in connection with that person's business, any name or description referred to in subsection (1) and that person -

(a) subsequently changes that name;

(b) produces any deed or document, bearing the previous name which was registered in any deeds registry or in any other office where a register or record of the ownership of, or entitlement to, any property is kept, to the person charged with the registration of deeds in that registry or to the officer in charge of that other office; and

(c) satisfies the person so charged or officer that the name was changed as a result of the prohibition contained in subsection (1),

that person so charged or officer must, without any charge, substitute the new name for the previous name on that deed or document and in all the relevant registers.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Prohibited marketing

325. (1) A person may not market, advertise or in any other way promote the business of any person in a manner likely to create the impression that such person conducts, will conduct, or is entitled to conduct the business of a medical aid fund or medical aid fund broker unless that person is registered or deemed to be registered as a medical aid fund or a medical aid fund broker under this Chapter.

(2) The admission of a person as a member of a medical aid fund or as a dependant of that member may not be made directly or indirectly conditional upon that person purchasing or participating in any product, benefit or service provided by any person other than the medical aid fund under its rules.

(3) A person may not advertise or in any other way promote a medical aid fund in a manner likely to create the impression that membership of such medical aid fund is conditional upon the purchase of or participation in any product, benefit or service provided by a person other than the medical aid fund under its rules.

(4) Any person who contravenes or fails to comply with subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

PART 2
REGISTRATION

Application for registration

326. (1) An application for registration as a medical aid fund must be made to NAMFISA by the board of the proposed fund in accordance with subsection (2).

(2) An application for registration as a medical aid fund must be -

(a) made in the manner and form required by the standards;

(b) include the information with respect to the principal office and principal officer required by the standards;

(c) accompanied by the documents and other information required by the standards;

(d) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(e) made subject to and in accordance with any other applicable provision of this Act; and

(f) accompanied by the required fee.

(3) In addition to the requirements of subsection (2), an application for registration referred to in subsection (1) must include -

(a) the rules of the fund;

(b) a report of a valuator appointed by the fund with respect to the current financial position of the fund and its projected financial soundness, prepared in accordance with the standards; and

(c) such financial guarantees as may be set out in the standards and that NAMFISA may demand from the person who will manage the business of the medical aid fund to ensure the future financial stability of the medical aid fund.

Registration requirements

327. (1) Before approving the application and registering the fund, NAMFISA must be satisfied on reasonable grounds that the requirements of subsection (2) have been met and that -

(a) the rules of the fund are not inconsistent with this Act and are based on sound financial principles;

(b) the fund has a sufficient number of members who will contribute to the fund as required by the standards;

(c) the fund does not and will not unfairly discriminate directly or indirectly against any person;

(d) the report of the valuator referred to in section 326(3)(b) is satisfactory; and

(e) the guarantee referred to in section 326(3)(c) is satisfactory.

(2) Before approving an application referred to in subsection (1) and registering a fund NAMFISA must be satisfied that -

(a) in relation to the proposed fund -

(i) every member of the board of trustees, the principal officer and other officers of the proposed fund are fit and proper within the meaning of the standards;

(ii) the rules or act, charter, deed of settlement, memorandum of association or other founding documents of the proposed fund are not inconsistent with the provisions of this Act;

(iii) the direct or indirect control of the proposed fund is not likely to be contrary to the interest of consumers of the financial services concerned; and

(iv) the proposed fund will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;

(b) doing so is not contrary to -

(i) this Act; or

(ii) the public interest;

(c) the proposed fund has the attributes reasonably necessary and adequate to -

(i) provide the financial services in question with professional integrity, prudence, proper skill and due diligence;

(ii) maintain a sound financial position and not cause or further instability in the financial system of Namibia; and

(iii) comply with this Act;

(d) the name under which the proposed fund proposes to conduct business, or a translation, shortened form or derivative of that name is not in contravention of section 391;

(e) the applicant has submitted all other information which, in the opinion of NAMFISA, is necessary to assess the application and such information has been found satisfactory by NAMFISA; and

(f) the applicant has complied and will continue to comply with any other requirements contained in this Act or in the standards which apply to the proposed fund.

Registration

328. (1) If NAMFISA is satisfied that the proposed medical aid fund complies with the requirements of section 327, NAMFISA must register the fund, subject to any conditions which NAMFISA may consider appropriate pursuant to subsection (4), and must issue a certificate of registration pursuant to subsection (3).

(2) The registration referred to in subsection (1) must specify -

(a) the principal office of the applicant in Namibia; and

(b) the places in Namibia from which the applicant may operate.

(3) Upon registration of an applicant, NAMFISA must issue to the applicant a certificate of registration in a form provided by the standards.

(4) NAMFISA may impose such conditions on the registration of the applicant as it considers necessary having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant and any guidelines issued by NAMFISA under this Act**.**

(5) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(6) A medical aid fund must comply with the conditions subject to which it was registered.

Existing medical aid funds

329. (1) A medical aid fund that was registered in Namibia prior to the commencement of this Chapter under any law repealed by this Act is deemed to be a medical aid fund registered under this Act.

(2) Despite subsection (1), a medical aid fund referred to in that subsection must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to section 326 for registration as a medical aid fund.

(3) If a medical aid fund referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (2), NAMFISA may take action that NAMFISA considers appropriate against the medical aid fund pursuant to section 332, 412 or 439.

Effect of registration

330. (1) On registration of a medical aid fund under section 328, in so far as is applicable -

(a) it has the powers of a juristic person to the extent that it is capable of suing and being sued under the name by which it is registered and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions pursuant to its rules;

(b) despite anything to the contrary contained in any law or in the rules or act, charter, deed of settlement, memorandum of association or other founding documents or the rules of fund or of any corporate body or unincorporated entity that controls the business of the fund -

(i) all the assets, rights, liabilities and obligations pertaining to the business of the fund will be assets, rights, liabilities and obligations of that registered fund to the exclusion of any other person; and

(ii) no person will have any claim on the assets or rights or be responsible for any liabilities or obligations of the fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund; and

(c) any assets, rights, liabilities and obligations, which are held by any person in trust for the fund as it existed immediately prior to its registration will vest in and devolve upon the registered fund without any formal transfer or cession; and

(d) it assumes liability for and guarantees the benefits offered to its members and their dependants under its rules.

(2) A person may not have a claim on the assets or rights or be responsible for any liabilities or obligations of a medical aid fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund.

(3) The person in charge of the deeds registry or any other officer in charge of any other office where a register or record of the ownership of, or entitlement to, any property is kept in which is registered a deed or other document relating to an asset or right which under subsection (1) vests in or devolves upon a medical aid fund, must, on production by the medical aid fund of its certificate of registration and of the deed or other document, without payment of transfer duty, stamp duty, registration fees or other charges, make the endorsements upon that deed or other document and the alterations in the registers in order to reflect that vesting or devolution.

Application for cancellation or variation of registration

331. (1) A registered fund may at any time make an application to NAMFISA for cancellation of the registration granted pursuant to this Act or a variation of the conditions subject to which that registration was granted.

(2) An application made under subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) accompanied by the documents and other information required by the standards;

(c) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case; and

(d) accompanied by the required fee.

(3) Before making an application for the cancellation of a registration or a variation of its conditions, the applicant must give prior notice of the proposed application in two newspapers circulating nationally in Namibia, at the expense of the applicant, stating -

(a) the name of the applicant;

(b) either -

(i) the reasons for the proposed cancellation; or

(ii) the nature of the proposed variation; and

(c) the period within which objections to the application may be lodged with NAMFISA.

(4) Section 328 applies with the changes required by the context to an application for a variation of conditions referred to in subsection (1).

(5) If after consideration of any objection received as a result of the notice referred to in subsection (3), NAMFISA is of the opinion that it is reasonable to do so and not against the public interest, NAMFISA may, by notice to the registered fund concerned -

(a) cancel the registration; or

(b) vary the conditions of registration, including the imposition of additional conditions.

(6) NAMFISA must make public any cancellation of registration or variation of conditions of registration under subsection (5) and the reasons for the cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

Cancellation or variation of registration

332. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that any of the following cirucmstances exist with respect to a registered medical aid fund:

(a) it has made a material misrepresentation or failed to provide information that was materially relevant in its application for registration;

(b) it has failed to comply with this Act;

(c) it no longer meets the requirements for registration;

(d) it has provided financial services without professional integrity, prudence, proper skill and due diligence;

(e) it is in an unsound financial position;

(f) it has failed to comply with a directive, request or requirement of NAMFISA issued under this Act;

(g) it has failed to give effect to a decision of the Appeal Board;

(h) it has ceased to operate or has failed to commence operating within a reasonable time after being registered;

(i) it is involved in a financial crime; or

(j) a member of the board of trustees, the principal officer or other officer of the registered medical aid fund no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take any of the following actions with respect to the registered medical aid fund -

(a) cancel its registration;

(b) vary the conditions of its registration, including the imposition of additional conditions; or

(c) take any other steps that NAMFISA may consider necessary or advisable.

(3) NAMFISA must give notice to the registered fund of the intention of NAMFISA to take any action referred to in subsection (2), together with the reasons for taking the action, and must give the registered fund a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the registered fund may make representations to NAMFISA on the matter.

(4) Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of a registered medical aid fund.

(5) On the cancellation of the registration of a medical aid fund under section 331 or subsection (2) -

(a) the fund must be dissolved in accordance with the requirements of section 358 or wound-up in accordance with the requirements of section 359, as applicable, and the rules of the medical aid fund; and

(b) NAMFISA must take such steps and may impose such conditions as are necessary in the circumstances, which steps may include the transfer of the business of the medical aid fund to another medical aid fund, as appropriate, but no distribution of the assets of the medical aid fund may be made without the prior approval of NAMFISA.

(6) NAMFISA must make public any suspension or cancellation of registration, variation of conditions of registration or any other steps taken under this section and the reasons for the suspension, cancellation, variation or steps, by notice in the *Gazette* or by means of any other appropriate public statement.

(7) A person who -

(a) continues to operate, or carry on, the business of a medical aid fund after the cancellation of registration under section 331(5)(a), subsection (2)(a) or any other applicable provision of this Act or after suspension of registration under subsection (4); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (4),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Application for registration as medical aid fund broker

333. (1) An individual or an entity may make an application for registration as a medical aid fund broker to NAMFISA in accordance with subsection (2).

(2) An application for registration as a medical aid fund broker must be -

(a) made in the manner and form required by the standards;

(b) include the information with respect to the principal office and principal officer required by the standards;

(c) accompanied by the documents and other information required by the standards;

(d) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(e) made subject to and in accordance with any other applicable provision of this Act; and

(f) accompanied by the required fee.

Registration requirements

334. (1) Before approving an application and registering an individual as a medical aid fund broker, NAMFISA must be satisfied that the applicable requirements of subsection (3) have been met and that -

(a) the individual is at least 18 years of age;

(b) the individual has met the requirements for registration that may from time to time be included in the standards;

(c) there are reasonable grounds for believing the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure the business of a medical aid fund broker;

(d) the individual has not been refused registration as a financial intermediary or had such a registration suspended or revoked under this Act or any other financial services law;

(e) the individual has not been convicted of an offence the nature of which renders him, in the opinion of NAMFISA, unfit to hold a registration under this Act;

(f) the individual is fit and proper within the meaning of the standards;

(g) there are reasonable grounds for believing that the individual will carry on with integrity and honesty the activities of a medical aid fund broker;

(h) the individual has met, or will be able to meet, any other requirements of this Act and any instructions and guidelines issued by NAMFISA under this Act that apply to medical aid fund brokers;

(i) the individual does not, and will not be likely to, engage in conduct of a kind identified in the standards as misconduct;

(j) the individual is ordinarily resident in Namibia and is in a position to comply with the law relating to his or her residency in Namibia and with any other applicable laws of Namibia; and

(k) any required fee has been paid.

(2) Before approving an application and registering an entity as a corporate medical aid fund broker, NAMFISA must be satisfied that the requirements of subsection (3) have been met and that -

(a) the individuals who will carry on activities of the kind to which the registration relates on behalf of the entity will meet the requirements of subsection (1) and be registered under section 335; and

(b) any required fee has been paid.

(3) Before approving the application and registering the applicant as a medical aid broker, NAMFISA must be satisfied that -

(a) in relation to the applicant entity -

(i) every shareholder or other owner that controls the applicant, and every director, the principal officer or other officers of the applicant, and where applicable, members of any board of trustees or other board, are fit and proper within the meaning of the standards;

(ii) the memorandum, articles and rules or other founding documents of the applicant are not inconsistent with the provisions of this Act;

(iii) the direct or indirect control of the entity is not likely to be contrary to the interest of consumers of the financial services concerned; and

(iv) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;

(b) doing so is not contrary to -

(i) this Act; or

(ii) the public interest;

(c) the applicant has the attributes reasonably necessary and adequate to -

(i) provide the financial services in question with professional integrity, prudence, proper skill and due diligence;

(ii) maintain a sound financial position and not cause or further instability in the financial system of Namibia; and

(iii) comply with this Act;

(d) the name under which the applicant proposes to conduct business, or a translation, shortened form or derivative of that name is not in contravention of section 391;

(e) the applicant has submitted all other information which, in the opinion of NAMFISA, is necessary to assess the application and such information has been found satisfactory by NAMFISA; and

(f) the applicant has complied and will continue to comply with any other requirements contained in this Act or in the standards which apply to the applicant.

(4) In addition to the applicable requirements for a registration set out in subsections (1), (2) and (3), if an application for a registration is made after a date determined by the Minister by notice in the *Gazette,* an individual or entity may not be granted a registration as a medical aid fund broker or a corporate medical aid fund broker, unless NAMFISA is satisfied that -

(a) an insurance policy is in place providing errors and omissions coverage in respect of the activities of the individual or entity as broker in a form approved by NAMFISA and in an amount that has been prescribed in respect of any one occurrence, with extended coverage for fraudulent acts or some other financial guarantee affording comparable protection acceptable to NAMFISA; and

(b) if the individual or entity will have employees carrying on the activities of a broker, a fidelity insurance policy is in place providing coverage in respect of losses arising from dishonesty of employees in a form approved by NAMFISA and in an amount that has been prescribed in respect of any one occurrence.

Registration and renewal of registration

335. (1) If NAMFISA is satisfied that the applicant complies with the requirements of section 334, NAMFISA must register the applicant as a medical aid fund broker or corporate medical aid fund broker, subject to any conditions which NAMFISA may consider appropriate pursuant to subsection (4), and must issue a certificate of registration pursuant to subsection (3).

(2) The registration referred to in subsection (1) must specify -

(a) the principal office of the applicant in Namibia;

(b) the places in Namibia from which the applicant may operate.

(3) Upon registration of an applicant NAMFISA must issue to the applicant a certificate of registration in a form provided by the standards.

(4) NAMFISA may impose such conditions on the registration of the applicant as it considers necessary having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant and any guidelines issued by NAMFISA under this Act.

(5) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(6) A medical aid fund broker must comply with the conditions subject to which it was registered.

(7) The term of registration as a medical aid fund broker under this section expires on March 31 of each year or on such other date as NAMFISA may specify, but if the appropriate renewal fee as determined by NAMFISA in respect of each medical aid fund broker is paid to NAMFISA in the manner set out in the standards, the registration must, subject to compliance with any requirements that may be set out in the standards, be renewed for a period of 12 months as from the expiry date.

(8) The renewal fee is payable within the period set out in the standards, and any payment received after that period bears interest at a rate determined by NAMFISA in the standards which rate may not exceed the rate prescribed for this purpose.

(9) If -

(a) the renewal fee is not received within the period contemplated in subsection (8); or

(b) the requirements of the standards referred to in subsection (7) have not been complied with,

NAMFISA may not renew the registration of the medical aid fund broker whose renewal fee was not paid or in respect to whom the requirements of the standards have not been complied with.

(10) A person who continues to operate, or carry on, the business of a medical aid fund broker after the non-renewal of registration under subsection (9) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Existing medical aid fund brokers

336. (1) A person carrying on the business of a medical aid fund broker on the date of commencement of this Chapter is deemed to be a medical aid fund broker registered under this Act.

(2) Despite subsection (1), a person referred to in that section must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to section 333 for registration as a medical aid fund broker.

(3) If a person referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (2) the deemed registration of that person is cancelled and the person must cease to carry on the business of medical aid fund broker.

(4) A person who continues to operate, or carry on, the business of a medical aid fund broker after the cancellation of registration under subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Application for cancellation or variation of registration

337. (1) A registered medical aid fund broker may at any time make an application to NAMFISA for cancellation of the registration granted pursuant to this Act or a variation of the conditions subject to which that registration was granted.

(2) An application made under subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) accompanied by the documents and other information required by the standards;

(c) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case; and

(d) accompanied by the required fee.

(3) Before making an application for the cancellation of a registration or a variation of its conditions, the applicant must give prior notice of the proposed application in two newspapers circulating nationally in Namibia, at the expense of the applicant, stating -

(a) the name of the applicant;

(b) either -

(i) the reasons for the proposed cancellation; or

(ii) the nature of the proposed variation; and

(c) the period within which objections to the application may be lodged with NAMFISA.

(4) Section 335 applies with the changes required by the context to an application for a variation of conditions referred to in subsection (1).

(5) If after consideration of any objection received as a result of the notice referred to in subsection (3), NAMFISA is of the opinion that it is reasonable to do so and not against the public interest, NAMFISA may, by notice to the registered medical aid fund broker concerned -

(a) cancel the registration; or

(b) vary the conditions of registration, including the imposition of additional conditions.

(6) NAMFISA must make public any cancellation of registration or variation of conditions of registration under subsection (5) and the reasons for the cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

Cancellation or variation of registration

338. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to a registered medical aid fund broker:

(a) it has made a material misrepresentation or failed to provide information that was materially relevant in its application for registration;

(b) it has failed to comply with this Act;

(c) it no longer meets the requirements for registration;

(d) it has provided financial services without professional integrity, prudence, proper skill and due diligence;

(e) it is in an unsound financial position;

(f) it has failed to comply with a directive, request or requirement of NAMFISA issued under this Act;

(g) it has failed to give effect to a decision of the Appeal Board;

(h) it has ceased to operate or has failed to commence operating within a reasonable time after being registered;

(i) it is involved in a financial crime,

(j) it in the case of an individual, the individual no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct; or

(k) in the case of an entity, any director, the principal officer, other officer or member of a board of the medical aid fund broker no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take any of the following actions with respect to the registered medical aid fund broker-

(a) cancel its registration;

(b) vary the conditions of its registration, including the imposition of additional conditions; or

(c) take any other steps that NAMFISA may consider necessary or advisable.

(3) NAMFISA must give notice to the registered medical aid fund broker of the intention of NAMFISA to take any action referred to in subsection (2), together with the reasons therefor, and must give the registered medical aid fund broker a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the registered medical aid fund broker may make representations to NAMFISA about the matter.

(4) Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of a registered medical aid fund broker.

(5) On the cancellation of the registration of a medical aid fund broker under section 337(5), subsection (2)(a) or any other applicable provision of this Act, or on suspension of registration under subsection (4), the medical aid fund broker must cease to carry on the business of a medical aid fund broker.

(6) NAMFISA must make public any suspension or cancellation of registration, variation of conditions of registration or any other steps taken under this section and the reasons for the suspension, cancellation, variation or steps, by notice in the *Gazette* or by means of any other appropriate public statement.

(7) A person who -

(a) continues to operate, or carry on, the business of a medical aid fund broker after the cancellation of registration under section 337(5)(a), subsection (2)(a) or any other applicable provision of this Act or after suspension of registration under subsection (4); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (4),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 3
ADMINISTRATION AND POWERS

Principal office and principal officer

339. (1) Every registered medical aid fund and every registered medical aid fund broker must -

(a) have a principal office in Namibia where it must hold and maintain the documents referred to in the standards; and

(b) where applicable, appoint to be its principal officer in Namibia, a fit and proper person within the meaning of the standards who -

(i) is a Namibian citizen or permanent resident;

(ii) is resident in Namibia; and

(iii) must be an *ex officio* member of the board of the medical aid fund or of the medical aid fund broker, but the principal officer may not serve as chairperson of the board.

(2) Despite subsection (1)(b)(i), NAMFISA may, in exceptional circumstances, grant permission that a principal officer referred to in that subsection may, subject to the Immigration Control Act, 1993 (Act No. 7 of 1993), for such period as may be determined by NAMFISA, be a person other than a Namibian citizen or permanent resident.

(3) After the appointment of a principal officer pursuant to subsection (1)(b), the registered medical aid fund or medical aid fund broker must, within the period set out in the standards, in writing notify NAMFISA of the appointment.

(4) NAMFISA may, on the grounds that a principal officer is not a fit and proper person within the meaning of the standards and after giving the registered medical aid fund or medical aid fund broker and the principal officer a reasonable opportunity to be heard, direct the registered medical aid fund or medical aid fund broker to appoint some other person to be the principal officer of the registered medical aid fund or medical aid fund broker.

(5) Whenever a principal officer resigns or the appointment of a principal officer is terminated by a registered medical aid fund or medical aid fund broker or by the expiry of a contract of employment, the registered medical aid fund or medical aid fund broker must, within the period set out in the standards, in writing notify NAMFISA and submit to NAMFISA a written statement of the reasons for the termination or, in the opinion of the registered medical aid fund or medical aid fund broker, the reasons for the resignation.

(6) The principal officer of a registered medical aid fund or medical aid fund broker is authorised to act on behalf of the medical aid fund or a medical aid fund broker to ensure compliance with this Act, and in any case where a person, including

NAMFISA, communicates with that medical aid fund or medical aid fund broker, that person may do so by addressing the communication to the principal officer.

(7) Process in any legal proceedings may be served on a registered medical aid fund or medical aid fund broker by serving a copy of the process at its principal office.

(8) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Board of medical aid fund

340. (1) A registered medical aid fund must have a board of trustees consisting of persons who are fit and proper within the meaning of the standards.

(2) Despite any rule of the fund but subject to sections 341, the board of a registered medical aid fund must consist of a minimum of four members.

(3) The active and the retired members of a medical aid fund have the right to elect, whether directly or indirectly, at least half of the number of board members of the medical aid fund.

(4) Subsections (1), (2) and (3) come into force on the date which is 90 days after the date of commencement of this Chapter.

(5) A person may not be a member of the board of a registered medical aid fund if that person is -

(a) a director or an officer or employee of the fund administrator of the registered medical aid fund or of the holding company, subsidiary, joint venture or associate of the fund administrator;

(b) a consultant to or contractor under an agreement with the fund administrator; or

(c) a financial institution or financial intermediary that renders financial services to the registered medical aid fund or its board of trustees.

(6) Subject to subsections (1), (2) and (3), the rules of a medical aid fund must -

(a) set out the constitution of the board, the election and appointment procedure for its members, the terms of office of the members, the procedures at meetings, the voting rights of members, the quorum for a meeting and the breaking of deadlocks;

(b) provide a code of conduct for the members of the board;

(c) require that the board meet at least four times a year; and

(d) provide that all meetings of the board are held in Namibia.

(7) The rules of a registered medical aid fund must be amended in accordance with section 353 to comply with subsections (1), (2), (3), (5) and (6) within 90 days after the date of coming into force referred to in subsection (4).

(8) Where a board consists of four members or pursuant to section 341 less than four members, all the members of the board constitute a quorum for a meeting of that board.

(9) If a board member is removed from office for reasons other than the expiration of that member's term of appointment or voluntary resignation -

(a) that board member must within 21 days of the removal submit a written statement to NAMFISA of the reasons, in the opinion of the board member, for the termination and must in addition comply with subsection (10); and

(b) the board must within 21 days of the removal submit a written statement to NAMFISA of the reasons, in the opinion of the board, for the termination.

(10) A board member must at any time inform NAMFISA in writing on becoming aware of any material matter relating to the affairs of the fund which, in the opinion of the board member, may seriously prejudice the financial viability of the fund or the benefits or rights of its members.

(11) A person who contravenes or fails to comply with subsection (10) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Exemptions

341. (1) NAMFISA may on written application by the board of a registered medical aid fund and subject to such conditions as may be determined by NAMFISA -

(a) authorise a fund to have a board consisting of less than four members, if that number is impractical or unreasonably expensive, provided that the active and retired members of the medical aid fund have the right to elect at least 50 percent of the board members; or

(b) exempt a medical aid fund from the requirement that the active and retired members of the medical aid fund have the right to elect members of the board.

(2) NAMFISA may withdraw an exemption granted under subsection (1) if a medical aid fund no longer qualifies for such exemption or if NAMFISA regards such exemption no longer to be in the public interest.

Replacement of member of board

342. (1) On the termination of office for any reason of a member of the board of a registered medical aid fund a person to replace such member must, subject to section 340(1) and (2), be elected or appointed in the manner set out in the rules

of the fund and the board must notify NAMFISA forthwith of the termination and replacement.

(2) A person who is elected or appointed as a member of the board of the fund pursuant to subsection (1) or (3) must be a fit and proper person within the meaning of the standards and such election or appointment must comply with the provisions of section 340 or 341.

(3) NAMFISA may at any time, on the grounds that any member of the board of a registered fund is not a fit and proper person within the meaning of the standards and after giving the board and the member of the board in question a reasonable opportunity to be heard, direct -

(a) that such member of the board be removed from office; and

(b) in case the remaining number of members is less than the number required by section 340 or 341, as applicable, or by the rules of the fund, that some other person who complies with the provisions of subsection (2) be elected or appointed to the board of the fund.

Objects of board

343. (1) The objects of the board of a registered medical aid fund are to direct, control and oversee the operations of the medical aid fund in accordance with this Act and the rules of the medical aid fund.

(2) In pursuing its objects the board must -

(a) take all reasonable steps to ensure that the interests of members under the rules of the medical aid fund are protected and that the medical aid fund complies with the provisions of this Act and the rules;

(b) act with due care, diligence, prudence and good faith;

(c) avoid conflicts of interest wherever possible and, if not possible, manage the conflicts;

(d) disclose any conflict of interest of a member of the board; and

(e) act with impartiality in respect of all members and beneficiaries.

(3) The members of the board of the medical aid fund must, within 30 days of the end of each financial year, disclose in writing to NAMFISA any payments or other considerations made, whether directly or indirectly, to them in that particular year by the medical aid fund or by a contractor with the medical aid fund.

(4) A member of the board of a medical aid fund who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Duties of board

344. (1) In addition to the duties of a board of a registered medical aid fund set out in the rules of the medical aid fund and in section 395, the board of a registered medical aid fund must -

(a) ensure that proper registers, books and records of the operations of the medical aid fund are kept, including proper minutes of all resolutions passed by the board;

(b) ensure that membership records, contributions and benefit payments are administered in accordance with the rules;

(c) ensure that the assets of the medical aid fund are invested in accordance with the investment policy established by the board which is appropriate to the nature and financial circumstances of the medical aid fund, and which the board implements and regularly reviews after taking expert advice;

(d) ensure that the risks of the fund are appropriately managed, including ensuring that proper control systems and functional separation of duties are employed by or on behalf of the medical aid fund;

(e) ensure that adequate and appropriate information is communicated to members of the medical aid fund, employers and sponsors pursuant to a communication strategy consistent with the standards issued by NAMFISA;

(f) take all necessary steps to ensure that contributions are paid in a timely manner to the medical aid fund in accordance with this Chapter;

(g) obtain expert advice on matters where board members lack sufficient expertise;

(h) ensure that the rules and the operation and administration of the medical aid fund comply with this Act and other applicable laws;

(i) ensure that the board meets at least four times each year;

(j) continuously monitor the compliance of the members of the board with the requirement that they be fit and proper within the meaning of the standards as required by sections 340 and 342;

(k) prepare an annual report, which must be submitted to NAMFISA, that summarises -

(i) the financial position of the medical aid fund;

(ii) the investment policy of the medical aid fund;

(iii) the activities of the board during the year; and

(iv) any other matters required by the standards; and

(l) comply with such other duties as NAMFISA may require in the standards.

(2) If, despite the steps taken by the board of a registered medical aid fund pursuant to subsection (1)(f), contributions to the medical aid fund remain outstanding for such period as is specified by NAMFISA in the standards the board must, within the time specified in the standards, notify all active and retired members of the medical aid fund and NAMFISA of this fact.

(3) The board of a medical aid fund may, in accordance with a system of delegation set out in the rules of the medical aid fund which system must maximise administrative and operational efficiency and provide adequate checks and balances, appoint a fund administrator to exercise any of its powers of administration or to perform any of its administrative duties or functions as long as -

(a) the fund administrator is registered by NAMFISA as a fund administrator pursuant to section 368;

(b) the board has determined after taking expert advice that the fund administrator has qualifications and experience relevant to the administration of the medical aid fund in question; and

(c) the board has entered into a contract with the fund administrator that complies with the rules of the medical aid fund and the policies of the board.

(4) The board is not divested or relieved of any power or duty or function delegated or assigned under subsection (1) and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.

(5) As soon as possible after a contract referred to in subsection (3)(c) has been entered into the board must file a copy of the contract with NAMFISA.

(6) A fund administrator that enters into a contract with the board of a medical aid fund pursuant to subsection (3)(c) has a fiduciary duty and responsibility to the medical aid fund and must exercise the powers delegated or perform the duty or function assigned to it with the standard expected of an expert.

(7) Where a board delegates a power or assigns a duty or function pursuant to this section, the board must monitor the performance of the fund administrator with respect to the standards described in the contract and take remedial action if that performance fails to achieve those standards.

(8) Administration in respect of a medical aid fund means the rendering of any form of administrative service, as defined in section 363, to the medical aid fund.

(9) A fund administrator must, in relation to a medical aid fund, perform the functions and duties entrusted to the fund administrator by section 374.

Appointment of auditor

345. (1) Except where the accounts of a medical aid fund are to be audited by the Auditor-General pursuant to another law of Namibia, the board of a registered medical aid fund must, in accordance with section 401 and in the manner set

out in the rules of the fund, appoint and at all times have an auditor or firm of auditors to be the auditor of the fund.

(2) The board of a registered medical aid fund may not appoint as the auditor of the fund -

(a) an auditor who is; or

(b) a firm of auditors, any member of which is,

an employee or officer of the fund or of a fund administrator of the fund or a member of the board of trustees of the fund or a member of the board of a fund administrator of the fund or an employee, or officer of the board, of a participating employer or a sponsor of the fund.

(3) NAMFISA may direct the board of a medical aid fund to change the auditor of the fund if NAMFISA is satisfied that the auditor or any member of the firm of auditors appointed as auditor is an employee or officer of the fund or of a fund administrator of the fund or a member of the board of trustees of the fund or a member of the board of a fund administrator of the fund or an employee, or officer of the board, of a participating employer or an employee, or officer of the board, of the sponsor of the fund.

(4) An auditor appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

an auditor by section 401.

Appointment of valuator

346. (1) The board of a registered medical aid fund must, in accordance with section 402 and in the manner set out in the rules of the fund, appoint and at all times have a valuator.

(2) The board of a fund referred to in section 336 must, if that fund does not have a valuator on the date of commencement of this Part, appoint a valuator within 90 days of that date.

(3) The board of a medical aid fund may not appoint as the valuator of the fund an employee or officer of the fund or of a fund administrator of the fund or a member of the board of trustees of the fund or a member of the board of a fund administrator of the fund or an employee, or officer of the board, of a participating employer or an employee, or officer of the board, of the sponsor of the fund.

(4) NAMFISA may direct the board of a medical aid fund to change the valuator of the fund if NAMFISA is satisfied that the person appointed as valuator is an employee or officer of the fund or of a fund administrator of the fund or a member of the board of trustees of the fund or a member of the board of a fund administrator

of the fund or an employee, or officer of the board, of a participating employer or an employee, or officer of the board, of the sponsor of the fund.

(5) A valuator appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

a valuator by section 402.

Investigations by valuator

347. (1) The board of a registered medical aid fund must in accordance with the provisions of the standards, at least once in every three years, cause the financial position of the fund to be investigated by the valuator of the fund and a valuation report thereon to be prepared by the valuator as at the end of the third financial year.

(2) Despite subsection (1), if NAMFISA has reason to believe that an investigation would show that the medical aid fund is not in a sound financial position NAMFISA may, after not less than one month's notice in writing to the board of a medical aid fund, require the board to cause the financial position of the fund to be investigated by the valuator of the fund as at the end of any financial year as specified by NAMFISA and a valuation report thereon to be prepared by the valuator.

(3) The report of the valuator referred to in subsection (1) or (2) must include any particulars set out in the standards.

(4) The board of a medical aid fund must, within 180 days from the end of the valuation period and subject to section 402(10)(d), deposit a copy of the valuation report referred to in subsection (1) or (2) with NAMFISA and the board must send a copy of the report or a summary of the report prepared by the valuator in the form required by the standards, to every employer who contributes to that fund.

(5) Whenever the board of a medical aid fund deposits with NAMFISA a copy of a report made by a valuator under this section it must also deposit with NAMFISA a certificate of the board and of the principal officer of the fund that to the best of their knowledge and belief the information furnished to the valuator for the purposes of the report was correct and complete in every material respect and, where applicable, that a copy of the report or a summary of the report referred to in subsection (3) was sent to every employer contributing to the fund.

(6) If the rules of a fund provide that the benefits which may become payable to members are subject to the discretion of the board of the fund, the board must determine and inform NAMFISA what amount or scale of benefits were taken into consideration for the purpose of the valuation.

(7) Any person who contravenes or fails to comply with subsection (4) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Financial arrangements

348. (1) A medical aid fund may not carry on any business other than the business of a medical aid fund, but NAMFISA may approve of a registered fund carrying on such other business on such conditions and for such period as NAMFISA may determine if NAMFISA is satisfied that it is necessary in order to safeguard an investment made by the fund.

(2) A medical aid fund must at all times maintain its business in a financially sound position by -

(a) complying with the minimum solvency requirements set out in the standards; and

(b) generally conducting its business so as to be at all times in a position to meet its obligations to members.

(3) The determination of -

(a) the kinds or categories of assets that must be held in Namibia or outside Namibia by a fund;

(b) the items to be included in the liabilities of a fund;

(c) the valuation of the assets and liabilities of a fund; and

(d) the minimum solvency requirements for a fund and the determination of the financial position of a fund for that purpose,

must be in accordance with the regulations.

(4) A medical aid fund is deemed not to hold an asset for the purposes of this Chapter to the extent to which such asset is encumbered as provided in subsection (5).

(5) A medical aid fund may -

(a) encumber its assets;

(b) allow its assets to be held by another person on its behalf;

(c) directly or indirectly borrow money; or

(d) by means of suretyship or any other form of personal security, whether under a primary or accessory obligation, give security in relation to obligations between other persons,

only to the extent provided for by the standards.

(6) A medical aid fund may not, directly or indirectly, invest any of its assets in the business of or grant loans to -

(a) an employer who participates in the medical aid fund;

(b) any other medical aid fund;

(c) the fund administrator;

(d) any director, officer, member of the board of trustees or trustee of a person referred to in paragraphs (a) to (c); or

(e) any associate of a person referred to in paragraphs (a) to (d);

other than investing in publicly traded shares of any of the above persons and subject to the standards.

(7) A medical aid fund which fails to comply with any provision of this section must, within 30 days after becoming aware of the failure, notify NAMFISA of such failure and state the reasons for the failure.

(8) NAMFISA may, if a medical aid fund gives notice to NAMFISA under subsection (7) or if NAMFISA is satisfied that a medical aid fund is failing, or is likely to fail within a reasonable period, to comply with any provision of this section, direct that the medical aid fund submit to NAMFISA within a specified period and in the form required -

(a) information relating to the nature and causes of the failure or likely failure; and

(b) the course of action that the medical aid fund proposes to adopt to ensure compliance.

(9) When NAMFISA has received the information referred to in subsection (8) and is reasonably satisfied that the proposed course of action will ensure compliance by the medical aid fund with any of provision of this section, NAMFISA may require the fund within the period specified by NAMFISA to adopt -

(a) the proposed course of action;

(b) the proposed course of action with such modifications as NAMFISA considers appropriate; or

(c) some other course of action.

(10) If NAMFISA is satisfied that it is necessary in the interest of the members and beneficiaries of the medical aid fund NAMFISA may, at the same time that it requires the medical aid fund to take action under subsection (9) or at any time thereafter and despite any steps already taken by NAMFISA, take any other action or pursue any remedy provided for by this Act.

(11) Any person who contravenes or fails to comply with subsection (1), (2), (5), (6), (7) or (8) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Insurance of liabilities

349. (1) A medical aid fund may not purchase any insurance or reinsurance policy in respect of any health service other than to insure or reinsure with an insurer or a reinsurer registered under Chapter 2, a liability referred to in section 326(3)(c) or 356(3).

(2) Where a medical aid fund intends to enter into an insurance or a reinsurance contract or to effect an amendment to an insurance or a reinsurance contract as contemplated in subsection (1), the board of trustees must submit to NAMFISA -

(a) a copy of that insurance or reinsurance contract or amendment; and

(b) an evaluation of the need for the proposed insurance or reinsurance contract undertaken by the valuator of the fund.

(3) NAMFISA may, not less than 30 days from the day it receives the copy of the insurance or reinsurance contract, amendment or evaluation, raise any matter in that respect taking into account whether -

(a) due consideration has been given to the need for insurance or reinsurance, based upon an assessment of the risks to which the medical aid fund is exposed;

(b) the insurance or reinsurance contract is in the best interests of the members of the medical aid fund; and

(c) there is a possible conflict of interests between the parties to the insurance or reinsurance contract.

(4) The board of trustees is obliged to address, to the satisfaction of NAMFISA, any matter raised before the implementation of the insurance or reinsurance contract or amendment to any such contract.

(5) The board of trustees must certify that an insurance or a reinsurance contract or amendment submitted under subsection (2) constitutes the entire agreement between the medical aid fund and the insurer or reinsurer with respect to the business being insured or reinsured, and that there are no arrangements between the medical aid fund and the insurer or reinsurer other than those expressed in the contract or amendment.

(6) Failure to comply with subsection (2), (4) or (5) will result in such insurance or reinsurance contract or amendment being rendered void.

Investments

350. (1) Subject to the provisions of this section and the regulations, a medical aid fund may invest its funds in any manner provided by its rules.

(2) The Minister may make regulations and NAMFISA may issue standards in respect of the investments by, or of, a medical aid fund.

(3) Any person who makes an investment in contravention of, or fails to comply with, subsection (1) commits an offence and is liable on conviction to a fine not

exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Membership of more than one fund prohibited

351. (1) A person, including a person who is a member of any fund established by the State may not -

(a) be a member of more than one medical aid fund;

(b) be admitted as a dependant of -

(i) more than one member of a particular fund;

(ii) members of different funds; or

(iii) a member of a fund if the person has been admitted as a member of another fund; or

(c) make a claim or accept a benefit from any medical aid fund other than the medical aid fund of which the person is a member.

(2) Despite subsection (1) but subject to such conditions as may be imposed in the standards NAMFISA may, where it considers that it is reasonably necessary in the interest of the medical aid fund industry or the public interest, allow a deviation from the application of the provisions of subsection (1) in respect of groups, classes or categories of persons as may be specified in the standards.

PART 4
RULES OF MEDICAL AID FUND

Rules

352. (1) The rules of a medical aid fund must comply with the requirements of this Act.

(2) Where the rules of a fund are inconsistent with any provision of this Act, those rules are invalid to the extent of the inconsistency.

(3) Where the rules of a fund are inconsistent with any provision of this Act and have not been amended, NAMFISA must direct the board of the fund to amend the rules of the fund and the board must comply with the direction forthwith.

(4) Despite subsections (2) and (3), the board of a fund has a period of 12 months within which to amend any rules of the fund which are inconsistent with this Act which period commences, as applicable, on -

(a) the date of commencement of this Act;

(b) the date on which a regulation relating to the rules comes into effect; or

(c) the date on which a standard relating to the rules comes into effect.

(5) In addition to any other matter that may be required by the standards or that may be prescribed, the rules of a fund must provide for -

(a) the terms and conditions applicable to the admission of a person as a member and of that person's dependants, and the determination of contributions;

(b) the payment of benefits;

(c) the dependants of a member being entitled to participate in the same benefit option as the member;

(d) the conditions for continuation of the membership of a member who retires from the service of his or her employer or whose employment is terminated on account of age, ill health or other disability, and of the membership of his or her dependants;

(e) the conditions for continuation of the membership of a member's dependants after the death of that member until such dependant becomes a member of the fund or is admitted as a dependant of another member of the fund or becomes a member of another medical aid fund or is admitted as a dependant of a member of another fund;

(f) the admission, as from the date of receipt of the application for membership, to the fund as a member of the fund, subject to the terms and conditions applicable to the admission of other members, but without a waiting period or the imposition of new restrictions on account of the state of his or her health or the health of any of his or her dependants, of any person who -

(i) has been a member of any other registered fund for a continuous period of at least two years and whose application for membership of the first-mentioned fund is necessitated by his or her changing of employment; or

(ii) has for a continuous period of not less than two years been a dependant of a person who, during that period, has been a member of that fund or any other fund,

and who applies within three months after the date on which he or she ceased to be a member of such other fund or a dependant of a member of that fund or such other fund to become a member;

(g) the amount of any membership contribution that is payable, calculated after consultation with a valuator;

(h) the settlement of any complaint or dispute; and

(i) subject to the provisions of this Act or of any other law, the manner in which and the circumstances under which a medical aid fund may be terminated or dissolved.

(6) The rules of a medical aid fund may not provide for the cancellation or suspension of a person's membership or that of any of his or her dependants, except on the grounds of -

(a) failure to pay, within the time allowed in the rules of the fund, the contributions required by the rules;

(b) failure to repay any debt due to the fund;

(c) submission of fraudulent claims;

(d) commission of any fraudulent act; or

(e) nondisclosure of material information.

(7) The rules of a medical aid fund may not provide for the imposition of waiting periods other than those provided for in section 354.

(8) A medical aid fund must provide any person who becomes a member of the fund with a copy of the rules of the fund, free of charge, at the time that the person becomes a member.

(9) Any person who contravenes or fails to comply with subsection (8) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Amendment of rules

353. (1) The board of a registered fund may, in the manner directed by the rules of the fund, amend or rescind any rule or make any additional rule, but no such amendment, rescission or addition will be valid if it purports to affect any right of a creditor of the fund, other than as a member of the medical aid fund.

(2) The board of a fund must send a copy of any amended, rescinded or additional rule to NAMFISA not less than 30 days before its implementation, together with the particulars set out in the standards.

(3) If any amendment of, rescission of or addition to the rules of a medical aid fund affects the financial position of the medical aid fund, the board must also send to NAMFISA a report by -

(a) the valuator of the fund; or

(b) a valuator retained by the fund for this purpose, if no valuator has been appointed,

as to the soundness of the financial position of the fund, determined in accordance with the standards, having regard to the rate of contributions by the employer and members and, if the fund is not in a sound financial position, what arrangements will be made to bring the fund into a sound financial position.

(4) If NAMFISA is not satisfied with the report referred to in subsection (3), NAMFISA may, at the cost of the medical aid fund, require a report by an independent

valuator that complies with the conditions set out in the standards and as may be specified by NAMFISA.

(5) The board of a medical aid fund may at any time consolidate the rules of the fund, and in that case the board must forward to NAMFISA a copy of such consolidation, but if the consolidated rules differ from the approved rules, NAMFISA must direct the board to amend the consolidated rules so that they do not differ from the approved rules.

(6) With respect to the rules of a medical aid fund, NAMFISA may request additional information regarding any amendment, rescission, addition or consolidation submitted to NAMFISA, as NAMFISA may consider necessary, and any such amendment, rescission, addition or consolidation is void if the fund fails to furnish the information requested by NAMFISA under this subsection, within 30 days from the date of that request.

(7) If at any time NAMFISA is of the opinion that the rules of a medical aid fund do not comply with the requirements of this Act, NAMFISA may direct the board of the fund to amend the rules.

(8) The medical aid fund must send or cause to be send a copy of any amendment to, rescission of, or addition to, the rules of the fund to every member of the fund free of charge.

(9) Any person who contravenes or fails to comply with subsection (8) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Waiting periods

354. (1) Where an application is made for membership of a medical aid fund or for admission as a dependant, and the applicant was not a member or beneficiary of another fund for at least 90 days preceding the date of application the fund may impose upon the applicant -

(a) a general waiting period; or

(b) a condition-specific waiting period,

which may not be longer than the period provided by the standards.

(2) Where an application is made for membership of a medical aid fund or for admission as a dependant, and the applicant was previously a member or beneficiary of another fund for a continuous period of 24 months or less and the applicant applies for membership of the new fund within a period of 90 days after the termination of his or her membership of the previous fund, the new fund may impose upon the applicant -

(a) a condition-specific waiting period which may not be longer than the period provided by the standards; or

(b) where that previous fund had imposed a general or condition-specific waiting period which had not expired at the time membership was

terminated, a general or condition-specific waiting period for the unexpired portion of the waiting period imposed by that previous fund.

(3) The other fund referred to in subsection (2) of which a person was previously a member or beneficiary may not unreasonably withhold any information which will enable the fund to which the person has made an application for membership to make any determination with respect to that applicant.

(4) Where an application is made for membership of a medical aid fund or for admission as a dependant, and the applicant was previously a member or beneficiary of another fund for a continuous period of more than 24 months and the applicant applies for membership of the new fund within a period of 90 days after the termination of his or her membership in the previous fund, the new fund may impose upon the applicant a general waiting period which may not be longer than the period provided by the standards.

(5) A medical aid fund may not impose a general or a condition-specific waiting period on a member or beneficiary who changes from one benefit option to another within the same fund unless that member or beneficiary is subject to a waiting period on the first benefit option, in which case any remaining portion of the waiting period may be applied.

(6) A medical aid fund may not impose a general or a condition-specific waiting period on a child-dependant born during the period of membership of the member the child-dependant is to be a beneficiary.

(7) Subject to subsection (8), where an application is made for membership of a medical aid fund or for admission as a dependant, and the applicant was previously a member or beneficiary of another fund for a continuous period of not less than 24 months and the applicant applies for membership of the new fund within a period of 90 days after the termination of his or her membership in the previous fund, the new fund may not impose a general or condition-specific waiting period, where the transfer of, or application for, membership is required as a result of -

(a) a change of employment; or

(b) an employer changing or terminating the medical aid fund of its employees.

(8) Despite the provisions of subsection (7), in the case where a medical aid fund from which a member is transferring had imposed a general or condition-specific waiting period which had not expired at the time of termination of membership, the medical aid fund to which an application has been made pursuant to subsection (7) may impose a general or condition-specific waiting period for the unexpired portion of the original waiting period imposed by the first medical aid fund.

(9) A medical aid fund may not require an applicant to provide the fund with a medical report on any proposed beneficiary, except in the circumstances where a health service was recommended or received for a condition during the waiting period set out in the standards and ending on the date on which the application for membership is made.

Binding force of rules

355. Subject to the provisions of this Chapter, the rules of a medical aid fund are binding on the fund, the board, its members and officers and on any person who claims any benefit under the rules or whose claim is derived from a person so claiming.

PART 5
BENEFIT OPTIONS

Additional benefit options

356. (1) A medical aid fund may provide members with more than one benefit option if such additional benefit option or options are financially sound and will not jeopardise the financial soundness of any existing benefit option of the fund.

(2) Despite subsection (1), if a benefit change occurs during the course of a fund's financial or benefit year that benefit change requires the approval of the board of the fund, unless the benefit change is occasioned by a life event as determined in the standards, affecting the member.

(3) The principal officer of the fund must file the details of any additional benefit option or options with NAMFISA, and if NAMFISA is of the opinion that it is advisable NAMFISA may demand that the principal officer obtain such financial guarantees as will, in the opinion of NAMFISA, ensure the financial soundness of all benefit options.

(4) Where as a result of an inspection or investigation of a medical aid fund under this Act or as a result of any report, document, statement or information furnished to NAMFISA, NAMFISA is of the opinion that a benefit option is not or may not be financially sound NAMFISA may, after giving the fund a reasonable opportunity to be heard, require the fund to withdraw such benefit option and to amend its rules accordingly with effect from the date directed by NAMFISA.

(5) Before NAMFISA requires the withdrawal of a benefit option pursuant to subsection (4), NAMFISA must have regard to any corrective measures proposed by the fund to ensure that a benefit option becomes financially sound.

(6) If a medical aid fund fails to amend its rules within the period specified by NAMFISA pursuant to subsection (4), NAMFISA may direct the fund to amend those rules.

Prohibition on cession and attachment of benefits

357. (1) A benefit or right in respect of a benefit payable under this Chapter is not capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or liable to be attached or subjected to any form of execution under a judgment or order of a court.

(2) A medical aid fund may withhold, suspend or discontinue the payment of a benefit to which a member is entitled under this Chapter or any right in respect of such benefit or payment of such benefit to that member, if the member attempts to assign or transfer or otherwise cede, pledge or hypothecate such benefit.

PART 6
GENERAL

Voluntary dissolution of fund

358. Subject to the requirements of any regulations made by the Minister and standards issued by NAMFISA under this Act, a medical aid fund may be terminated or dissolved wholly or in part in such circumstances, if any, as may be specified for that purpose in its rules and in the manner provided by such rules, and subject to the prior approval of NAMFISA, the assets of the fund must in that case be distributed to the members in the manner provided by the rules.

Winding-up by court

359. (1) If -

(a) NAMFISA is satisfied that a medical aid fund is in such an unsound financial condition that any scheme as contemplated by Part 7 of Chapter 10 would be ineffective, impracticable or unsatisfactory; or

(b) a fund is required under any provision of this Act to be wound-up under this section,

NAMFISA or a person acting with the approval of NAMFISA may, if the fund has assets and liabilities equal to or exceeding the values that are set out in the standards, apply to the High Court for an order that the whole or any part of the business of the fund be wound-up.

(2) An application for the winding-up, and the winding-up, of a fund pursuant to subsection (1) must be done in accordance with the regulations made by the Minister and standards issued by NAMFISA under this Act.

Right to obtain and inspect documents

360. (1) A medical aid fund must, on request by a member or beneficiary or a person authorised by a member or beneficiary, provide that member, beneficiary or authorised person, on payment of such fee as may be determined by the standards and reflected in the rules of the fund -

(a) with a copy, additional to the one provided under section 352(8), of the rules of the fund;

(b) with a copy of the most recent financial statements of the fund; and

(c) with a copy of the most recent report by the valuator of the fund prepared pursuant to section 347(1).

(2) A member, beneficiary or person authorised by a member or beneficiary may without charge at the principal office of a medical aid fund, inspect a copy of any of the documents referred to in subsection (1) and make extracts from the document.

(3) NAMFISA may issue standards with respect to any reports and other information that a medical aid fund must provide to members and beneficiaries of the fund free of charge.

(4) Any person who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Charges by suppliers of health services

361. (1) A supplier of health services who has provided a health service to a member or beneficiary for which an account has been rendered must, despite the provisions of any other law, furnish to the member concerned an account or statement reflecting such particulars as may be required by the standards.

(2) A registered medical aid fund must, where an account has been rendered, subject to the provisions of this Chapter and the rules of the fund, pay to a member or a supplier of health services any benefit owing to that member or supplier not later than the date required by the standards following the date on which the account was received by the fund or the date on which the member or the supplier of health services has submitted the account to the fund for payment, if later.

(3) Despite anything to the contrary contained in any other law, a medical aid fund may deduct from any benefit payable to a member or to a supplier of health services any amount of money which has been paid *bona fide* in accordance with the provisions of this Chapter to which that member or that supplier of health services is not entitled.

(4) A medical aid fund may institute proceedings in a court against a member or health supplier for the repayment of any amount referred to in subsection (3) which it has not been able to recover through a deduction referred to in that subsection.

Offences relating to medical aid funds

362. Any person who -

(a) makes or causes to be made any claim for the payment of any benefit allegedly due under the rules of a medical aid fund, knowing such claim to be false;

(b) knowingly makes or causes to be made a false representation of any material fact to a medical aid fund, for use in determining any right to any benefit allegedly due under the rules of the fund;

(c) having knowledge of any fact or the occurrence of any event affecting his or her right to receive any benefit under the rules of a fund, fails to disclose such fact or event to the fund with the intent to obtain from the fund a benefit to which he or she is not entitled or a larger benefit than that to which he or she is entitled; or

(d) renders a statement, account or invoice to a member or any other person, knowing that such statement, account or invoice is false and may be used by such member or other person to claim from a fund any benefit or a benefit greater than the benefit to which he or she is entitled under the rules of the fund,

commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

CHAPTER 8
FUND AND SOCIETY ADMINISTRATORS

PART 1
PRELIMINARY

Definitions for this Chapter

363. (1) In this Chapter, unless the context indicates otherwise -

"administration services" include -

(a) the maintenance, safe-keeping and preservation of the records of members of a retirement fund, friendly society or medical aid fund;

(b) the maintenance of contributions;

(c) claims and benefit payment services;

(d) debt management services;

(e) enquiry services;

(f) services related to invoicing, financial record keeping and other similar services related to the management of a retirement fund, a friendly society or medical aid fund;

(g) preparation of member statements and reports to the board or other parties requiring reports in respect of a retirement fund, a friendly society or medical aid fund;

(h) data management;

(i) the performance of similar or related duties; and

(j) any other service that may be determined by NAMFISA in the standards;

"board" means the board of directors of a fund administrator or society administrator;

"fund administrator" means a company registered as such by NAMFISA to provide administration services to a retirement fund or medical aid fund pursuant to section 368 or deemed to be registered under section 369;

"friendly society" means a friendly society as defined in section 284;

"medical aid fund" means a medical aid fund as defined in section 321;

"retirement fund" means a retirement fund as defined in section 249, and includes a beneficiary fund as defined in that section; and

"society administrator" means a natural person or an entity registered as such by NAMFISA to provide administration services to a friendly society pursuant to section 368 or deemed to be registered under section 369.

Prohibitions

364. (1) A person may not carry on the business of a fund administrator or society administrator in Namibia, unless that person is registered as a fund administrator or society administrator pursuant to section 368 or deemed to be registered under section 369.

(2) NAMFISA may in its discretion and subject to any conditions provided by the standards exempt a society administrator from the operation of any or all of the provisions of this Chapter.

(3) NAMFISA may at any time by notice to a society administrator referred to in subsection (2), withdraw, wholly or in part and on any grounds which NAMFISA considers sufficient, any exemption granted under subsection (2).

(4) Any person who contravenes or fails to comply with the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Restriction on use of designation "fund administrator", "society administrator" or "administrator"

365. (1) A person may not, in connection with a business, use a name which includes the words "fund administrator", "society administrator", "administrator" or any other name which is intended to indicate or is likely to lead other persons to believe that the person carries on the business of a fund administrator or society administrator, unless such business is registered as a fund administrator or society administrator under section 368 or deemed to be registered under section 369.

(2) If at the commencement of this Chapter any person was using, in connection with that person's business, any name or description referred to in subsection (1), and that person -

(a) subsequently changes that name;

(b) produces any deed or document, bearing the previous name which was registered in any deeds registry or in any other office where a register or record of the ownership of, or entitlement to, any property is kept, to the person charged with the registration of deeds in that registry or to the officer in charge of that other office; and

(c) satisfies the person so charged or officer that the name was changed as a result of the prohibition contained in subsection (1),

that person so charged or officer must, without any charge, substitute the new name for the previous name on such deed or document and in all the relevant registers.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000

or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 2
REGISTRATION

Application for registration

366. (1) Only a -

(a) company may make an application for registration as a fund administrator; and

(b) natural person or an entity may make an application for registration as a society administrator,

to NAMFISA in accordance with subsection (2).

(2) An application for registration as a fund administrator or society administrator must be -

(a) made in the manner and form required by the standards;

(b) include the information with respect to the principal office and principal officer required by the standards;

(c) accompanied by the documents and other information required by the standards;

(d) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case;

(e) made subject to and in accordance with any other applicable provision of this Act; and

(f) accompanied by the required fee.

(3) In addition to the requirements of subsection (2), an application for registration referred to in subsection (1) must be accompanied by the memorandum and articles of association, constitution, rules or other founding documents of the applicant.

Registration requirements

367. (1) Before approving an application made under section 366 and registering a fund administrator or society administrator, NAMFISA must be satisfied on reasonable grounds that the requirements of subsection (2) have been met and that -

(a) the fund administrator or society administrator is in position to comply with the requirements of section 372; and

(b) in the case of an entity, the memorandum and articles of association, constitution, rules or other founding documents of the fund administrator or society administrator are not inconsistent with this Act and are based on sound financial principles.

(2) Before approving an application referred to in subsection (1) and registering a fund administrator or society administrator, NAMFISA must be satisfied that -

(a) in the case of an entity -

(i) every shareholder or other owner that controls the applicant, the principal officer and other officers of the applicant, and where applicable, members of the board of directors of the applicant or other board, are fit and proper within the meaning of the standards;

(ii) the memorandum and articles of association, constitution, rules or other founding documents of the applicant are not inconsistent with the provisions of this Act;

(iii) the direct or indirect control of the applicant is not likely to be contrary to the interest of consumers of the financial services concerned; and

(iv) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;

(b) doing so is not contrary to -

(i) this Act; or

(ii) the public interest;

(c) the applicant has the attributes reasonably necessary and adequate to -

(i) provide the administration services in question with professional integrity, prudence, proper skill and due diligence;

(ii) maintain a sound financial position and not cause or further instability in the financial system of Namibia; and

(iii) comply with this Act;

(d) the name under which the applicant proposes to conduct business or a translation, shortened form or derivative of that name is not in contravention of section 391;

(e) the applicant has submitted all other information which, in the opinion of NAMFISA, is necessary to assess the application and such information has been found satisfactory by NAMFISA; and

(f) the applicant has complied and will continue to comply with any other requirements contained in this Act or in the standards which apply to the applicant.

Registration

368. (1) If NAMFISA is satisfied that the proposed fund administrator or society administrator complies with the requirements of section 367, NAMFISA must register the applicant as a fund administrator or society administrator, subject to any conditions which NAMFISA may consider appropriate pursuant to subsection (4), and must issue a certificate of registration pursuant to subsection (3).

(2) The registration referred to in subsection (1) must specify -

(a) the principal office of the applicant in Namibia;

(b) the places in Namibia from which the applicant may operate.

(3) Upon registration of an applicant NAMFISA must issue to the applicant a certificate of registration in a form provided by the standards.

(4) NAMFISA may impose such conditions on the registration of the applicant as it considers necessary having regard, without limitation, to all the facts and information available to NAMFISA pertaining to the applicant and any guidelines issued by NAMFISA under this Act**.**

(5) If an application is refused by NAMFISA or is granted subject to conditions, NAMFISA must advise the applicant of the refusal or conditions by giving a notice to the applicant containing the reasons for the refusal or the conditions and must give the applicant a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the applicant may make representations in writing to NAMFISA.

(6) A fund administrator or society administrator must comply with the conditions subject to which it was registered.

Existing fund administrators and society administrators

369. (1) A person carrying on the business of a fund administrator or society administrator on the date of commencement of this Chapter is deemed to be a fund administrator or society administrator registered under this Act.

(2) Despite subsection (1), a person referred to in that section must, within 12 months after the date of commencement of this Chapter, make an application to NAMFISA pursuant to section 366 for registration as a fund administrator or society administrator.

(3) If a person referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (2) the deemed registration of that person is cancelled.

Application for cancellation or variation of registration

370. (1) A registered fund administrator or society administrator may at any time make an application to NAMFISA for cancellation of the registration granted pursuant to this Act or a variation of the conditions subject to which that registration was granted.

(2) An application made under subsection (1) must be -

(a) made in the manner and form required by the standards;

(b) accompanied by the documents and other information required by the standards;

(c) accompanied by such further information that NAMFISA on reasonable grounds may require in any particular case; and

(d) accompanied by the required fee.

(3) Before making an application for the cancellation of a registration or a variation of its conditions, the applicant must give prior notice of the proposed application in two newspapers circulating nationally in Namibia, at the expense of the applicant, stating -

(a) the name of the applicant;

(b) either -

(i) the reasons for the proposed cancellation; or

(ii) the nature of the proposed variation; and

(c) the period within which objections to the application may be lodged with NAMFISA.

(4) Section 368 applies with the changes required by the context to an application for a variation of conditions referred to in subsection (1).

(5) If after consideration of any objection received as a result of the notice referred to in subsection (3), NAMFISA is of the opinion that it is reasonable to do so and not against the public interest, NAMFISA may, by notice to the registered fund concerned -

(a) cancel the registration; or

(b) vary the conditions of registration, including the imposition of additional conditions.

(6) NAMFISA must make public any cancellation of registration or variation of conditions of registration in terms of subsection (5) and the reasons for the cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

Cancellation or variation of registration

371. (1) NAMFISA may take any of the actions set out in subsection (2), if NAMFISA acting reasonably, finds that any of the following circumstances exist with respect to a registered fund administrator or society administrator:

(a) it has made a material misrepresentation or failed to provide information that was materially relevant in its application for registration;

(b) it has failed to comply with this Act;

(c) it no longer meets the requirements for registration;

(d) it has provided administration services without professional integrity, prudence, proper skill and due diligence;

(e) it is in an unsound financial position;

(f) it has failed to comply with a directive, request or requirement of NAMFISA issued under this Act;

(g) it has failed to give effect to a decision of the Appeal Board;

(h) it has ceased to operate or has failed to commence operating within a reasonable time after being registered;

(i) it is involved in a financial crime; or

(j) any director, the principal officer, other officer or member of a board of the fund administrator or society administrator no longer meets the fit and proper requirements within the meaning of the standards or has engaged in conduct identified in the standards as misconduct.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take any of the following actions with respect to the registered fund administrator or society administrator:

(a) cancel its registration;

(b) vary the conditions of its registration, including the imposition of additional conditions; or

(c) take any other steps that NAMFISA may consider necessary or advisable.

(3) NAMFISA must give notice to the registered fund administrator or society administrator of the intention of NAMFISA to take any action referred to in subsection (2), together with the reasons for the action, and must give the registered fund administrator or society administrator a reasonable opportunity to be heard by specifying a period of not less than 21 days during which the registered fund administrator or society administrator may make representations to NAMFISA on the matter.

(4) Subject to such conditions as NAMFISA may impose, NAMFISA may provisionally suspend the registration or take control of the assets of a registered fund administrator or society administrator.

(5) On the cancellation of the registration of a fund administrator or society administrator under section 369(3), 370(5)(a), subsection (2)(a) or any other applicable provision of this Act, the fund administrator or society administrator must cease to carry on the business of fund administrator or society administrator.

(6) NAMFISA must make public any suspension or cancellation of registration, variation of conditions of registration or any other steps taken under this

section and the reasons for the suspension, cancellation or variation, by notice in the *Gazette* or by means of any other appropriate public statement.

(7) A person who -

(a) continues to operate, or carry on, the business of a fund administrator or society administrator after the cancellation of registration under section 369(3), 370(5)(a), subsection (2)(a) or any other applicable provision of this Act or after suspension of registration under subsection (4); or

(b) fails to comply with a condition imposed by NAMFISA under subsection (4),

commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 3
ADMINISTRATION AND POWERS

Principal office and principal officer

372. (1) Every registered fund administrator or society administrator must -

(a) have a principal office in Namibia where it must hold and maintain the documents referred to in the standards; and

(b) appoint to be its principal officer in Namibia, a fit and proper person within the meaning of the standards who -

(i) is a Namibian citizen or permanent resident;

(ii) is resident in Namibia; and

(iii) must be an *ex officio* member of the board of the fund administrator or society administrator, but the principal officer may not serve as chairperson of the board.

(2) Despite subsection (1)(b)(i), NAMFISA may, in exceptional circumstances, grant permission that a principal officer referred to in that subsection may, subject to the Immigration Control Act, 1993 (Act No. 7 of 1993), for such period as may be determined by NAMFISA, be a person other than a Namibian citizen or permanent resident.

(3) After the appointment of a principal officer pursuant to subsection (1)(b), the registered fund administrator or society administrator must, within the period set out in the standards, in writing notify NAMFISA of the appointment.

(4) NAMFISA may, on the grounds that a principal officer is not a fit and proper person within the meaning of the standards and after giving the registered fund administrator or society administrator and the principal officer a reasonable opportunity to be heard, direct the registered fund administrator or society administrator to appoint

some other person to be the principal officer of that registered fund administrator or society administrator.

(5) Whenever a principal officer resigns or the appointment of a principal officer is terminated by a registered fund administrator or society administrator or by the expiry of a contract of employment, the registered fund administrator or society administrator must, within the period set out in the standards, in writing notify NAMFISA and submit to NAMFISA a written statement of the reasons for the termination or, in the opinion of the registered fund administrator or society administrator, the reasons for the resignation.

(6) The principal officer of a registered fund administrator or society administrator is authorised to act on behalf of the fund administrator or society administrator to ensure compliance with this Act, and in any case where a person, including NAMFISA, communicates with that fund administrator or society administrator, that person may do so by addressing the communication to the principal officer.

(7) Process in any legal proceedings may be served on a registered fund administrator or society administrator by serving a copy of the process at its principal office.

(8) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Appointment of auditor

373. (1) Except where the accounts of a registered fund administrator or society administrator are to be audited by the Auditor-General pursuant to another law of Namibia, the board of a registered fund administrator or society administrator must, in accordance with section 401 and in the manner set out in the rules of the fund, appoint and at all times have an auditor or firm of auditors to be the auditor of the fund administrator or society administrator.

(2) The board of a registered fund administrator or society administrator may not appoint as the auditor of the fund -

(a) an auditor who is; or

(b) a firm of auditors, any member of which is,

an employee or officer of the fund administrator or society administrator or a member of the board of the fund administrator or society administrator.

(3) NAMFISA may direct the board of a fund administrator or society administrator to change the auditor of the fund if NAMFISA is satisfied that the auditor or any member of the firm of auditors appointed as auditor is an employee or officer of the fund administrator or society administrator or a member of the board of the fund administrator or society administrator.

(4) An auditor appointed under subsection (1) -

(a) must perform the functions and duties assigned to;

(b) must exercise the powers conferred on; and

(c) is subject to the obligations imposed on,

an auditor by section 401.

Duties of fund administrators and society administrators

374. A fund administrator or society administrator must -

(a) endeavour to avoid conflict between the interests of the fund administrator or society administrator and the duties respectively owed to a retirement fund, medical aid fund or friendly society, and any conflict of interest or potential conflict of interest must be disclosed by the fund administrator or society administrator to the board of the retirement fund, medical aid fund or friendly society setting out full particulars of how such conflict will be managed;

(b) administer the retirement fund, medical aid fund or friendly society in a responsible manner;

(c) maintain proper records and ensure that they are kept -

(i) secure and continuously backed-up; and

(ii) separately from all other records of the fund administrator or society administrator;

(d) employ adequately trained staff and ensure they are properly supervised;

(e) have well-defined compliance procedures;

(f) maintain adequate financial resources to meet its commitments and to manage the risks to which the fund administrator or society administrator is exposed;

(g) provide the board of the retirement fund, medical aid fund or friendly society with a monthly report on its administration services;

(h) furnish NAMFISA with information upon request;

(i) assist the auditor and valuator of the retirement fund, medical aid fund or friendly society in the performance of their duties; and

(j) perform any other functions or duties that may be required by the standards.

Other business of fund administrator or society administrator

375. A registered fund administrator or society administrator that engages in any other business concurrently with the business of fund administrator or society administrator may not allow such outside interest to jeopardise the integrity, independence or competence of the fund administrator or society administrator to perform its functions under this Act.

Application of Companies Act to fund administrator or society administrator

376. Except where this Chapter expressly provides otherwise, the application of the Companies Act to a fund administrator or society administrator is not affected by this Chapter.

CHAPTER 9
PROPERTY HELD IN TRUST

Definitions for this Chapter

377. In this Chapter, unless the context indicates otherwise -

"agreement" means any agreement, whether written or verbal, power of attorney, will, deed of settlement, order of a court or other instrument, pursuant to which trust property is invested, kept in safe custody, controlled, administered, alienated or otherwise held in trust by an institutional trustee or nominee company on behalf of a principal;

"institutional trustee" means a financial institution or financial intermediary that holds trust property in trust on behalf of a principal;

"nominee company" means a company controlled by a financial institution or financial intermediary, which -

(a) has as its principal object to act as nominee for, or representative of, a principal for the purpose of holding trust property in trust for such principal;

(b) is precluded by its memorandum and articles from incurring any liabilities other than those to the principal on whose behalf it holds trust property; and

(c) has entered into an irrevocable written agreement with the financial institution or financial intermediary which controls it, pursuant to which the financial institution or financial intermediary has undertaken to pay all the expenses of, and incidental to, its formation, operations and liquidation;

"principal" means any person or persons on whose behalf an institutional trustee or nominee company holds trust property in trust pursuant to an agreement and includes a beneficiary;

"trust property" means funds, assets or other property of a principal held in trust by an institutional trustee or a nominee company pursuant to this Chapter.

Duties with respect to trust property

378. (1) An institutional trustee or nominee company and any director, officer, employee, agent, shareholder or other owner of the institutional trustee or nominee company that invests, holds, keeps in safe custody, controls, administers or alienates trust property on behalf of a principal -

(a) must, with regard to the trust property and the terms of the agreement, observe the utmost good faith and exercise the care and diligence required of a trustee in the exercise or discharge of that trustee's powers and duties; and

(b) may not alienate, invest, pledge, hypothecate or otherwise encumber or make use of the trust property or furnish any guarantee in a manner calculated to gain directly or indirectly any improper advantage for that trustee, nominee company or person or for any other person to the prejudice of the principal.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Declaration of interest

379. (1) Any director, officer, employee, agent, shareholder or other owner of an institutional trustee or a nominee company who takes part in a decision to invest, within the meaning of subsection (2), any trust property in an entity in which that person has a direct or indirect financial interest, must declare that interest in writing to the board of directors or other board of the institutional trustee or nominee company, indicating the nature and extent of such interest, before the decision is made.

(2) For the purposes of subsection (1), "invest" includes -

(a) the purchase of shares in a corporate body or an interest in a partnership or other unincorporated entity;

(b) the grant of a secured or an unsecured loan; and

(c) the acquisition of a financial interest in an agreement or any other matter in which the institutional trustee or nominee company has a material interest.

(3) A declaration of interest made pursuant to subsection (1) must be recorded in the minutes of the meeting of the board of directors or other board at which the declaration is made.

(4) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Investment of trust property

380. (1) An institutional trustee or a nominee company which administers trust property and any director, officer, employee, agent, shareholder or other owner of that institutional trustee or nominee company may not invest that trust property or cause that trust property to be invested otherwise than in a manner directed in, or required by, the agreement governing the trust property that was entered into by the institutional trustee or nominee company.

(2) In the absence of a direction or requirement referred to in subsection (1), the institutional trustee or nominee company or any director, officer, employee, agent, shareholder or other owner of that institutional trustee or nominee company may not cause any trust property to be invested otherwise than in the name of -

(a) the principal;

(b) the institutional trustee in its capacity as administrator, trustee, curator or agent; or

(c) the nominee company.

(3) Despite subsections (1) and (2) -

(a) where the articles of association of a corporate body prohibit the registration of its shares or debentures in the name of -

(i) a trust;

(ii) an institutional trustee in its capacity as administrator, trustee, curator or agent; or

(iii) a nominee company; and

(b) where the shares or debentures referred to in paragraph (a) form part of the trust property administered by an institutional trustee or nominee company,

those shares or debentures must be registered in the name of the director, officer, employee, agent, shareholder or other owner of that institutional trustee or nominee company.

(4) In any situation described in subsection (3), the director, officer, employee, agent, shareholder or other owner of the institutional trustee or the nominee company -

(a) must hold those shares or debentures in a fiduciary capacity on behalf of the principal concerned; and

(b) prior to the registration of any shares or debentures in the name of such director, officer, employee, agent, shareholder or other owner, must furnish security to the satisfaction of the Master of the High Court, if such security has not already been furnished pursuant to the Trust Moneys Protection Act.

(5) An institutional trustee or a nominee company must keep trust property separate from its own assets and must in its books of account clearly indicate the trust property as being property belonging to an identified principal.

(6) Despite anything to the contrary in any law or the common law, trust property invested, held, kept in safe custody, controlled or administered by an institutional trustee or a nominee company may not form part of the assets or funds of that institutional trustee or a nominee company.

(7) The provisions of this section also apply in the situation where an institutional trustee or a nominee company invests, holds, keeps in safe custody, controls, administers or alienates trust property jointly with another person under an agreement to which that other person is also a party.

(8) A person who contravenes or fails to comply with subsections (1) or (5) commits an offence and is liable on conviction to a fine not exceeding N$ 5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Alienation of trust property

381. (1) Subject to subsection (2), if an institutional trustee or a nominee company or any director, officer, employee, agent, shareholder or other owner of an institutional trustee or a nominee company sells, transfers or otherwise alienates trust property to another person in contravention of, or without complying with, the provisions of this Chapter, the sale, transfer or other alienation is void.

(2) Subsection (1) does not apply if the person to whom trust property is sold, transferred or alienated proves that -

(a) the trust property was acquired for valuable consideration; and

(b) he or she had no knowledge of, or reason to suspect, a contravention of, or non-compliance with, this Chapter.

Records and documents as evidence

382. The provisions of section 458 apply to trust property held in trust by an institutional trustee or a nominee company pursuant to this Chapter.

Statutory manager

383. (1) If it comes to the attention of NAMFISA that an institutional trustee or a nominee company or any director, officer, employee, agent, shareholder or other owner of that institutional trustee or nominee company is -

(a) in contravention of any provision of this Chapter; or

(b) in any other way, acting negligently or recklessly with respect to trust property;

NAMFISA may apply to the court for the appointment of a statutory manager for the institutional trustee or nominee company pursuant to section 443.

(2) For the purposes of this section, sections 443 and 444 apply to a financial intermediary that is an institutional trustee or to a nominee company as though such financial intermediary or nominee company were a financial institution.

Consequences of criminal conviction

384. (1) A court that has convicted a person of an offence under this Chapter may, in addition to any penalty it may impose under this Chapter, order that person to -

(a) pay the principal concerned any profit made by that person; and

(b) compensate the principal concerned for any damage suffered as a result of the contravention or failure.

(2) Where the person referred to in subsection (1) is an individual who is the director, officer, employee, agent, shareholder or other owner of an institutional trustee or a nominee company the court may, in addition to any penalty imposed under this Chapter and any order made under subsection (1), order that the person may not serve as director, officer, employee or agent, or become a shareholder or other owner, of any institutional trustee or nominee company for such period as the court may consider fit.

(3) Where the person referred to in subsection (1) or (2) is an individual referred to in subsection (2) the court may, if the court considers it appropriate when issuing an order pursuant to subsection (1), declare that the institutional trustee or nominee company of which the individual was the director, officer, employee, agent, shareholder or other owner at the time the offence was committed is jointly and severally liable with such individual to the principal concerned.

CHAPTER 10
GENERAL PROVISIONS

PART 1
PRELIMINARY

Definitions for this Chapter

385. For the purposes of this Chapter "Board of NAMFISA" means the board referred to in section 1 of the NAMFISA Act.

Application of Chapter

386. The provisions of this Chapter apply only to the extent that the subject matter dealt with in this Chapter is not dealt with specifically in the other Chapters of this Act.

General prohibition

387. (1) A person may not, in Namibia, provide a financial service that requires a person providing that service to be registered under this Act, unless that person is registered or deemed to be registered under this Act as a financial institution or financial intermediary.

(2) Subsection (1) does not apply to -

(a) a foreign insurer or reinsurer referred to in section 5(2);

(b) a foreign exchange referred to in section 101(1) or 197(1);

(c) a foreign collective investment scheme referred to in section 219(1); and

(d) a person who provides a service by virtue of an authority, approval or right granted to that provider under a law of Namibia other than this Act.

(3) If NAMFISA is satisfied that a person has obtained any monies, assets or other property in contravention of this section, NAMFISA must in writing direct the

person to repay all such monies, assets or other property so obtained by that person, including any interest or other amounts which may be owing by that person in respect of such monies, assets or other property to the respective persons from whom such person has obtained the monies, assets or other property as verified by NAMFISA.

(4) The monies, assets or other property and any interest or other amounts referred to in subsection (3) must be repaid in the manner, in accordance with the requirements and within the period of time directed by NAMFISA and specified in the direction.

(5) A person who contravenes or fails to comply with subsection (1) or contravenes or fails to comply with a directive given by NAMFISA under subsection (4) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Transitional provisions

388. (1) Despite section 387, any person who was providing a financial service that requires a person providing that service to be registered under this Act on or before the date of commencement of this Act or the date of commencement of any applicable Chapter or provision of this Act without being registered or licensed and who -

(a) was not thereby in contravention of any law of Namibia as such law existed prior to such date;

(b) is required under this Act to be registered in order to provide that financial service; and

(c) is not the subject of a specific transitional or exceptional provision of this Act with respect to that registration,

may continue to provide such financial service under this Act without being registered for the period ending on the date determined under subsection (2).

(2) A person referred to in subsection (1) must, within six months of the date of commencement of this Act or the date of commencement of any applicable Chapter or provision of this Act, or within such longer period as NAMFISA may specify, but which period may not exceed 12 months, apply to NAMFISA for registration under the applicable provisions of this Act.

(3) A person referred to in subsection (1) must cease providing any financial service if an application -

(a) to NAMFISA for registration has not been made within the period referred to in subsection (2); or

(b) has been made to NAMFISA but registration has been refused.

(4) A person who contravenes of fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Unregistered persons to furnish information

389. (1) Where NAMFISA has reason to suspect that any person is carrying on the business of a financial institution or financial intermediary and has not been registered under this Act, NAMFISA may, by notice in writing, require that person to send to NAMFISA, within the period stated in the notice, a copy of any documents and other information that NAMFISA may require.

(2) If NAMFISA is not satisfied with the documents or other information referred to in subsection (1) or if the person fails to supply those documents and that information, NAMFISA may require the person to produce at any place where that person carries on the business in question, the records, documents, statements and accounts relating to that business in order to enable NAMFISA to ascertain whether that business constitutes the business of a financial institution or financial intermediary.

(3) A person who contravenes of fails to comply with a request made by NAMFISA under subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 2
GENERAL MATTERS

Financial year

390. (1) A financial institution or financial intermediary must, not more than 30 days from the date of its registration, notify NAMFISA in writing of the date on which its financial year ends.

(2) The financial year of a financial institution or financial intermediary may not exceed a period of 12 months.

(3) A financial institution or financial intermediary may not, without the prior written approval of NAMFISA, change its financial year.

Name and change of name

391. (1) Every financial institution and financial intermediary must for all purposes and in every document issued by it use the name under which it is registered.

(2) NAMFISA may not register a financial institution or a financial intermediary under a name or approve a change of name to a name which is -

(a) the same as that of a financial institution or financial intermediary that has already been registered;

(b) confusingly similar to that of another registered financial institution or registered financial intermediary; or

(c) likely to mislead the public.

(3) A financial institution or financial intermediary registered under this Act may not, without the prior written approval of NAMFISA -

(a) change the name under which it is registered;

(b) use or refer to itself by a name other than the name under which it is registered; or

(c) use or refer to itself by a shortened form or derivative of the name under which it is registered.

(4) An application for approval of a change of name, use of another name or use of a shortened form or derivative of a name pursuant to subsection (3) must be made to NAMFISA in the manner and form and be accompanied by such documents and fees set out in the standards.

(5) If, on receipt of an application referred to in subsection (4), NAMFISA is satisfied that the proposed name does not contravene the requirements of subsection (2) and that the applicant is in compliance with the provisions of any other law applicable to a change of name, NAMFISA must register the applicant under the new name and issue to such applicant, in the form provided by the standards, a new certificate of registration under that name.

(6) Despite subsection (2)(a) and (b) and subsection (3)(b), a financial institution or financial intermediary may, with the consent of NAMFISA, in conjunction with its registered name, use or refer to itself by the name of a financial institution or financial intermediary with which it has amalgamated or the assets and liabilities of which have been transferred to it or, in the case of a change of name, the name by which it was previously known.

Notification of certain matters

392. A financial institution or a financial intermediary must notify NAMFISA in writing within 30 days -

(a) of any change of its principal officer;

(b) of any change of the address of its principal office;

(c) of any location in addition to its principal office where it intends to carry on business; and

(d) subject to section 390(3), of any change in the date of its financial year.

PART 3
GOVERNANCE

Application of this Part

393. (1) The provisions of this Part apply -

(a) to the boards of all financial institutions, except for the provisions of sections 394(a), 395(2) and 397 which apply to members of a board of trustees or any other board of a financial institution that is not a company to the extent provided for in the standards, with such changes as may be required by the context; and

(b) unless otherwise expressly provided in this Part, to financial intermediaries to the extent provided for in the standards, with such changes as may be required by the context.

(2) Despite subsection (1), NAMFISA may, in exceptional circumstances, exempt the members of a particular board of trustees or any other board referred to in subsection (1) from one or more requirements of sections 394(a), 395(2), 397 and 402.

Board of financial institution

394. Despite anything to the contrary in any of the provisions of the Companies Act or any other law -

(a) one third of the board of directors of every financial institution that is a company must be independent directors within the meaning of the standards; and

(b) the chairperson of the board of a financial institution may not also be the principal officer, general manager or other senior officer of the financial institution.

Duties of board

395. (1) Subject to this Act, the directors of a financial institution must manage or supervise the management of the business and affairs of the financial institution with the objective of maximizing the returns of shareholders or other owners, subject to the overriding responsibility of ensuring that -

(a) the financial resources of the financial institution are sufficient to discharge its obligations;

(b) consumers are fairly treated in accordance with the contractual arrangements applicable to them; and

(c) the provisions of this Act are fully complied with.

(2) Without limiting the generality of subsection (1), the directors of a financial institution must -

(a) establish an audit committee to perform the duties referred to in section 397;

(b) establish procedures for identifying and dealing with conflicts or potential conflicts of interest and for identifying and vetting related party transactions, as defined in the standards, with a view to avoiding those that are prohibited by the standards;

(c) designate a committee of the board of directors to monitor the procedures referred to in paragraph (b);

(d) establish investment and lending policies, standards and procedures in accordance with the standards;

(e) establish procedures with respect to the fair treatment of consumers and clients, including the disclosure of information to them, the protection of their personal information, the prompt assessment and payment of the legitimate claims of such consumers and clients and the handling of consumer and client complaints;

(f) appoint and dismiss senior officers and establish the level of remuneration for officers of the financial institution based on criteria that promote the interests of the financial institution and are not such as to encourage imprudent behaviour;

(g) establish internal risk management strategies and policies for the identification, measurement, monitoring and controlling of significant risks on an on-going basis;

(h) establish procedures for the outsourcing of functions in accordance with the standards;

(i) monitor the procedures, strategies and policies referred to in this section to ensure that they are being adhered to by the financial institution and that they are modified from time to time to take account of changing circumstances; and

(j) prepare the annual financial statements of the financial institution in accordance with generally accepted accounting practice, except as otherwise specified by NAMFISA, and approve those statements.

Directors to act in good faith

396. (1) Every director and officer of a financial institution in exercising any of the powers, and discharging any of the duties, of a director or an officer must -

(a) act honestly and in good faith with a view to the best interests of the financial institution and its clients; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director, officer and employee of a financial institution must comply with this Act and the memorandum, articles and rules or other founding documents of the financial institution.

(3) No provision in any contract, in any resolution or in the rules or other documents of a financial institution relieves any director, officer or employee of the financial institution from the duty to act in accordance with this Act or relieves a director, an officer or employee from liability for a contravention of the provision.

Audit committee

397. Every financial institution must establish an audit committee comprised of at least two directors, at least one of whom must be an independent director within the meaning of the standards to -

(a) review the annual financial statements of the financial institution before they are approved by the board and make any recommendations or comments thereon to the board;

(b) review such transactions and conditions that could significantly and adversely impact the financial position of the financial institution as the auditor or any officer of the financial institution may bring to the attention of the committee;

(c) meet with the auditor of the financial institution to discuss the annual financial statements;

(d) in the case of a financial institution that is required to appoint a valuator, meet with the valuator to discuss the parts of the annual financial statements prepared or reviewed by the valuator;

(e) meet with the chief internal auditor of the financial institution or the officer or employee of the financial institution acting in a similar capacity, and with management of the financial institution to discuss the effectiveness of the internal control procedures established for the financial institution;

(f) with regard to any annual return or other returns of a financial institution that under this Act must be approved by the board, report to the full board with regard to any comments or findings of the audit committee before board approval is requested;

(g) call a meeting of the board of the financial institution to consider any matters that the audit committee considers to be of concern; and

(h) carry out any other responsibilities that may be delegated to the committee by the board.

Other committees

398. The board of a financial institution may appoint from among their number such other committees, in addition to the audit committee, as they consider necessary and may delegate to any such committee such of their powers as they consider appropriate but any such delegation does not limit the responsibilities of the members of the board.

Indemnification of directors and officers

399. A financial institution may indemnify a director or officer against any liability, including legal defence costs, that he or she may incur as a result of anything done or omitted to be done as a director or officer but only if he or she has acted honestly and in good faith with a view to the best interests of the financial institution and its clients, and the financial institution may purchase and maintain insurance for the benefit of any director or officer against such liability.

Information to be made available

400. Every financial institution must make available for examination by its directors such information about the financial institution, including accounting records,

as will enable the directors to perform their responsibilities and exercise their duties under this Act.

Appointment of auditor

401. (1) Every -

(a) registered financial institution that is -

(i) an insurer;

(ii) a collective investment scheme of a registered manager;

(iii) a retirement fund;

(iv) a friendly society, unless exempted under section 286;

(v) a medical aid fund; or

(vi) a regulated person referred to in section 103(1);

(b) registered financial intermediary that is -

(i) a regulated person referred to in section 103(1);

(ii) fund administrator; or

(iii) society administrator, unless exempted under section 364; and

(c) financial institution or financial intermediary that has been identified by NAMFISA in the standards,

must appoint and at all times have an auditor or firm of auditors to be its auditor.

(2) If a firm of auditors is appointed as the auditor of a financial institution or financial intermediary referred to in subsection (1), the firm of auditors and the financial institution or financial intermediary must jointly designate the member of the firm who will conduct the audit on behalf of the firm.

(3) A natural person or firm of auditors is qualified to be the auditor of a financial institution or financial intermediary referred to in subsection (1) if -

(a) in the case of a natural person, that person is an auditor who -

(i) is registered under the Public Accountants' and Auditors' Act and admitted to membership of the Institute of Chartered Accountants of Namibia referred to in that Act;

(ii) has at least five years' experience at a senior level in performing audits of a financial institution or financial intermediary;

(iii) is ordinarily resident in Namibia;

(iv) is a fit and proper person within the meaning of the standards; and

(v) is independent of the financial institution or financial intermediary within the meaning of the standards; and

(b) in the case of a firm of auditors, the member of the firm designated pursuant to subsection (2) is qualified in accordance with paragraph (a).

(4) After the appointment of an auditor or the designation of a member of a firm of auditors who will conduct the audit, the financial institution or financial intermediary must, within the period set out in the standards, in writing notify NAMFISA of the appointment or designation.

(5) NAMFISA may, on the grounds that an auditor is not a fit and proper person or is not independent within the meaning of the standards and after giving the financial institution or financial intermediary and the auditor a reasonable opportunity to be heard, direct the financial institution to appoint some other auditor or firm of auditors to be the auditor of the financial institution or financial intermediary.

(6) Whenever an auditor resigns, the appointment of an auditor terminates due to the expiry of the contract or the appointment of an auditor is terminated by a financial institution or financial intermediary for whatever reason -

(a) the financial institution or financial intermediary must, within the period set out in the standards, notify NAMFISA in writing and submit to NAMFISA a written statement of the reasons for the termination or, in the opinion of the financial institution or financial intermediary, the reasons for the resignation; and

(b) the auditor must, within the period set out in the standards, submit a written statement to NAMFISA of the reasons for the resignation or, in the opinion of the auditor, the reasons for the termination, stating any matter relating to the affairs of the financial institution or financial intermediary of which the auditor became aware in the performance of the duties as auditor which in the opinion of the auditor may be of concern to NAMFISA.

(7) The auditor of a financial institution or financial intermediary may -

(a) at all times access the accounting records and other books and records of that financial institution or financial intermediary and may require from the directors, principal officer, other officers or the manager of a collective investment scheme the information and explanations that the auditor considers necessary for the carrying out of the duties of auditor; and

(b) attend and speak at any meeting of the board of the financial institution or financial intermediary.

(8) In addition to the duties imposed upon auditors by the Public Accountants' and Auditors' Act and this Act, the auditor of a financial institution or financial intermediary must perform the duties set out in the standards.

(9) Whenever the auditor of a financial institution or financial intermediary furnishes copies of a report or other document or particulars required under the Public Accountants' and Auditors' Act or any other law in respect of that financial institution or financial intermediary, the auditor must also furnish a copy to NAMFISA.

(10) The auditor of a financial institution or financial intermediary must, at the cost of the financial institution or financial intermediary, undertake such other examination of the affairs of the financial institution or financial intermediary as may be required by NAMFISA.

(11) The auditor of a financial institution or financial intermediary must audit the annual financial statements of the financial institution or financial intermediary in accordance with International Auditing Standards, except as otherwise specified by NAMFISA and must report on those financial statements.

(12) A financial institution or financial intermediary must, commencing 12 months after the date of commencement of this Act and within 90 days of the end of the financial year end of the financial institution or financial intermediary, send a copy of its annual financial statements, together with the report of the auditor to NAMFISA.

(13) An auditor must report in writing to the board and principal officer of the financial institution or financial intermediary and to the manager of a collective investment scheme with a copy to NAMFISA, on any transactions or conditions that have come to the attention of the auditor which, in the opinion of the auditor, could significantly and adversely impact the financial position of the financial institution or financial intermediary whether or not those transactions or conditions are reflected in the financial statements or annual return of the financial institution or financial intermediary.

(14) An auditor of a financial institution or financial intermediary does not incur any liability to any person for having furnished to NAMFISA in good faith information on any irregularity or other matter of which the auditor has become aware in the capacity of auditor of the financial institution or financial intermediary and which, in the opinion of the auditor, may be of concern to NAMFISA.

(15) Subject to the auditing standards referred to in subsection (11), the auditor of a financial institution or financial intermediary, in expressing an opinion with respect to the financial affairs of the financial institution or financial intermediary under this Act or any other law, may rely on the work performed by the valuator, if any, of the financial institution or financial intermediary.

(16) An auditor must send a copy of any report or other document referred to in this section to the valuator, if any, of the financial institution or financial intermediary.

(17) A person who -

(a) contravenes or fails to comply with subsection (4), (6) or (12); or

(b) hinders or obstructs an auditor in the performance of the duties or the exercise of the powers of an auditor under this Act,

commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Appointment of valuator

402. (1) Every registered financial institution that is -

(a) an insurer;

(b) a retirement fund;

(c) a friendly society referred to in section 303(1); or

(d) a medical aid fund,

must appoint and at all times have a valuator.

(2) A valuator must be -

(a) a fit and proper person within the meaning of the standards; and

(b) independent of the financial institution within the meaning of the standards.

(3) After the appointment of a valuator the financial institution must, within the period set out in the standards, in writing notify NAMFISA of the appointment.

(4) NAMFISA may, on the grounds that the valuator is not a fit and proper person or is not independent within the meaning of the standards, and after giving the financial institution and the valuator a reasonable opportunity to be heard, direct the financial institution to appoint some other person to be the valuator of the financial institution.

(5) Whenever a valuator resigns, the appointment of a valuator terminates due to the expiry of the contract or the appointment of a valuator is terminated by a financial institution -

(a) the financial institution must, within the period set out in the standards, notify NAMFISA in writing and submit to NAMFISA a written statement of the reasons for the termination or, in the opinion of the financial institution, the reasons for the resignation; and

(b) the valuator must, within the period set out in the standards, submit a written statement to NAMFISA of the reasons for the resignation or, in the opinion of the valuator, the reasons for the termination, stating any matter relating to the affairs of the financial institution of which the valuator became aware in the performance of the duties as valuator, which in the opinion of the valuator may be of concern to NAMFISA.

(6) A valuator of a financial institution may -

(a) at all times access the accounting records and other books and records of that financial institution and may require from the directors, the principal officer or other officers of the financial institution the information and explanations that the valuator considers necessary for the carrying out of the duties of valuator; and

(b) attend and speak at any meeting of the board of that financial institution.

(7) In addition to the duties imposed upon valuators by this Act, any other law or a code of professional practice, the valuator of a financial institution must perform the duties set out in the standards.

(8) The valuator of a financial institution must, at the cost of the financial institution, undertake such other evaluation or examination of the affairs of the financial institution as may be required by NAMFISA.

(9) A valuator must conduct the valuation in accordance with generally accepted actuarial or other practice, with such changes as may be determined by NAMFISA, and any additional directives that may be made by NAMFISA.

(10) A financial institution must, commencing 12 months after the date of commencement of this Act, send a copy of its valuation to NAMFISA within 180 days of -

(a) the end of each financial year, in the case of an insurer;

(b) the end of the financial year referred to in -

(i) section 268(1)(a), in the case of a retirement fund other than the one referred to in subparagraph (ii);

(ii) section 268(1)(b), in the case of a retirement fund that is a defined benefit fund; or

(iii) section 268(2), in the case of every other retirement fund;

(c) the end of the financial year referred to in section 304(1) or (2), in the case of a friendly society; or

(d) the end of the financial year referred to in section 347(1) or (2), in the case of a medical aid fund.

(11) A valuator must report in writing to the board and principal officer of the financial institution with a copy to NAMFISA, on any transactions or conditions that have come to the attention of the valuator which, in the opinion of the valuator, could significantly and adversely impact the financial position of the financial institution whether or not those transactions or conditions are reflected in the valuation, financial statements or annual return of the financial institution.

(12) The valuator of a financial institution does not incur any liability to any person in consequence of having furnished to NAMFISA in good faith information on any irregularity or other matter of which the valuator has become aware in the capacity of valuator of the financial institution and which, in the opinion of the valuator, may be of concern to NAMFISA.

(13) Subject to subsection (9), the valuator of a financial institution, in expressing an opinion with respect to the financial affairs of the financial institution under this Act or any other law, may rely on the work performed by the auditor of the financial institution.

(14) A valuator must send a copy of any report or other document referred to in this section to the auditor of the financial institution.

(15) A person who -

(a) contravenes or fails to comply with subsection (3), (5) or (10); or

(b) hinders or obstructs a valuator in the performance of the duties or the exercise of the powers of a valuator under this Act,

commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Return of directors, auditors and valuators

403. (1) A financial institution and a regulated person referred to in section 83(1) must, after each annual meeting of the financial institution, file with NAMFISA a return showing -

(a) the name and residential and mailing address of each director holding office immediately following the meeting;

(b) the entities of which each director is a director or officer or which is controlled by the director;

(c) the experience and qualifications of each director;

(d) the date of expiry of the term of each director;

(e) the name, business and mailing address and date of appointment of the auditor of the financial institution;

(f) the experience and qualifications of the auditor;

(g) the name, business and mailing address and date of appointment of the valuator, if any, of the financial institution; and

(h) the experience and qualifications of the valuator.

(2) If a vacancy in a position of director, auditor or valuator occurs and is filled by another person the financial institution must, within the period set out in the standards after the new appointment, provide NAMFISA with such information as is required to maintain the return referred to in subsection (1) in complete and accurate form.

(3) A person who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Duties of financial institutions and financial intermediaries

404. Every registered financial institution and financial intermediary must act honestly and in good faith, in the best interest of its clients and in accordance with any additional duties set out in the standards.

PART 4
GENERAL MARKET CONDUCT REQUIREMENTS

Application of this Part and other financial services laws

405. This Part applies in addition to the other provisions of this Act and to the provisions of any other applicable financial services laws.

Prohibition of false and misleading statements

406. (1) A person may not engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to a financial service whether that financial service is provided by the person in question or by another person.

(2) Without limiting the generality of subsection (1), a person may not -

(a) falsely represent that a financial service is of a particular standard, quality, value or grade;

(b) falsely represent that a particular person has agreed to acquire a specified financial service;

(c) falsely represent that a financial service has sponsorship, approval, performance characteristics, uses or benefits;

(d) falsely represent that the person has, in relation to a financial service, a sponsorship, approval or affiliation;

(e) make a false or misleading representation with respect to the price of a financial service;

(f) make a false or misleading representation concerning the need for a specified financial service;

(g) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy in relation to a financial service; or

(h) make any statement, promise or forecast knowing that it -

(i) is misleading, false or deceptive in any material respect; or

(ii) conceals any material fact;

for the purpose of inducing or attempting to induce any other person to -

(aa) enter into or offer to enter into or to refrain from entering into or offering to enter into any contract, or to terminate a contract or transaction, in relation to a financial service; or

(bb) exercise or refrain from exercising any rights under such contract,

regardless of whether such other person is the person to whom the statement, promise or forecast was made or from whom the material facts were concealed.

(3) A person who contravenes or fails to comply with the provisions of subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Declaration of practices as irregular or undesirable

407. (1) NAMFISA may by notice in the *Gazette*, declare a specific practice or method of conducting business as an "irregular or undesirable practice" or an "undesirable method of conducting business" for a specific category or categories of financial institutions, financial intermediaries or financial services or for all financial institutions, financial intermediaries or financial services.

(2) The following principles must guide NAMFISA in considering whether a declaration pursuant to subsection (1) may be made -

(a) the practice concerned, directly or indirectly, has or is likely to have the effect of -

(i) harming the relations between financial institutions or financial intermediaries and clients or the general public;

(ii) unreasonably prejudicing any client;

(iii) deceiving any client; or

(iv) unfairly affecting any client; or

(b) if the practice is allowed to continue, one or more of the objects of NAMFISA or of this Act will or is likely to be defeated.

(3) NAMFISA may not issue a declaration referred to in subsection (1) unless NAMFISA -

(a) has, in the manner set out in the standards, invited interested persons to make written representations to NAMFISA concerning the intended declaration within a period of not less than 21 days before the proposed date of publication of the notice; and

(b) has consulted with the advisory committee.

(4) A financial institution or financial intermediary may not, on or after the date of the notice referred to in subsection (1), carry on a business practice or method of

conducting business that has been declared as an "irregular or undesirable practice" or an "undesirable method of conducting business".

(5) NAMFISA may, by notice to the financial institution or financial intermediary concerned and published in the *Gazette*, direct a financial institution or financial intermediary which carries on a business practice or method of conducting business referred to in subsection (4) on or after the date of publication of the notice referred to in subsection (1), to rectify, repair or repay to the satisfaction of NAMFISA any damage or other undesirable consequence which was caused by, or arose out of, that business practice or method of conducting business.

(6) A financial institution or financial intermediary which is directed to rectify, repair or repay any damage or undesirable consequence pursuant to subsection (5) must do so within 60 days after the financial institution or financial intermediary is so directed.

(7) A person who contravenes or fails to comply with the provisions of subsection (4) or fails to comply with a directive issued under subsection (5) within the period specified in subsection (6) commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Market conduct: powers of NAMFISA

408. (1) In addition to any other power granted to NAMFISA under this Act, NAMFISA may -

(a) investigate or instruct that an investigation be conducted regarding any alleged market conduct or matter relating to an alleged offence relating to market conduct;

(b) institute any proceedings with respect to poor market conduct practice referred to in this Act;

(c) handle complaints arising out of the obligations of the parties, if any, under any provision of this Act and ensuring that NAMFISA is able to perform its functions under this Act with respect to complaints on market conduct;

(d) issue standards with respect to -

(i) principles relating to market conduct and their administration by NAMFISA;

(ii) the manner in which investigations into market conduct under this Act are to be conducted;

(iii) the procedure for the lodging of complaints with respect to contraventions relating to market conduct; and

(e) after consultation with financial institutions or financial intermediaries that may be affected require the implementation of processes or tools that are -

(i) necessary for the identification and monitoring of contraventions or likely contraventions of the market conduct provisions of this Act; and

(ii) desirable as a pre-requisite for the fair treatment of customers under this Act.

(2) Any principle contained in standards made by NAMFISA under subsection (1) in relation to market conduct is binding on all financial institutions and financial intermediaries to which it is applicable, and on members of the public.

(3) The provisions of sections 418 to 429 do apply with the changes required by the context to an investigation referred to in subsection (1)(a).

PART 5
POWERS OF NAMFISA TO REGULATE AND SUPERVISE

Power to issue standards

409. (1) NAMFISA may by notice in the *Gazette* issue such standards that NAMFISA may consider necessary or advisable for the due carrying out of the provisions of this Act and to achieve the objects and intent of this Act.

(2) The notice referred to in subsection (1) must state the date on which the standard will come into effect.

(3) Before issuing a standard, NAMFISA must -

(a) obtain the approval of the Board of NAMFISA;

(b) publish a draft of the proposed standard in the *Gazette* and bring it to the attention of the financial institutions or financial intermediaries to which the standard will apply, and to their industry associations or self-regulatory organisations;

(c) give those financial institutions, financial intermediaries, industry associations or self-regulatory organisations not less than 30 days after the date of publication of the proposed standard to make representations in writing to NAMFISA with respect to the proposed standard; and

(d) take any such representations into account in determining whether to issue the standard as originally published or in a modified form.

(4) If NAMFISA considers it necessary on an urgent basis, NAMFISA may issue a standard without following the procedure set out in subsection (3), but any such standard ceases to have effect at the end of 90 days after it has been issued, unless the procedure referred to in subsection (3) has been followed.

(5) NAMFISA may by notice in the *Gazette* revoke or modify a standard, subject to the procedure referred to in subsection (3).

Standards

410. (1) Without derogating from the generality of section 409(1), NAMFISA may issue the standards referred to in subsections (2) to (8), inclusive.

(2) For the purposes of this Act, NAMFISA may issue standards relating to -

(a) the categories of professions and persons of which an expert must be a member for the purposes of the definition of "valuator" in section 1;

(b) the form of any certificate required under this Act;

(c) the form and content of any application required to be made to NAMFISA under this Act, the documents, information and material which must accompany such application and any required fee;

(d) fit and proper requirements for any person registered under this Act, and for directors, members of a board, principal officers, other officers, trustees, custodians, auditors and valuators of financial institutions and financial intermediaries, and for any other person subject to this Act;

(e) the independence of directors, members of a board, trustees, custodians, auditors and valuators and of any other person required to be independent under this Act;

(f) the identification of acts and omissions that will be considered misconduct on the part of any person registered under this Act, and on the part of any other person subject to this Act;

(g) the ongoing requirements for any person registered under this Act or otherwise subject to this Act;

(h) the appointment of principal officers;

(i) the documents relating to a financial institution that must be kept and maintained at the principal office of the financial institution;

(j) financial reporting and the additional duties of auditors and valuators;

(k) compliance officers and compliance arrangements for registered financial institutions and financial intermediaries;

(l) the conduct of the business of financial institutions and financial intermediaries with integrity, prudence and professional skill and in a way that ensures that they maintain a sound financial position and do not cause or promote instability in the financial system of Namibia;

(m) the exemption of securities rating agencies and nominee companies from compliance with certain provisions relating to financial intermediaries;

(n) the governance of financial institutions and financial intermediaries;

(o) the definition of related party transactions and identifying those that are prohibited;

(p) additional duties of financial intermediaries;

(q) minimum capital, capital adequacy, solvency and liquidity of financial institutions and financial intermediaries;

(r) the determination, calculation and valuation of assets of financial institutions and financial intermediaries, including the power of NAMFISA to -

(i) direct a financial institution or a financial intermediary to change a valuation under circumstances determined in such standard;

(ii) appoint an independent valuator to do an independent valuation where NAMFISA is not satisfied with a valuation report prepared by a valuator appointed by a financial institution or a financial intermediary; and

(iii) resolve disputes arising from any valuation report submitted to NAMFISA in terms of this Act;

(s) the determination, calculation and valuation of liabilities of financial institutions and financial intermediaries, including the power of NAMFISA to -

(i) direct a financial institution or a financial intermediary to change a valuation under circumstances determined in such standard;

(ii) appoint an independent valuator to do an independent valuation where NAMFISA is not satisfied with a valuation report prepared by a valuator appointed by a financial institution or a financial intermediary; and

(iii) resolve disputes arising from any valuation report submitted to NAMFISA in terms of this Act;

(t) the determination of what constitutes a sound financial position;

(u) the extent to which sections 394(a), 395(2) and 397 apply to a board of trustees or other board of a financial institution that is not a company, and the requirements for any further exemption from any of those provisions and section 402;

(v) the use by financial institutions and financial intermediaries of financial instruments, including derivatives, the entering into of off-balance sheet transactions and limitations, if any, on investments;

(w) insurance and reinsurance arrangements made by financial institutions and financial intermediaries including adequate professional indemnity and fidelity insurance cover and suitable guarantees and mechanisms

for the adjustment of such cover or guarantees by NAMFISA in a particular case;

(x) outsourcing of functions and responsibilities by financial institutions and financial intermediaries;

(y) risk management and internal control mechanisms employed by financial institutions and financial intermediaries;

(z) requirements for any filing of a financial nature;

(aa) the maximum limits to be imposed on specific asset classes for solvency standards of financial institutions and financial intermediaries;

(bb) adequate and appropriate record-keeping by financial institutions and financial intermediaries, including accounting records and the preparation of financial statements;

(cc) the fiduciary responsibilities of financial institutions and financial intermediaries and of their directors, members of boards, principal officers and other officers;

(dd) standards and other requirements regarding financial products, including the actuarial soundness of financial products offered by financial institutions and financial intermediaries;

(ee) unclaimed benefits;

(ff) accounting and auditing requirements for financial institutions and financial intermediaries;

(gg) the combating of financial crime;

(hh) the content of investment mandates;

(ii) the making of adequate and meaningful disclosure of relevant material information to clients, including the disclosure of actual or potential own interests;

(jj) the obtaining of sufficient and appropriate information from clients where a financial institution or financial intermediary is required to make a proper needs assessment of clients in order to determine suitable financial services for them;

(kk) reports to be made or information to be given to NAMFISA about financial institutions, financial intermediaries or financial services;

(ll) the prevention of inordinate or excessive incentives or inducements being offered or paid to financial intermediaries or to prospective clients;

(mm) the prohibition of unfair terms in contracts and other transactions between financial institutions or financial intermediaries and their

customers or the general public and the prohibition of undesirable trade practices, including untenable conflicts of interests;

(nn) training requirements for financial intermediaries;

(oo) the protection, segregation and safe-keeping of client assets, funds and transaction documents;

(pp) advertising, marketing or otherwise promoting financial services;

(qq) fees and pricing structures charged by financial institutions and financial intermediaries, including disclosure of those fees and pricing structures;

(rr) the form of any document referred to in this Act for which provision is not otherwise made;

(ss) applying the provisions of section 433 to financial intermediaries and for the purposes of that section, identifying certain types of financial intermediaries;

(tt) for the purposes of Part 7, identifying certain types or classes of financial intermediaries to which the provisions of Part 7 apply;

(uu) for the purposes of section 442, the application for approval of a scheme and the publication of, exclusions from, modifications to, and implementation of, schemes;

(vv) for the purposes of sections 443 and 444, the qualifications of a person appointed as a statutory manager and any additional powers and duties of a statutory manager;

(ww) for the purposes of section 445, the priority and ranking of claims against any particular type of financial institution being wound-up, the qualifications for a liquidator recommended by NAMFISA and other criteria relating to such liquidator and any other matter that is necessary or desirable for the winding-up of a financial institution;

(xx) for the purposes of Part 8, identifying certain types or classes of financial institutions and financial intermediaries that may amalgamate or to which business may be transferred and the conditions and limitations applicable to such amalgamations and transfers;

(yy) the documents to be deposited with NAMFISA pursuant to section 451(d);

(zz) the requirements for disclosure of fees and charges by financial institutions or financial intermediaries, including the manner and form of such disclosure;

(aaa) the funding of, and other matters regarding, the Financial Services Compensation Scheme referred to in Part 9; and

(bbb) any other matter which under this Act is required, permitted or appropriate to be provided for in the standards.

(3) For the purposes of Chapter 2, NAMFISA may issue standards relating to -

(a) the capital adequacy requirements for registered insurers or reinsurers;

(b) the nature of any terms and conditions that may apply with respect to foreign insurers and foreign reinsurers referred to in section 5(2);

(c) the nature of the conditions or limitations that may apply to a registered insurer or registered broker when effecting or renewing insurance outside Namibia pursuant to section 5 or section 70;

(d) business that will be considered to be ancillary to the class or classes of insurance for which an insurer is registered;

(e) the definition of "unit-linked products" and any particulars with regard to reporting, accounting, record keeping or legal status of such products;

(f) the accounts and other information that must be kept in Namibia relating to the insurance business of a registered insurer;

(g) the determination, calculation and valuation of the assets and liabilities of registered insurers for the purposes of capital adequacy requirements, including NAMFISA's right to change a valuation under circumstances determined in such standards;

(h) the terms and conditions under which a registered insurer may reinsure the whole or any part of its business;

(i) the investment of the funds of a registered insurer or reinsurer pursuant to section 20 and its memorandum, articles or rules, including matters to be included in an investment policy statement and limits on the amount and extent to which the insurer or reinsurer may invest -

(i) outside Namibia; or

(ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere, the basis on which the limit must be determined and defining the kinds or categories of assets to which the limit applies;

(j) the establishment of policies for determining the dividends and bonuses to be paid to participating policyholders;

(k) the description of plain language for the purposes of section 29;

(l) the amount of protection that will be afforded in respect of a life policy referred to in Part 5 of Chapter 2;

(m) the aggregate amount that may be paid under, and the aggregate realisable value of, life policies and other matters referred to in Part 5 of Chapter 2;

(n) the trust account to be opened by Lloyd's and the minimum value of funds therein;

(o) particulars regarding the business of Lloyd's in Namibia for the purposes of section 46(3);

(p) the medium and form of, and information to be contained in, returns to be furnished by Lloyd's and the date by which such returns must be furnished in connection with -

(i) the short-term insurance business carried on by Lloyd's underwriters in Namibia;

(ii) the trust account operated by Lloyd's; and

(iii) the calculation of the trust fund requirements for Lloyd's;

(q) the requirements for the registration, operation and duties of a Lloyd's intermediary in Namibia;

(r) the requirements for registration of insurance agents and insurance brokers;

(s) the information and material regarding insurance agents who are included in any list pursuant to section 55 that must be provided by the registered insurer;

(t) financial reporting requirement for insurance brokers;

(u) the imposition of penalties on registered insurers;

(v) the fair treatment of clients and policyholders by registered agents and registered brokers;

(w) matters with respect to entities commonly known as cell captives;

(x) the amount of commission that may be paid to insurance brokers;

(y) point-of-sale information to be provided by insurers, insurance agents and insurance brokers to policyholders and potential policyholders;

(z) provisions governing the registration and on-going requirements for a corporate body to act as an agent;

(aa) exempting a person or class of persons from the provisions of section 6;

(bb) the manner in which NAMFISA may approve additional classes of long-term insurance business and additional classes of short-term insurance business for the purposes of section 8;

(cc) the determination of assets that may be regarded as free assets for the purposes of section 21; and

(dd) any other matter which under Chapter 2 is required, permitted or appropriate to be provided for in the standards.

(4) For the purposes of Chapter 3, NAMFISA may issue standards relating to -

(a) the conditions that apply to a person who buys or sells listed securities for the purposes of section 82(1)(e);

(b) the information and material to be provided pursuant to section 91(6);

(c) the imposition of penalties on list applicants pursuant to section 92 and on an authorised user where a registered exchange has referred a matter to NAMFISA pursuant to section 96(2)(g) and the application of the provisions of section 92 pursuant to section 96(6);

(d) matters to be included by a registered exchange in its listing requirements;

(e) the conditions pursuant to which a registered exchange may include securities issued by it in its own list;

(f) contributions that a registered exchange may require its authorised users and their clients to make towards the funds of the exchange;

(g) additional matters which must be provided in the exchange rules of a registered exchange;

(h) matters to be included in a report referred to in section 113 and the manner and timing of such report;

(i) the manner of appeals to NAMFISA pursuant to section 120;

(j) additional functions for central securities depositories and participants;

(k) additional requirements for issuers of uncertificated securities;

(l) additional matters which must be provided in the depository rules of a central securities depository;

(m) the process to be followed when applying for recognition as a self-regulatory organisation, functions and supervisory powers of a self-regulatory organisation over its members and other matters regarding self-regulatory organisations;

(n) the process to be followed for the incorporation of a self-regulatory organisation that is an exchange, a central securities depository or securities clearing house without a share capital as a company having a share capital under the Companies Act;

(o) the amalgamation of, and the transfer of assets and liabilities by -

(i) exchanges;

(ii) central securities depositories; and

(iii) securities clearing houses;

(p) the annual report and the annual financial statements of a self-regulatory organisation;

(q) codes of conduct for one or more categories of regulated persons;

(r) information about an issuer and securities being issued by the issuer to clients or potential clients of a regulated person, when the securities are being sold by or through the services of that regulated person;

(s) limits for the purposes of paragraph (b) of the definition of "affected transaction" in section 155; and

(t) any other matter which under Chapter 3 is required, permitted or appropriate to be provided for in the standards.

(5) For the purposes of Chapter 4, NAMFISA may issue standards relating to -

(a) the determination of capital and reserves of a public company registered as the manager of a collective investment scheme which must be available for employment in the collective investment scheme;

(b) additional information required to enable an investor to make an informed decision pursuant to section 172(1)(b);

(c) the information and material to be provided pursuant to section 180(4);

(d) the imposition of penalties on an authorised representative pursuant to section 181 and on a designated representative where a manager has referred a matter to NAMFISA pursuant to section 183(2)(g) and the application of the provisions of section 181 pursuant to section 183(6);

(e) additional requirements for the granting of approval of a nominee company;

(f) the manner in which and the limits and conditions subject to which investments may be included in a portfolio of a collective investment scheme, and different matters, limits and conditions for different types or classes of investments or different portfolios of a collective investment scheme, including without limitation -

(i) the minimum size of portfolios;

(ii) the mandatory purchase of units by managers; and

(iii) restrictions and conditions on the use of leverage in, or in connection with, a portfolio;

(g) rules for the administration of collective investment schemes under one or more of Parts 4 to 9 of Chapter 4 and for the solicitation of investments in a foreign collective investment scheme under Part 10 of Chapter 4;

(h) the fee payable on an application by the manager or operator of a foreign collective investment scheme for approval to solicit investments in Namibia pursuant to section 219(1);

(i) securities or classes of securities that may be included in a portfolio of a collective investment scheme in securities;

(j) the calculation of the fair value of a security;

(k) money market instruments that may be included in a portfolio of a collective investment scheme in money market instruments;

(l) the calculation of the fair value of money market instruments;

(m) foreign exchanges, ratings and rating agencies and the due diligence requirements which a manager must apply to exchanges and securities;

(n) additional assets which may be included in the portfolio of a collective investment scheme in property;

(o) minimum investment periods for investments in a collective investment scheme in participation bonds;

(p) minimum investment periods for investments in a collective investment scheme in unlisted securities;

(q) defining the business activity or investment programme of a declared collective investment scheme, the matters to be included in the deed and notices to be issued with respect to different types of declared collective investment schemes;

(r) the actions that may be taken by NAMFISA pursuant to section 220;

(s) requirements with respect to trustees and custodians;

(t) resolutions of investors authorising the conversion of a collective investment scheme;

(u) assets that must be included in the portfolio of a collective investment scheme at the time that a participatory interest is sold or offered for sale;

(v) the requirements for the exercise of voting power conferred on a manager by the assets held in a portfolio;

(w) permissible deductions from a portfolio;

(x) the meaning of "net asset value" for the purposes of section 238;

(y) matters to be regulated by a deed pursuant to section 241;

(z) the circumstances under which the manager of a collective investment scheme in securities may suspend the repurchase of participatory interests and the conditions of such suspension;

(aa) different requirements for managers which are members of a self-regulatory organisation and those which are not, and managers of different types of collective investment schemes or different types of portfolios;

(bb) the conditions under which the terms of any price list, advertisement, brochure or similar document relating to a collective investment scheme will be considered as calculated to mislead or considered objectionable or undesirable; and

(cc) any other matter which under Chapter 4 is required, permitted or appropriate to be provided for in the standards.

(6) For the purposes of Chapter 5, NAMFISA may issue standards relating to -

(a) the definition of "actuarial surplus";

(b) alternative forms or payment of pensions for the purposes of defined contribution funds;

(c) the conditions pursuant to which a fund may be exempted from section 262, 268(7) or 282(3);

(d) the requirements of a communication strategy to be adopted by the board of a fund to ensure that adequate and appropriate information is communicated to members, employers and sponsors;

(e) requirements for the annual report of a fund;

(f) additional duties of the board of a fund;

(g) the period after which the fact that contributions to a fund remain outstanding must be notified to all active and retired members and NAMFISA;

(h) the requirements for an investigation by and the report of a valuator on the financial position of a fund and the form of a summary of such report;

(i) the conditions on which a defined contribution fund may be exempted from the requirement of regular investigations by a valuator;

(j) the minimum information that must be furnished to a fund by an employer with respect to the payment of contributions;

(k) the categories of persons having an interest in the compliance of a fund with the provisions of section 270(7), and the reports that must be submitted by the principal officer or a person authorised under section 270(8) to such categories of persons with respect to such compliance;

(l) the protection of unpaid contributions by an employer consistent with the requirements set out in the regulations;

(m) requirements for the rules of a fund and any amendment of such rules;

(n) the determination of the soundness of the financial position of a fund for the purposes of section 272(3);

(o) the conditions for a report of an independent valuator pursuant to section 272(5);

(p) the requirements for the voluntary termination or dissolution of a fund pursuant to section 278 and in the circumstances specified in its rules, and the winding-up of a fund by the court pursuant to section 279, but subject to the requirements of the regulations;

(q) the minimum benefits that a fund must provide to its members;

(r) provision for compulsory beneficiary nomination forms to be completed by members of a fund for the purpose of enabling a member to designate a nominee or nominees to receive benefits from such fund upon the death of such member;

(s) the investment of the funds of a registered fund pursuant to section 282 and its rules, including matters to be included in an investment policy statement and limits on the amount and extent to which the fund may invest -

(i) outside Namibia; or

(ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere, the basis on which the limit must be determined and defining the kinds or categories of assets to which the limit applies;

(t) matters to be communicated to members and contributing employers and minimum standards for such communication;

(u) matters to be included in the code of conduct to be adopted by the fund and sanctions that may be taken against the board or individual board members in respect of breaches of that code of conduct;

(v) early withdrawals from a fund;

(w) further amounts which may be deducted for the purposes of section 277;

(x) requirements regarding annuities purchased by a retirement fund from a registered financial institution;

(y) the transfer of any business from a fund to another fund or the transfer of any business from any other person to a fund;

(z) the fee that may be charged to members for copies of certain documents and the reports and other information that must be provided by the board of a fund to its members free of charge; and

(aa) any other matter which under Chapter 5 is required, permitted or appropriate to be provided for in the standards.

(7) For the purposes of Chapter 6, NAMFISA may issue standards relating to -

(a) a statement of the assets of a friendly society;

(b) a statement of the liabilities of a friendly society;

(c) the requirements with which a friendly society referred to in section 286(1) must comply;

(d) the conditions under which a friendly society may be exempted from any or all of the provisions of Chapter 6;

(e) the financial guarantees that may be required from a person who manages the business of a friendly society which is in the process of being established;

(f) the minimum number of members of a friendly society;

(g) the management and governance of a friendly society;

(h) requirements for the annual report of a friendly society;

(i) requirements for the rules of a friendly society and any amendment of such rules;

(j) the investment of the funds of a friendly society pursuant to section 306 and its rules, including matters to be included in an investment policy statement and limits on the amount and extent to which a friendly society fund may invest -

(i) outside Namibia; or

(ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere, the basis on which the limit must be determined and defining the kinds or categories of assets to which the limit applies;

(k) the valuation and report of the valuator of a friendly society referred to in section 304;

(l) the percentage of the fair value of property referred to in section 306(2);

(m) the determination of the soundness of the financial position of a friendly society for the purposes of section 308(3);

(n) the conditions for a report of an independent valuator pursuant to section 308(4);

(o) the maximum amount of insurance referred to in section 313;

(p) the books of account and records that must be kept and maintained with respect to the money and assets belonging to a friendly society;

(q) the persons who may, in the name of a friendly society, keep the money and assets of a friendly society;

(r) the requirements for the voluntary termination or dissolution of a friendly society pursuant to section 316 and in the circumstances specified in its rules, and the winding-up of a friendly society by the court pursuant to section 317, but subject to the requirements of the regulations;

(s) the fee that may be charged to members for copies of certain documents and the reports and other information that must be provided by a friendly society to its members free of charge; and

(t) any other matter which under Chapter 6 is required, permitted or appropriate to be provided for in the standards.

(8) For the purposes of Chapter 7, NAMFISA may issue standards relating to -

(a) business that has been excluded from the business of a medical aid fund by the Minister through regulations;

(b) the demarcation between the business of a medical aid fund and the business of insurance;

(c) additional services for the purpose of health services;

(d) additional restrictions for the purpose of a restricted medical aid fund;

(e) investments of a medical aid fund pursuant to section 350 and its rules, including matters to be included in an investment policy statement and limits on the amount and extent to which a medical aid fund may invest -

(i) outside Namibia; or

(ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere, the basis on which the limit must be determined and defining the kinds or categories of assets to which the limit applies;

(f) the determination, calculation and valuation of -

(i) the kinds or categories of assets that a medical aid fund must maintain in Namibia;

(ii) the items to be included in the liabilities of a fund;

(iii) the valuation of the assets and liabilities of a fund;

(iv) the minimum solvency requirements for a fund and the determination of the financial position of a fund for that purpose;

including NAMFISA's right to change a valuation in the circumstances determined in the standards;

(g) requirements for the report of the valuator of a medical aid fund with respect to the current financial position of the fund and its projected financial soundness;

(h) requirements for the financial guarantees that may be required from a person who will manage the business of a medical aid fund which is in the process of being established;

(i) the minimum number of members of a medical aid fund;

(j) the period after which payment of subscriptions or contributions to a medical aid fund become due;

(k) the direct or indirect election of members of the board of trustees by members of a medical aid fund;

(l) the duties of the board of trustees of a medical aid fund;

(m) requirements for the annual report of a medical aid fund;

(n) the extent to which a medical aid fund may encumber its assets, allow them to be held by another person, borrow money or give security;

(o) the investments of a medical aid fund in publicly traded shares pursuant to section 348(6);

(p) the rules of a medical aid fund and any amendment of such rules;

(q) the determination of the soundness of the financial position of a medical aid fund for the purposes of section 353(3);

(r) the conditions for a report of an independent valuator pursuant to section 353(4);

(s) the period for general and condition-specific waiting periods and other periods referred to in section 354;

(t) the provision by medical aid funds to their members of written proof of membership and the particulars such proof must or may contain;

(u) the conditions subject to which any person who has terminated his or her membership of a medical aid fund may be enrolled as a beneficiary of any other medical aid fund;

(v) the manner in which any payment due by a medical aid fund must be made;

(w) the administration of the affairs of a medical aid fund, including the regulation, control, restrictions or prohibition of any act relating to such administration;

(x) requirements relating to a transaction monitoring system to be used by a medical aid fund to prevent fraudulent claims;

(y) open enrolment and conditions and measures that may be imposed on open enrolment, premium penalties within defined bands for persons joining only late in life and such other measures against adverse selection as may be appropriate;

(z) provisions associated with the manner of providing managed health care to beneficiaries and requirements for managed health care contracts;

(aa) reporting acts or omissions of any person in contravention of the provisions of Chapter 7;

(bb) the requirements for the voluntary termination or dissolution of a medical aid fund pursuant to section 358 and in the circumstances specified in its rules, and the winding-up of a medical aid fund by the court pursuant to section 359, but subject to the requirements of the regulations;

(cc) the particulars that must be included in an account or statement provided by a health service provider to a member;

(dd) the date by which a benefit must be paid to a member or a supplier of health services by a medical aid fund pursuant to section 361(2);

(ee) the fee that may be charged to members for copies of certain documents and the reports and other information that must be provided by a medical aid fund to its members and beneficiaries free of charge; and

(ff) any other matter which under Chapter 7 is required, permitted or appropriate to be provided for in the standards.

(9) For the purposes of Chapters 8 and 9, this Chapter and Chapter 11, NAMFISA may issue standards relating to any matter which NAMFISA is empowered, permitted or required to issue standards on or which is appropriate to be provided for in the standards and which NAMFISA considers it necessary or expedient to issue standards in order to achieve the objects of Chapters 8 and 9, this Chapter and Chapter 11.

(10) The standards issued pursuant to this section and section 409 may provide for penalties for any contravention of the standards not exceeding such amounts as may be prescribed.

Guidelines, bulletins, rules, directives and other measures

411. (1) NAMFISA may issue such guidelines, bulletins, rules, general directives and any other subordinate measures as it considers necessary or desirable for carrying out its duties and functions under the financial services laws and to achieve the objects and intent of this Act.

(2) NAMFISA may publish the guidelines, rules, general directives and other measures referred to in subsection (1) in the *Gazette,* and NAMFISA must take measures that are necessary to ensure that the guidelines, bulletins, rules, general directives and other measures referred to in that subsection are brought to the attention of the persons or entities to whom they apply.

(3) The guidelines, rules, general directives and other subordinate measures referred to in subsection (1) are binding on those persons to whom they apply.

Power to issue directives

412. (1) NAMFISA may issue directives to any financial institution or financial intermediary or to any other person or entity that is governed by this Act or regulated by NAMFISA under this Act, with respect to any matter governed by this Act or any other applicable financial services laws in any situation where NAMFISA is of the opinion that the financial institution, financial intermediary or other person or entity is contravening or failing to comply with, or has contravened or failed to comply with, any provisions of this Act or of any other applicable financial services laws or if -

(a) an act or course of action has been or is about to be undertaken; or

(b) an omission has occurred or is about to occur,

on the part of the financial institution, financial intermediary or other person or entity that may be damaging to the financial soundness or reputation of that financial institution, financial intermediary or other person or entity or to its clients or to the financial stability of the financial system of Namibia or that is against the public interest.

(2) For the purposes of this section, NAMFISA may issue a directive requiring a financial institution, financial intermediary or any other person or entity to -

(a) furnish NAMFISA with any information or documents in the possession or under the control of that financial institution, financial intermediary or person or entity within the period specified in the directive; or

(b) appear before NAMFISA for questioning by NAMFISA at a time and place specified in the notice.

(3) A financial institution, financial intermediary or person or an entity to whom a directive has been issued pursuant to this section must comply with that directive despite anything to the contrary in its memorandum, articles or rules or other founding documents, and despite any contract or arrangement to which it is a party.

(4) Without derogating from the generality of subsection (1), NAMFISA may issue a directive to a financial institution, financial intermediary or any other person or entity with respect to the manner in which its affairs are to be conducted if it appears to NAMFISA that the -

(a) financial institution, financial intermediary or other person or entity has contravened this Act or any other financial services laws in a manner that is likely to affect its financial stability or to prejudice the interests of its clients;

(b) financial institution, financial intermediary or other person or entity is conducting its affairs in an improper, reckless or financially unsound manner;

(c) financial institution, financial intermediary or other person or entity is involved in a financial crime; or

(d) directive is necessary to protect the interests of clients of the financial institution, financial intermediary or other person or entity.

(5) Without derogating from the generality of subsection (1), a directive may require a financial institution, financial intermediary or any other person or entity to -

(a) comply with the whole or a specified part of this Act or the financial services laws;

(b) cause an auditor nominated by NAMFISA to be appointed at the expense of the financial institution, financial intermediary or other person or entity, to audit its records and to submit a report to NAMFISA;

(c) cause a valuator or any other expert nominated by NAMFISA to be appointed to prepare a report on its affairs and to submit the report to NAMFISA;

(d) prevent a specified director, member of a board, principal officer, other officer or employee of, or a person who controls, the financial institution, financial intermediary or other person or entity from taking part in the management or conduct of the business of the financial institution, financial intermediary or other person or entity, except as permitted by NAMFISA after giving the person concerned and the financial institution, financial intermediary or other person or entity a reasonable opportunity to be heard;

(e) appoint a specified person or persons to a specified office of the financial institution, financial intermediary or other person or entity for a period specified in the directive;

(f) remove an auditor or a valuator of the financial institution, financial intermediary or other person or entity from office after giving the person concerned and the financial institution, financial intermediary or other person or entity a reasonable opportunity to be heard;

(g) refrain from borrowing more than a specified amount or any amount of money;

(h) refrain from paying a dividend on any shares;

(i) refrain from paying or transferring any amount of money to any person or creating an obligation, contingent or otherwise, to do so;

(j) refrain from undertaking a financial obligation, contingent or otherwise, on behalf of another person;

(k) make arrangements to the satisfaction of NAMFISA for the discharge of all or any part of the obligations of the financial institution, financial intermediary or other person or entity under this Act or the financial services laws; or

(l) take any other corrective action which NAMFISA considers necessary or desirable in the interests of the financial institution, financial intermediary or other person or entity, its clients or the financial system of Namibia.

(6) In the case where NAMFISA has caused a report to be prepared pursuant to subsection (5)(c), NAMFISA may, at any time up to the end of a period of 30 days following receipt of the report, direct the financial institution, financial intermediary or other person or entity concerned to assume the expense of preparing the report, whereupon such expense becomes payable by that financial institution, financial intermediary or other person or entity.

(7) A directive under paragraph (d) of subsection (5) may only be issued if NAMFISA is satisfied that the person referred to in that pagragraph -

(a) was knowingly involved in the commission of a financial crime;

(b) acted recklessly or with intent to defraud creditors or clients of the financial institution, financial intermediary or other person or entity;

(c) has contravened the financial services laws in the manner stated in subsection (4)(a); or

(d) is otherwise not fit and proper within the meaning of the standards.

(8) A directive under subsection (5)(i) does not apply to the payment or transfer of money under an order of a court or a writ of execution.

(9) A directive must -

(a) be in the appropriate form specified in the standards and must be served on the financial institution, financial intermediary or other person or entity in the manner provided for in the standards; and

(b) specify the time by which, or period during which, it must be complied with.

(10) A directive issued under this Act is not a ground on which a person may terminate, repudiate or cancel a contract with a financial institution, financial intermediary or any other person or entity, accelerate any debt due under such a contract or close out a transaction with such financial institution, financial intermediary or other person or entity, despite any provision to the contrary in any document.

(11) A court may, on application by a party to a contract referred to in subsection (10) other than the financial institution, financial intermediary or other person or entity concerned, make an order relating to the effect of the directive on that contract.

(12) Without derogating from the extent of an order under subsection (11), the order may require the financial institution, financial intermediary or other person or entity to -

(a) perform its obligations under the contract; or

(b) compensate the applicant as specified in the order.

but may not require a person to take any action that would contravene the directive.

(13) NAMFISA may revoke a directive at any time by notice to the financial institution, financial intermediary or other person or entity concerned.

(14) Any person who fails to comply with a directive issued by NAMFISA under this section commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Application to court

413. If NAMFISA has reason to believe that as a result of any situation referred to in section 412(1) prejudice to any person has occurred or might occur, NAMFISA may apply to the High Court for an order restraining the financial institution or financial intermediary from continuing business or dealing with trust property pending an application to the court by NAMFISA pursuant to section 443 or pending the exercise of any other legal remedy that may be available to NAMFISA.

Reporting obligations

414. (1) NAMFISA may issue a directive imposing reporting requirements on -

(a) a financial institution;

(b) a financial intermediary;

(c) an affiliate of a financial institution or financial intermediary; or

(d) a person who is or has at any time been a director, member of a board, principal officer, any other officer, an auditor or a valuator of a financial institution or financial intermediary.

(2) The directive referred to in subsection (1) may require the persons referred to in that subsection to make reports to NAMFISA and to give information or documents to NAMFISA on matters with respect to the financial institution or financial intermediary concerned or in connection with the performance of functions by NAMFISA under the financial services laws.

(3) Without derogating from the provisions of subsections (1) and (2), NAMFISA may require -

(a) the filing with NAMFISA of periodic and other returns, including but not limited to quarterly reports, annual reports and financial statements;

(b) notification of changes in the management and control of financial institutions and financial intermediaries;

(c) reports on financial difficulties or suspected financial difficulties; or

(d) reports on contraventions or suspected contraventions of the financial services laws and the commission or suspected commission of any financial crime.

(4) A person who makes a report to NAMFISA -

(a) with respect to -

(i) financial difficulties or suspected financial difficulties of a financial institution or financial intermediary; or

(ii) a contravention or suspected contravention of the financial services laws or the commission or suspected commission of a financial crime; or

(b) pursuant to subsection (3);

whether or not the report is required by this Act, is not liable for damages or other sanction in relation to any loss caused by the report, provided that the report is made in good faith.

(5) A person may not subject another person (in this subsection called a "reporter") to any prejudice in his or her employment or penalise a reporter in any way, on the grounds that the reporter has made a report referred to in subsection (4), whether or not the report is required under this Act.

(6) A person who contravenes or fails to comply with a directive issued pursuant to subsection (1) or (3) or fails to comply with any requirements imposed by NAMFISA under this section commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Fees

415. (1) NAMFISA may, after considering any representations made under subsection (2), determine -

(a) those matters under this Act in respect of which fees are payable;

(b) the amount of the fee payable in respect of each such matter;

(c) the persons by whom the fees must be payable and the manner of payment; and

(d) where necessary, the payment of interest on overdue fees.

(2) Before making a determination with respect to fees under subsection (1), NAMFISA must publish information about the proposed fees in the *Gazette* and in such manner as may be appropriate in order to bring the proposed fees to the attention of financial institutions, financial intermediaries and persons who may be affected thereby, together with a statement that representations on the proposed fees may be made to NAMFISA within a specified time.

(3) A fee determined by NAMFISA under subsection (1) or any change to such fee comes into effect 30 days after the date of the notice announcing the final fee or within such extended period as may be determined by NAMFISA, which period may not exceed 90 days from the date that the notice was published in the *Gazette*.

Removal of member of board

416. If any member of a board of directors or other board of a financial institution or financial intermediary is not in compliance with the financial services laws or is no longer a fit and proper person within the meaning of the standards, NAMFISA may, after giving the person, the board and the financial institution or financial intermediary concerned an opportunity to be heard, require the removal of that person from office and the appointment of another person in his or her place.

Enquiries to principal officer

417. (1) NAMFISA may address any enquiry in relation to a matter connected with the business of a financial institution or financial intermediary to the principal officer of that financial institution or financial intermediary, and the principal officer must reply in writing not later than the date specified by NAMFISA in the enquiry notice.

(2) NAMFISA must upon request and without charge inform any person of the address of the principal office of a financial institution or financial intermediary, and the name of its principal officer.

Inspections

418. (1) For the purposes of this section NAMFISA may, with prior notification to the financial institution or financial intermediary concerned, authorise an employee of NAMFISA or an inspector appointed under section 419 to conduct an on-site inspection of the business and affairs of a financial institution or financial intermediary (in this section and sections 427, 428 and 429 referred to as a "person under inspection").

(2) A person conducting an on-site inspection pursuant to subsection (1) may at any time during business hours -

(a) enter the premises of the person under inspection and request the person under inspection to provide any document which may furnish proof of any failure to comply with the provisions of the financial services laws;

(b) examine, make extracts from and copy any document referred to in paragraph (a) or against the issue of a receipt, temporarily remove the document;

(c) request any information about any document or article from -

(i) the owner of the premises;

(ii) the person in control of the premises;

(iii) any person who has control of the document or article; or

(iv) any other person who may have the information;

(d) require the person under inspection to produce at a specified time and place any documents or documents of a specified description that are in the possession or under the control of the person under inspection; or

(e) require any person holding or accountable for any document to provide information and an explanation of that document.

(3) Following an inspection under subsection (2), if NAMFISA considers that the person under inspection is contravening or failing to comply with, or has contravened or failed to comply with, any provision of the financial services laws NAMFISA may -

(a) take any action permitted under this Act or apply to a court for any order under Part 6;

(b) apply to a court under section 443 for the appointment of a statutory manager to take control and manage the whole or any part of the business of the person under inspection;

(c) issue a directive to the person under inspection or any other person concerned with the business of the person under inspection to take any steps or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity, undesirable practice or state of affairs disclosed by the inspection;

(d) issue a directive to the person under inspection or any other person referred to in paragraph (c) to prohibit or restrict specified activities performed by an individual who is a director, member of a board, principal officer, any other officer, a trustee or an employee of the person under inspection or the other person, if NAMFISA believes that such individual is not fit and proper within the meaning of the standards; or

(e) refer the matter to the appropriate authority to investigate whether a financial crime has been committed.

(4) NAMFISA may by notice in the *Gazette* or by means of any other appropriate public statement make known the status, outcome and details of an on-site inspection if such disclosure is in the public interest.

(5) A person who contravenes or refuses or fails to comply with a directive of NAMFISA referred to in subsection (3)(c) or (d) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Appointment of inspectors

419. (1) NAMFISA may from time to time appoint, from persons employed by NAMFISA or from persons who are not employed by NAMFISA, one or more inspectors under this Act, and must issue to any such inspector or inspectors a certificate of appointment containing information, and in the form, set out in the standards.

(2) An inspector may, with the consent of NAMFISA, appoint one or more persons to assist in carrying out an inspection or investigation and upon such appointment NAMFISA must issue any such person or persons with a certificate of appointment signed by a person authorised by NAMFISA.

(3) When exercising any power or performing any duty under this Act an inspector and any person referred to in subsection (2) must be in possession of the certificate of appointment referred to in subsection (1) or (2), as applicable, and must produce the certificate at the request of any person having a material interest in the matter concerned.

Investigations

420. (1) NAMFISA may at any time instruct one or more inspectors to carry out an investigation of the business or affairs or any part of the business or affairs of -

(a) a financial institution or financial intermediary; or

(b) any person not registered under this Act, if NAMFISA has reason to believe that the person is carrying on the business of a financial institution or financial intermediary or is providing a financial service.

(2) Before instructing one or more inspectors to carry out an investigation pursuant to subsection (1), NAMFISA must be reasonably satisfied that the inspector or inspectors will be able to report to NAMFISA objectively and impartially.

(3) Any person who holds shares in a financial institution or financial intermediary as a nominee or in trust on behalf of another person must, upon the request of an inspector or NAMFISA, disclose the name of that other person.

(4) For the purposes of an investigation under this section an inspector may visit any office or place of business of any financial institution, financial intermediary or of a person referred to in subsection (1)(b), and may inspect the records relating to the business carried out and may request any information reasonably required to properly investigate the situation.

(5) Every financial institution, financial intermediary or a person referred to in subsection (1)(b) must do everything possible to facilitate any inquiries by an inspector and must make all required information available on a timely basis.

(6) An inspector is entitled to question any financial institution, financial intermediary or a person referred to in subsection (1)(b) and any employee, officer or director of a financial institution, financial intermediary or person under oath or affirmation.

(7) NAMFISA may in the standards describe conduct that constitutes misconduct on the part of a financial institution or financial intermediary for the purposes of this Part.

Investigations on request of other agencies

421. For the purposes of implementing any arrangements entered into with an agency or organisation under section 30 of the NAMFISA Act, at the request of such agency or organisation, NAMFISA may instruct one or more inspectors to carry out an investigation of the business or affairs or part of the business or affairs of any person present or resident in Namibia, identified by the agency or organisation.

Powers of inspectors

422. (1) A financial institution, financial intermediary or a person referred to in section 420(1)(b) and a person referred to in section 414 are, for the purposes of this section and sections 427, 428 and 429, referred to as a "person under investigation".

(2) In carrying out an investigation pursuant to section 420 or 421 an inspector may, subject to subsection (3), without a warrant or prior notice to the person under investigation -

(a) enter any premises, other than premises that are a home or are being used as a home, occupied by the person under investigation and require the production of any document or other item relating to its business or affairs;

(b) open any strong room, safe or other container in which the inspector on reasonable grounds suspects any document or other item relating to the business or affairs of the person under investigation is kept;

(c) search the premises or any person on the premises if there are reasonable grounds for believing that the person has personal possession of any document or article that has a bearing on the investigation;

(d) use any computer system on the premises or require assistance of any person on the premises to use that computer system to -

(i) search any data contained in or available to that computer system;

(ii) reproduce any record from that data; and

(iii) seize any output from that computer for examination and copying;

(e) if the inspector is of the opinion that any document or other item relating to the business or affairs of the person under investigation contains information relevant to the investigation, examine, make extracts from and copy the document or other item;

(f) against the issue of a receipt, remove any document or other item referred to in paragraph (e) temporarily for the purposes referred to in that paragraph; or

(g) if the inspector is of the opinion that any document or other item referred to in paragraph (e) contains evidence of an offence under this Act or any other financial services law, against the issue of a receipt, seize such document or other item and retain it for so long as it may be required for any criminal or other proceedings.

(3) An inspector may take any action referred to in subsection (2) in respect of premises or part of premises that are a home or are being used as a home only if -

(a) authorised to do so by a warrant issued under subsection (4);

(b) there are reasonable grounds for the inspector to believe that -

(i) the delay in obtaining a warrant would prejudice the object of the investigation or failure to act immediately may prejudice securing documents or other items for supervisory or enforcement action by NAMFISA; and

(ii) a warrant will be issued under subsection (4) if the inspector or NAMFISA applies for such warrant; or

(c) consent to such actions has been given by -

(i) the person lawfully in control of any premises or lawfully in possession or having custody of documents or other items; or

(ii) a person with the power to give such consent.

(4) A judge or magistrate in chambers having jurisdiction in the area where the premises in question are located may, on application by an inspector or by NAMFISA, issue a warrant referred to in subsection (3).

(5) A warrant may only be issued pursuant to subsection (4) if it appears from information given under oath or affirmation that there is reason to believe that one or more documents relating to the business or affairs of the person under investigation is kept at the premises concerned.

(6) In carrying out an investigation an inspector may -

(a) if the inspector is of the opinion that any individual who is or was a director, member of a board, principal officer, any other officer, an employee, a partner, shareholder or any other owner of the person under investigation is in possession of or has under his or her control any document or documents or other item or items relating to the business or affairs of the person under investigation, summon that individual to -

(i) produce the document or other item; or

(ii) appear at a time and place specified in the summons to be examined or to produce such document or other item; or

(b) administer an oath or affirmation or otherwise examine any individual referred to in paragraph (a) and examine or retain, against the issue of a receipt, any document or other item.

(7) A person under investigation pursuant to this section or the authorised representative of such person may, during business hours, examine and make extracts from any document or other item seized pursuant to subsection (2)(f) or (g), under the supervision of NAMFISA or an inspector.

(8) If it transpires during or after an investigation conducted under this section that a document or other item referred to in subsection (2)(f) or (g) has no relation to the business or affairs of the person under investigation or is patently of a private nature the inspector may release such document or item to its rightful owner.

(9) In so far as this section provides for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution in that it authorises interference with the privacy of a person's home, correspondence or communication, that limitation is enacted upon the authority of Sub-Article (2) of that Article.

Time and place of examinations

423. (1) An inspector may determine the time and place of any examination pursuant to section 422(6) and may determine who may be present at such examination.

(2) Despite subsection (1), an individual examined pursuant to section 422(6), whether under oath or affirmation, may be represented by a legal practitioner.

Entry upon and search of premises

424. (1) Any entry upon or search of any premises pursuant to section 422 must be conducted with due regard to decency, good order and the dignity of persons under investigation and must be executed during business hours unless execution at some other time is justified.

(2) An inspector when exercising the powers conferred by section 422(2) or (3) may be accompanied and be assisted by an assistant appointed pursuant to section 419(2), an interpreter and one or more police officers.

(3) If during an entry or search of any premises, a person claims that any document or other item contains privileged information and for that reason refuses the inspection or removal of that document or item, provided that the inspector is reasonably satisfied that the document or item contains information relevant to the investigation, the inspector or the police officer accompanying the inspector may seize and remove that document or item for safe custody until a court has made a ruling on the question of privilege.

Professional privilege and incriminating evidence

425. (1) Sections 422 and 424(3) may not be construed as infringing on the common law right of professional privilege between a legal practitioner and his or her client in respect of information communicated to the legal practitioner to enable him or her to provide advice, render litigation assistance or defend the client.

(2) Any individual examined under section 422 may be required to answer any question put to that person at the examination despite that the answer might incriminate that person.

(3) An incriminating answer directly obtained or incriminating evidence directly derived from an examination pursuant to section 422 is not admissible as evidence in criminal proceedings in a court against the individual or the person under investigation of which the individual is or was a director, member of a board, principal officer, any other officer or an employee or which the individual controls or used to control, except in criminal proceedings where the individual is charged with an offence relating to -

(a) an oath or affirmation;

(b) giving false evidence;

(c) making a false statement; or

(d) deliberate failure to answer questions fully or satisfactorily.

(4) Where any person giving evidence in terms of the provisions of this section is obliged to answer questions which may incriminate him or her or where he or she is to be tried on a criminal charge and the evidence may prejudice him or her at the trial, the inspector may order that such part of the examination be held *in camera* and that no information regarding such questions and answers may be published in any manner whatsoever.

(5) Any person who contravenes any provision of an order contemplated in subsection (4) commits an offence and is liable on conviction to the penalty mentioned in subsection (5) of section 154 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Observance of secrecy

426. An inspector or other person carrying out an inspection or investigation under this Act, including a person appointed under section 419(2), must keep secret all matters that may come to the attention of that inspector or person in the performance of the inspection or investigation and may not communicate any such matter to any person other than NAMFISA, unless communication of the matter is necessary to carry out the inspection or investigation or is made pursuant to an order of a court.

Disclosure to certain parties

427. (1) If in the opinion of NAMFISA it is necessary or desirable to do so on the basis of the provisions of this Act or other applicable laws, NAMFISA may convey any information obtained during an inspection or investigation to -

(a) an organ of the State;

(b) the Adjudicator or any competent court of law;

(c) a regulatory or supervisory authority established by law;

(d) a self-regulatory or self-supervisory authority;

(e) a director, member of a board, principal officer, auditor, valuator, shareholder or any other owner, a partner, liquidator, curator or an executor or a trustee of a person under inspection or a person under investigation;

(f) a participating employer in a retirement fund that is a person under inspection or a person under investigation; or

(g) any agency or organisation which has entered into an arrangement with NAMFISA under section 30 of the NAMFISA Act.

(2) For purposes of subsection (1) and sections 430 and 464, "organ of the State" means -

(a) any office, ministry or agency as defined in the Public Service Act, 1995 (Act No. 13 of 1995);

(b) any local authority council as defined in the Local Authorities Act, 1992 (Act No. 23 of 1992);

(c) any regional council as defined in the Regional Councils Act, 1992 (Act No. 22 of 1992); and

(d) any other functionary or institution exercising a power or performing a function in terms of the Namibian Constitution or exercising a public power or performing a public function in terms of any law.

Costs of investigation

428. If after considering the results of an investigation, NAMFISA is satisfied that it is reasonable to do so, the expenses incurred by and the remuneration of, an inspector appointed under section 419(1) or a person appointed under section 419(2), may be recovered from the person under investigation or from a director, member of a board, principal officer or any other officer of, or person who controls, the person under investigation.

Offences relating to inspections

429. A person who -

(a) without lawful excuse refuses to take an oath or to make an affirmation when requested to do so by an inspector;

(b) intentionally or recklessly -

(i) gives any false information to an inspector; or

(ii) hinders an inspector in the exercise of the powers or performance of the duties of the inspector;

(c) without lawful excuse refuses or fails to -

(i) answer a question put by an inspector which relates to the affairs of a person under inspection or person under investigation; or

(ii) comply with any reasonable request by an inspector;

(d) has been duly summoned under section 422(6)(a) and without sufficient or reasonable cause fails to -

(i) appear at the time and place specified in the summons;

(ii) remain in attendance before being excused by the inspector from further attendance; or

(iii) file with the inspector any document or item referred to in the summons; or

(e) contravenes section 426,

commits an offence and is liable on conviction to a fine not exceeding N$500 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Power of NAMFISA to verify information

430. For the purposes of a determination in accordance with this Act as to whether a person is fit and proper within the meaning of the standards, NAMFISA may verify any information at NAMFISA's disposal by making enquiries at any organ of the State, credit bureau authorised by law to keep information about the creditworthiness of any person or any other lawful source of information or by obtaining the evidence of any other person.

Decisions to be in writing

431. All decisions, notices, directives or other official communications of NAMFISA or the Minister under this Act, unless specifically provided for otherwise in this Act, must be in writing.

Representative self-regulatory organisations

432. (1) NAMFISA may enter into an arrangement with any entity (in this section referred to as a "representative self-regulatory organisation"), that has functions in relation to a class of financial institutions or financial intermediaries aimed at the performance by the representative self-regulatory organisation of functions of a regulatory or supervisory nature in relation to that class of financial institutions or financial intermediaries.

(2) NAMFISA may, under an arrangement referred to in subsection (1), assign some of the functions or delegate some of the powers of NAMFISA under this Act to the representative self-regulatory organisation.

(3) The arrangement may provide for -

(a) the supervision by NAMFISA of the manner in which the functions assigned or powers delegated under subsection (2) are performed or excercised;

(b) the attendance by NAMFISA or its authorised representative at meetings of the representative self-regulatory organisation or its executive committee or a subcommittee of that committee;

(c) the filing with the representative self-regulatory organisation of copies of all directives, notices and other documents which are sent by NAMFISA to the class of financial institutions or financial intermediaries in question;

(d) the filing with NAMFISA of any rules of the representative self-regulatory organisation relating to the class of financial institutions or financial intermediaries in question; and

(e) the variation or termination of the arrangement in a case where the representative self-regulatory organisation is not performing or excercising or assigned the delegated regulatory or supervisory functions or powers to the satisfaction of NAMFISA.

(4) NAMFISA may at any time cancel an arrangement made pursuant to this section.

Changes in control of financial institution

433. (1) A person may not enter into a proposed transaction whereby the person would acquire or relinquish control of a financial institution without the prior approval of NAMFISA.

(2) The person referred to in subsection (1) and the financial institution concerned must, within 14 days of entering into the transaction referred to in that subsection, report the finalisation of the transaction to NAMFISA.

(3) If a person -

(a) controls a financial institution by virtue of the degree of voting power that the person is able to exercise or control in relation to the financial institution; and

(b) by virtue of a proposed transaction the degree of such voting power would be varied by more than the percentage determined by the Minister by notice in the *Gazette*,

that person may not enter into the proposed transaction without the prior approval of NAMFISA.

(4) The variation referred to in subsection (3) may be by way of increase or decrease in the percentage of such voting power.

(5) The person referred to in subsection (3) and the financial institution concerned must, within 14 days of entering into the transaction referred to in that subsection, report the finalisation of the transaction to NAMFISA.

(6) NAMFISA may issue standards applying the provisions of this section to certain financial intermediaries as though the references to "financial institution" were

to "financial intermediary", and identifying the type or types of financial intermediary in question.

(7) If a person enters into a transaction referred to in subsection (1) or (3) without obtaining the prior approval of NAMFISA that person commits an offence and is liable on conviction to a fine not exceeding N$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

(8) A person who contravenes or fails to comply with subsection (2) or (5) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Right to be heard

434. A financial institution, financial intermediary or any other person affected by a decision of NAMFISA under this Act has the right to be heard and the right to make representations to NAMFISA before the decision is made.

Late filing or payment

435. A financial institution, financial intermediary or any other person that or who fails to -

(a) file with NAMFISA a return, report, statement, financial statement or any other document or information required by or under this Act within the period specified; or

(b) pay the annual fee required for the renewal of registration or any other fee on or before the due date,

may, with the prior consent of NAMFISA, furnish the return, report, statement or other document or information or pay the required annual fee or other fee after the specified period or due date, subject to any administrative sanction referred to in section 439.

PART 6
ENFORCEMENT

Enforceable undertakings

436. (1) If under normal circumstances NAMFISA could impose a condition on the registration of a person under this Act, NAMFISA may in its discretion, in place of such condition, require a written undertaking from the person in connection with a matter governed by this Act and, without limitation, the undertaking may include -

(a) a written undertaking that the person will, in order to comply with this Act or any regulations, standards, directives or other subordinate measures made or issued under this Act, take specified action;

(b) a written undertaking that the person will, in order to comply with this Act or any regulations, standards, directives or other subordinate measures made or issued under this Act, refrain from taking specified action;

(c) a written undertaking that the person will take specified action directed towards ensuring that the person does not contravene this Act or any regulations, standards, directives or other subordinate measures made or issued under this Act or that it is unlikely for the person to contravene this Act or any regulations, standards, directives or other subordinate measures made or issued under this Act, in the future,

and that person must comply with such undertaking.

(2) The person referred to in subsection (1) may not withdraw or vary the undertaking without the consent of NAMFISA.

(3) If NAMFISA considers that the person has breached an undertaking made under subsection (1) NAMFISA may apply to the High Court for an order under subsection (4).

(4) If the High Court is satisfied that the person has breached the undertaking the court may make -

(a) an order directing the person to comply with the undertaking; and

(b) any other order that the High Court considers appropriate.

(5) NAMFISA may, if appropriate, make available to any interested person a copy of the undertaking referred to in subsection (1).

(6) If NAMFISA makes a copy of an undertaking available pursuant to subsection (5), NAMFISA must delete from the copy any information which NAMFISA is satisfied -

(a) is confidential information with commercial value;

(b) should not be disclosed as it would be against the public interest to do so; or

(c) consists of irrelevant personal details relating to any person.

(7) If information has been deleted from a copy of an undertaking pursuant to subsection (6) the copy must include a note stating that information has been so deleted.

(8) A person contravenes or fails to comply with the requirement of an undertaking made under subsection (1) commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Compensation for contraventions of Act

437. (1) A person (in this section called the "claimant") who suffers loss as a consequence of a contravention of, or failure to comply with, this Act by another person (in this section called the "offender") may recover the amount of the loss by action in a court or other competent tribunal against -

(a) the offender;

(b) any other person who was knowingly involved in the contravention; or

(c) both the offender and any other person who was knowingly involved in the contravention jointly and severally.

(2) NAMFISA may institute an action of a kind referred to in subsection (1) on behalf of a claimant or group of claimants in a court if in the opinion of NAMFISA it is appropriate to do so.

(3) With respect to proceedings instituted by NAMFISA the court may make any appropriate order relating to the conduct of the proceedings.

(4) If -

(a) proceedings instituted by NAMFISA under this section relate to a loss suffered by a group of claimants; and

(b) a specific claimant, either before or after the institution of proceedings by NAMFISA but before any determination is made, institutes a proceeding under this section in respect of the same loss,

that claimant is not entitled to recover any compensation in the proceedings instituted by NAMFISA and the court may make any appropriate order for the further conduct of the relevant proceedings.

(5) Where NAMFISA has instituted proceedings it may conduct the proceedings without joinder of the claimants or group of claimants concerned and may withdraw, abandon, settle or compromise the proceedings, but any such withdrawal, abandonment, settlement or compromise is subject to the approval of the court.

(6) With respect to proceedings instituted by NAMFISA the court may, in addition to ordering compensation pursuant to subsection (1) -

(a) order an offender to pay a penalty for punitive purposes in a sum determined by the court; and

(b) award interest on any amount ordered to be paid from the date of the contravention or failure to comply.

(7) In giving judgment in an action instituted by NAMFISA under this section or in approving a withdrawal, abandonment, settlement or compromise in relation to such an action, the court must make an order for the publication of the judgment and any related matter in the *Gazette* and otherwise as the court directs.

(8) A judgment in an action instituted by NAMFISA under this section binds all claimants other than a claimant referred to in subsection (4)(b).

(9) Any amount recovered by NAMFISA in proceedings instituted by it must be deposited into a specially designated account established by NAMFISA with a banking institution or building society and thereupon -

(a) NAMFISA, as a first charge against the account, is entitled to reimbursement of all expenses reasonably incurred in bringing the proceedings and in administering the distribution made under this subsection;

(b) NAMFISA must take reasonable steps to identify claimants and determine the amount of their losses in connection with the contravention, including by further publication of the order of the court; and

(c) the balance of the amount recovered (in this section called the "distributable balance"), after making provision for expenses referred to in paragraph (a), must be distributed among the claimants so that each claimant entitled thereto is paid the amount determined using the following formula:

$$\frac{\text{amount of the claimant's loss}}{\text{total amount of all claimants' losses}} \times \text{distributable balance}$$

(10) A person who was knowingly involved in the contravention or failure to comply in question is not entitled to a distribution pursuant to subsection (9).

(11) Distributions may be made in stages as determined by NAMFISA.

(12) Any surplus of the distributable balance not allocated or claimed at the end of 30 years after the first payment pursuant to subsection (9) becomes funds of NAMFISA.

(13) Nothing contained in this section affects any liability which a person may incur under any other law or the common law, but any damages previously awarded under this section which arise from the same cause must be taken into consideration for purposes of any further claim referred to in this subsection.

Court orders to enforce Act

438. (1) Where a person has contravened or failed to comply with any provision of this Act the High Court may at the instance of NAMFISA make any order considered appropriate for the purposes of enforcing this Act or protecting the interests of clients.

(2) Without derogating from the generality of subsection (1), an order of the court under that subsection may -

(a) direct the person to undertake a specified act or refrain from undertaking a specified act in order to -

(i) remedy the effects of the contravention;

(ii) preserve the assets of any relevant financial institution or financial intermediary;

(iii) compensate persons who have suffered loss because of the contravention;

(iv) ensure that the person does not commit further contraventions of this Act; and

(v) prevent the disposal of evidence; and

(b) include an order for the attachment of assets to prevent their concealment, removal, dissipation or destruction.

(3) The court may in appropriate circumstances issue an interim order pending the final determination of the matter.

(4) NAMFISA is deemed to have the necessary *locus standi* or other procedural requirement for an applicant or plaintiff for the purposes of launching proceedings in a court.

(5) NAMFISA may apply to the court for a declaratory order on the interpretation or application of any provision of this Act.

Administrative sanctions

439. (1) NAMFISA may impose an administrative sanction referred to in subsection (4) on any financial institution, financial intermediary or other person to whom this Act applies when satisfied on available facts and information that the financial institution, financial intermediary or person -

(a) has failed to comply with a provision of this Act or any regulation, standard, directive or other subordinate measures made or issued under this Act;

(b) has failed to comply with a condition of a registration, approval or authorisation issued or amended in accordance with this Act or any other law; or

(c) has failed to comply with a standard, guideline, rule, directive or other subordinate measure issued under section 409, 410, 411 or 412.

(2) Before imposing an administrative sanction referred to in subsection (4) NAMFISA must give the financial institution, financial intermediary or person reasonable notice in writing -

(a) of the nature of the alleged non-compliance;

(b) of the intention to impose an administrative sanction;

(c) of the amount or particulars of the intended administrative sanction,

and inform the financial institution, financial intermediary or person that it or he or she may, in writing and within a period specified in the notice, make representations to NAMFISA as to why the administrative sanction should not be imposed.

(3) In determining an appropriate administrative sanction NAMFISA must consider the following factors:

(a) the nature, duration, seriousness and extent of the relevant non-compliance;

(b) whether the financial institution, financial intermediary or person has previously failed to comply with any law;

(c) any remedial steps taken by the financial institution, financial intermediary or person to prevent a recurrence of the non-compliance;

(d) any steps taken or to be taken against the financial institution, financial intermediary or person by any voluntary association of which the financial institution, financial intermediary or person is a member; and

(e) any other relevant factor, including mitigating factors.

(4) After considering any representations and the factors referred to in subsection (3) NAMFISA may -

(a) give the financial institution, financial intermediary or person a written warning;

(b) give the financial institution, financial intermediary or person a reprimand;

(c) issue a directive to the financial institution, financial intermediary or person requiring the financial institution, financial intermediary or person to undertake a specified act or to refrain from undertaking a specified act in order to -

(i) remedy the effects of the contravention and;

(ii) ensure that the financial institution, financial intermediary or person does not commit any further contraventions of this Act;

(d) require the financial institution, financial intermediary or person to establish compliance programmes, corrective advertising or changes in the management practices of the financial institution, financial intermediary or person;

(e) suspend the registration, approval or authorisation to carry on business of the financial institution, financial intermediary or person for a specified period and subject to such conditions as may be determined by NAMFISA;

(f) subject to other provisions of this Act, cancel the registration, approval or authorisation of the financial institution, financial intermediary or person to carry on business; or

(g) impose a financial penalty not exceeding N$10 000 000, payable by that financial institution, financial intermediary or person to NAMFISA in the manner provided for in the standards.

(5) NAMFISA may -

(a) in addition to the imposition of an administrative sanction, make recommendations to the relevant financial institution, financial intermediary or person in respect of compliance with this Act or any regulation, standard, directive or other subordinate measures made or issued under this Act;

(b) direct that a financial penalty must be paid by a natural person or person for whose actions the relevant financial institution, financial intermediary or person is accountable in law, if that person or persons was or were personally responsible for the non-compliance;

(c) suspend any part of any administrative sanction on any condition NAMFISA considers appropriate for a period not exceeding five years.

(6) On imposing an administrative sanction NAMFISA must in writing notify the financial institution, financial intermediary or person of -

(a) the decision and the reasons for the saction;

(b) in the case of a financial penalty, the amount payable as a penalty and any interest that may become payable and the interest rate and the period within which the penalty must be paid to NAMFISA;

(c) the right to appeal against the decision in accordance with section 45 of the NAMFISA Act.

(7) Any financial penalty imposed under subsection (4)(g) must be paid to NAMFISA within the period and in the manner specified in the notice referred to in subsection (6).

(8) If the financial institution, financial intermediary or person fails to pay the financial penalty and any interest charged within the period referred to in subsection (6), and an appeal has not been lodged within the period prescribed in the NAMFISA Act or an appeal has been lodged timeously but has been dismissed by the Appeal Board, NAMFISA may forthwith and in the prescribed manner file with the clerk or registrar of a competent court a certified copy of the notice contemplated in subsection (6), and the notice thereupon has the effect of a civil judgment lawfully given in that court in favour of NAMFISA.

(9) In assessing the penalty to be imposed on a person convicted of an offence in terms of this Act, the court may take into account any administrative sanction imposed under this section in respect of the same set of facts.

(10) An administrative sanction imposed in terms of this section does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(11) If the financial institution, financial intermediary or person requests an administrative hearing on a matter under this section, NAMFISA may hold a hearing before taking a final decision on the matter.

(12) The hearing referred to in subsection (11) must be held in private unless the person consents to the hearing being held in public.

(13) Unless NAMFISA is of the opinion that there are exceptional circumstances present that justify the preservation of the confidentiality of any decision, NAMFISA must make public the decision and the nature of any sanction imposed where -

(a) the financial institution, financial intermediary or person does not appeal against a decision of NAMFISA within the required period; or

(b) the Appeal Board has confirmed the decision of NAMFISA.

(14) Section 436(3) to (7) applies with the changes required by the context to a directive issued under subsection (4)(c).

PART 7
SCHEMES, STATUTORY MANAGEMENT AND WINDING-UP

Interpretation

440. (1) In this Part -

"Chapter 12 order" means an order made pursuant to section 317 or 319 of the Companies Act;

"scheme" means a scheme of any of the following kinds in relation to a financial institution that may be subject to a Chapter 12 order -

(a) a scheme for a compromise or arrangement;

(b) a scheme for the transfer of some or all of the business of the financial institution in respect of which it is registered to another person, other than a transfer under Part 8; or

(c) a scheme for the amalgamation of some or all of the business of the financial institution in respect of which it is registered with the business of another person, other than an amalgamation under Part 8.

(2) This Part applies to financial institutions, and with any changes made necessary by the context to -

(a) financial intermediaries and other persons, where it is so expressly provided for in this Part; and

(b) certain types of financial intermediaries to the extent that NAMFISA has issued a standard identifying these as the types of financial intermediaries to which the provisions of this Part apply.

(3) Despite subsection (2), the provisions of sections 441(2)(c)(iii) and 445 do not apply to a financial institution that is a retirement fund, friendly society or medical aid fund.

Failure to maintain sound financial position

441. (1) If NAMFISA is satisfied that a financial institution is failing, or is likely to fail within a reasonable period to comply with the financial soundness

requirements of this Act, NAMFISA may direct the financial institution to furnish NAMFISA, within a specified period, with -

(a) information relating to the nature and cause of the failure; and

(b) the course of action that the financial institution proposes to adopt to ensure compliance with the financial soundness requirements.

(2) On receipt by NAMFISA of the information and proposals referred to in subsection (1), without derogating from the powers of NAMFISA under any other provision of this Act, NAMFISA may -

(a) after considering the proposals and, if necessary, after consultation with the auditor or valuator of the financial institution, require the financial institution to adopt a course of action or enter into a scheme approved by NAMFISA which NAMFISA is reasonably satisfied will ensure that the financial institution complies with the financial soundness requirements of this Act;

(b) at that time or at any time thereafter, and if necessary after further consultation with the auditor or valuator, require the modification of that course of action or scheme to the extent that NAMFISA considers appropriate in the circumstance; and

(c) if it is reasonably necessary in the interests of the clients of the financial institution and the protection and furtherance of the integrity, stability and growth of the financial system in Namibia, at that time or at any time thereafter, and despite any steps already taken by NAMFISA in accordance with paragraph (a) or (b) or any other provision of this Act -

(i) make an application to the High Court for a Chapter 12 order pursuant to section 442(1) in relation to a scheme;

(ii) appoint a statutory manager for the financial institution pursuant to section 443; or

(iii) apply to the High Court for the winding-up of the financial institution pursuant to section 445.

Schemes

442. (1) Despite anything to the contrary in any provision of the Companies Act, NAMFISA may make an application to the High Court for a Chapter 12 order in relation to a scheme.

(2) A financial institution may not enter into a scheme or make an application to the High Court for a Chapter 12 order in relation to the scheme without the prior approval of NAMFISA.

(3) Each financial institution involved in a proposed scheme must ensure that a copy of the proposed scheme and a copy of all proposed applications to the court in relation to the scheme are submitted to NAMFISA and that the approval of NAMFISA is obtained prior to any application being made to the High Court.

(4) The High Court may not make a Chapter 12 order in relation to a scheme to which a financial institution is a party unless the scheme has been approved by NAMFISA.

(5) Subsection (4) does not apply to an interlocutory or provisional order.

(6) NAMFISA is entitled to be heard at any proceeding on an application for a Chapter 12 order made pursuant to subsection (1) or (2).

(7) If a financial institution enters into a scheme that has not been approved by NAMFISA, the purported compromise, arrangement, transfer of business or amalgamation that is the subject of the scheme is void.

(8) NAMFISA may issue standards with respect to an application by a financial institution for approval of a scheme by NAMFISA, the publication of the scheme, exclusions from the scheme, modification of a scheme and implementation of the scheme following a Chapter 12 order.

Appointment of statutory manager

443. (1) Chapter 15 of the Companies Act does not apply to a financial institution and to a financial intermediary or person referred to in section 440(2).

(2) The provisions of this section and section 444 apply to financial institutions or financial intermediaries and to a person who is not registered under this Act but who is carrying on the business of a financial institution or providing a financial service in contravention of this Act.

(3) The High Court may on application by NAMFISA appoint a person approved by NAMFISA to be the statutory manager of a financial institution.

(4) A person, other than NAMFISA, may not make an application referred to in subsection (3).

(5) A person may not be appointed or hold office as a statutory manager of a financial institution unless the person is approved by NAMFISA.

(6) The High Court may appoint a person as the statutory manager of a financial institution if satisfied that the financial institution -

(a) has in a material respect failed to comply with this Act;

(b) is or is likely to be in an unsound financial position;

(c) is or may be involved in a financial crime; or

(d) is or may be acting negligently or recklessly with respect to trust property within the meaning of Chapter 9,

and the High Court considers that it is in the interests of the clients of the financial institution or the financial system of Namibia to make the appointment.

(7) NAMFISA may before making an application under subsection (1), appoint a person to be the statutory manager of a financial institution on a temporary basis if NAMFISA is satisfied that the financial institution -

(a) has in a material respect failed to comply with this Act;

(b) is or is likely to be in an unsound financial position;

(c) is or may be involved in a financial crime; or

(d) is or may be acting negligently or recklessly with respect to trust property within the meaning of Chapter 9,

and that it is necessary to appoint a statutory manager on an urgent basis in order to protect the interests of clients, trust property or the stability, fairness, efficiency and orderliness of the financial system of Namibia, including the safety and soundness of financial institutions in general.

(8) An appointment made under subsection (7) takes effect immediately, but NAMFISA must, as soon as practicable thereafter and in any event within 30 days after the appointment, apply to the High Court for an order confirming the appointment.

(9) On hearing the application under subsection (8) the High Court must confirm the appointment, unless that court is satisfied that the grounds for making the appointment no longer exist.

Power and duties of statutory manager

444. (1) The statutory manager of a financial institution -

(a) must control the management of the affairs of the financial institution to the exclusion of its directors, members of a board, managers and principal officer;

(b) has power to repudiate a contract to which the financial institution is a party if the statutory manager considers the contract detrimental to the interests of clients; and

(c) is entitled to receive such remuneration from the financial institution as the High Court may order.

(2) The statutory manager must manage the affairs of the financial institution with compatible efficiency, and as soon as practicable must report to NAMFISA -

(a) what steps should be taken to ensure that the financial institution -

(i) complies with this Act;

(ii) becomes financially sound; or

(iii) will not be involved in a financial crime; or

(b) if the statutory manager considers that it is not practicable to take the steps referred to in paragraph (a), whether -

(i) steps should be taken to transfer the business of the financial institution to another appropriate person and, if so, on what terms; or

(ii) the financial institution should be wound up.

(3) The statutory manager must comply with any written directives from NAMFISA.

(4) The statutory manager may on notice to NAMFISA at any time apply to the High Court for directions.

(5) NAMFISA may at any time apply to the High Court for the removal of a statutory manager from office and, if necessary and subject to section 443(7) and (8), apply to the High Court to appoint a replacement.

(6) The statutory manager is not liable for any loss that the financial institution suffers unless it is established that the loss was caused by the fraud or dishonesty of, or intentional failure to comply with the law by, the statutory manager.

(7) NAMFISA may issue standards with respect to the qualifications of a person approved by NAMFISA to act as a statutory manager and the additional powers and duties of a statutory manager.

Winding-up

445. (1) A resolution, demand or other step to wind-up a financial institution or a portion of its business or a portfolio managed by that financial institution is of no effect without the prior written approval of NAMFISA.

(2) Despite any provision of the Companies Act but subject to subsection (3), a person may not make an application to the High Court for the winding-up of a financial institution, a portion of its business or a portfolio that it manages, whether made under the Companies Act or any other law.

(3) Only NAMFISA or a person acting with the prior approval of NAMFISA may make an application referred to in subsection (2) to the High Court.

(4) NAMFISA may apply to the High Court for the winding-up of a financial institution that contravenes or fails to comply with this Act, whether or not the financial institution is insolvent in accordance with -

(a) the Companies Act; or

(b) any other applicable law.

(5) NAMFISA may not grant approval under subsection (3) unless -

(a) the registration of the financial institution has been cancelled; and

(b) NAMFISA is satisfied that adequate provision has been made to protect the interests of the shareholders or other owners and clients of the financial institution.

(6) Where an application for the winding-up of a financial institution is made NAMFISA may -

(a) appear before the High Court at the hearing of the application; and

(b) make representations to the High Court relating to the application.

(7) In deciding on an application for the winding-up of a financial institution made pursuant to this section the High Court may -

(a) take into account whether the winding-up of the financial institution is reasonably necessary -

(i) to protect the interests of clients; or

(ii) for the integrity and stability of the financial system of Namibia;

(b) subject to any applicable standard issued by NAMFISA under subsection (9) make an order concerning the manner in which claims against the financial institution may be proved; and

(c) appoint as trustee or liquidator a person nominated or recommended by NAMFISA.

(8) Despite anything to the contrary in the Companies Act or any other law, the High Court -

(a) may not appoint a person as trustee or liquidator or provisional trustee or liquidator of a financial institution, other than a person nominated or recommended by NAMFISA under subsection (7)(c);

(b) must, 30 days before appointing a person as trustee or liquidator or provisional trustee or liquidator, submit the particulars, qualifications and experience of the person and other relevant information to NAMFISA for its recommendation; and

(c) must appoint a person designated by NAMFISA, who in the opinion of NAMFISA has wide experience of, and is knowledgeable about, the latest developments in the type of business in which the financial institution concerned is engaged, to assist a trustee or liquidator or provisional trustee or liquidator referred to in paragraph (a) in the performance of his or her functions in respect of the financial institution.

(9) NAMFISA may issue standards with respect to -

(a) the priority and ranking of claims against any particular financial institution or type of financial institution that is subject to a winding-up order having regard to the provisions of section 460;

(b) the qualifications necessary for a person to be recommended by NAMFISA as liquidator and other criteria with respect to such liquidator; or

(c) any other matter that is necessary or desirable for the winding-up of a financial institution under this section.

PART 8
AMALGAMATIONS AND TRANSFERS IN ORDINARY COURSE OF BUSINESS

Amalgamations

446. (1) Subject to the provisions of this Part, a financial institution or financial intermediary may not amalgamate with any other entity or entities except -

(a) with one or more financial institutions or financial intermediaries; and

(b) with the prior approval in writing of NAMFISA.

(2) NAMFISA may not approve an amalgamation referred in subsection (1) unless satisfied that the interests of clients of the amalgamating financial institutions or financial intermediaries are adequately protected and that the amalgamated entity will satisfy the requirements for registration under this Act.

Transfers

447. (1) Subject to the provisions of this Part, a financial institution or financial intermediary may not transfer all or any portion of its business except -

(a) to one or more financial institutions or financial intermediaries; and

(b) with the prior approval in writing of NAMFISA.

(2) NAMFISA may not approve a transfer referred to in subsection (1) unless satisfied that the interests of clients of the transferring financial institution or financial intermediary and of the other party or parties to the proposed transaction are adequately protected and that the other party or parties are registered as financial institutions or financial intermediaries under this Act.

Standards and exemptions

448. (1) NAMFISA may issue standards relating to -

(a) the types or classes of financial institutions or financial intermediaries that may amalgamate with one another or to which a financial institution or financial intermediary may transfer all or any part of its business; and

(b) the conditions and limitations that apply to such amalgamations and transfers.

(2) In exceptional circumstances, NAMFISA may exempt a particular financial institution or financial intermediary from the requirements of any standards issued under subsection (1)(a).

Application for amalgamation or transfer

449. (1) The members of the board (hereafter in this Part referred to as the "applicants") of each financial institution or financial intermediary referred to in section 446 or 447 may make an application to NAMFISA in the form and manner provided by the standards together with -

(a) a draft of the documents under which the proposed amalgamation or transfer is to take effect;

(b) annual financial statements in respect of the business of each of the financial institutions or financial intermediaries concerned;

(c) any report on which the proposed amalgamation or transfer was founded; and

(d) any other documents that NAMFISA may require.

(2) The documents referred to in subsection (1) must be executed as at the date at which the proposed amalgamation or transfer is to take effect which date must not be more than 12 months before or after the date of the application to NAMFISA.

(3) An applicant must, before any application is made to NAMFISA, publish a notice of intention to make the application in the *Gazette* and in at least one newspaper circulating nationally in Namibia or in any other manner approved by NAMFISA.

(4) The notice referred to in subsection (3) must -

(a) indicate that any client of the financial institution or financial intermediary concerned or any other interested person has the opportunity to object to the amalgamation or transfer within a period of 30 days from the date of the publication of the notice;

(b) describe the procedure for making such an objection; and

(c) indicate the place where the documents referred to in subsection (5) may be inspected.

(5) The documents under which the proposed amalgamation or transfer is to take effect must be open to inspection to clients and other interested persons for a period of 30 days after the publication of the notice referred to in subsection (3).

Approval of amalgamation or transfer

450. NAMFISA, after considering the documents referred to in section 449, receiving representations from the applicants and such other persons as it considers appropriate, and any objections received as a result of the notice referred to in section 449(3), may approve the proposed amalgamation or transfer if NAMFISA is satisfied that no sufficient grounds for objection have been or can be established.

Statement to be deposited with NAMFISA

451. Where an amalgamation or transfer has been approved, the amalgamating financial institutions or financial intermediaries and any other party to the amalgamation or the transferor and transferee financial institutions or financial intermediaries must within 10 days from the date of the amalgamation or transfer deposit with NAMFISA -

(a) certified copies of statements of their respective assets and liabilities together with a statement of the nature and terms of the amalgamation or transfer;

(b) a certified copy of the documents under which the amalgamation or transfer was effected;

(c) a declaration signed by the chairperson and principal officer of each financial institution or financial intermediary that to the best of their knowledge and belief every payment, whether in money or other property, made or due to any person on account of the amalgamation or transfer has been recorded in the documents mentioned in this section, and that no other such payments have been made or are due to the knowledge of any of the parties concerned in the amalgamation or transfer; and

(d) any other documents that may be required by the standards.

PART 9
FINANCIAL SERVICES COMPENSATION SCHEME

Financial Services Compensation Scheme

452. (1) NAMFISA may establish a compensation scheme to be known as the Financial Services Compensation Scheme and referred to in this Part as the "compensation scheme", for the purpose of compensating persons in cases where financial institutions or financial intermediaries are unable to satisfy claims against them.

(2) The compensation scheme is funded by financial institutions and financial intermediaries.

(3) The Minister may make regulations and NAMFISA may issue standards with respect to funding of the compensation scheme and to other matters relating to the scheme.

Scheme manager

453. (1) NAMFISA may establish a corporate body (referred to in this Part as "the scheme manager") to perform the functions conferred on the scheme manager by or under this Part.

(2) To administer the affairs of the compensation scheme, the constitution of the scheme manager must provide for it to have a board, a chairperson who is a member of the board and an auditor.

(3) The Minister must appoint the board of the scheme manager on the terms and conditions that the Minister considers appropriate in such a manner as to ensure its independence from NAMFISA in the operation of the compensation scheme.

(4) The scheme manager may, for the benefit of the compensation scheme, recover from the financial institution or financial intermediary concerned the amount of any claim paid to a claimant by way of compensation under section 454.

Functions and duties of scheme manager

454. The compensation scheme must provide for the scheme manager to assess and in its discretion pay compensation, in accordance with the rules of the scheme, on claims made in connection with financial services provided by financial institutions or financial intermediaries.

CHAPTER 11
MISCELLANEOUS PROVISIONS

Confidentiality and sharing of information

455. (1) Subject to subsections (2) and (3), a person may not disclose to any other person confidential information or information which is not publicly available about a person which information was acquired in the performance of functions under this Act.

(2) Disclosure of the information referred to in subsection (1) does not constitute a contravention of that subsection if made by -

(a) a person for the purpose of performing functions under this Act;

(b) a person for the purpose of any legal proceedings under this Act;

(c) a person who is required to do so by a court, under this Act or any other law;

(d) NAMFISA, if it is necessary to achieve one or more of the objects of NAMFISA or of this Act;

(e) NAMFISA, if it is in the public interest; or

(f) NAMFISA by publishing the status and outcome of inspections and investigations under this Act.

(3) NAMFISA may share information concerning any matter dealt with under this Act with the Bank of Namibia, the Public Accountants' and Auditors' Board constituted under the Public Accountants' and Auditors' Act, self-regulatory organisations, the Ministry for responsible finance, the Minister and with all other persons, whether inside Namibia or elsewhere, responsible for regulating, investigating or prosecuting financial institutions or financial intermediaries.

(4) Any person who contravenes or fails to comply with subsection (1) commits an offence is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Inspection of documents

456. (1) If NAMFISA is satisfied that a person has an interest in a matter that is subject to this Act, and upon payment of the fees required by NAMFISA, the person may inspect at the office of NAMFISA any document deposited with NAMFISA and may make a copy of the document or take extracts from the document or obtain from NAMFISA a copy of the documeunt or extracts from the document, unless NAMFISA determines on the basis of confidentiality or the public interest that such document may not be inspected, copied or have extracts taken from the document.

(2) NAMFISA may exempt a person from the obligation to pay fees under this section if NAMFISA is satisfied that the inspection, copy or extract in question is to be made for purposes of the public interest.

Effect of certificate of NAMFISA on document

457. Every document which purports to have been certified by NAMFISA to be a document deposited with NAMFISA under this Act or to be a copy of such a document is *prima facie* considered to be such a document or a copy of that document and is admissible in evidence as if it were the original document.

Records and documents as evidence

458. A record or document purporting to have been made in the ordinary course of the business of -

(a) a financial institution; or

(b) a financial intermediary that is a company;

and a copy or printout of, or an extract from, any such record or document that is certified by the principal officer of the financial institution or financial intermediary is, on its production in any civil, criminal, administrative or disciplinary proceedings under this Act, any other law or the common law, admissible in evidence and is *prima facie* proof of the facts contained in such record, document, copy, printout or extract.

Alienation of property

459. (1) Subject to subsection (2), if a financial institution or financial intermediary or any director, trustee, officer, employee, agent, shareholder or other owner of a financial institution or financial intermediary sells, transfers or otherwise alienates property or assets of the financial institution or financial intermediary to a person in contravention of, or without complying with, the provisions of this Act, the sale, transfer or other alienation is void.

(2) Subsection (1) does not apply if the person to whom the property or assets of the financial institution or financial intermediary are sold, transferred or alienated proves that -

(a) the property or assets were acquired for valuable consideration; and

(b) the person had no knowledge of, or reason to suspect, a contravention of, or non-compliance with, this Act.

Protection of client assets

460. (1) In this section "client assets" means money, assets, contractual rights, participatory interests, trust property and other property held for and on behalf of clients and controlled or administered or managed by a financial institution or financial intermediary including, without limitation -

(a) for the purposes of Chapter 2 on Insurance -

(i) the trust account in the name of Lloyd's referred to in section 46;

(ii) the premiums deposited into a trust account pursuant to section 73; and

(iii) claims that have arisen under policies issued by an insurer;

(b) for the purposes of Chapter 3 on Financial Markets -

(i) client funds referred to in section 119;

(ii) certificated and uncertificated securities held, controlled or managed for and on behalf of clients; and

(iii) interests in securities referred to in section 128;

(c) for the purposes of Chapter 4 on Collective Investment Schemes -

(i) the money and other assets received from an investor and the assets of a portfolio referred to in section 193;

(ii) the money and other assets referred to in section 244;

(iii) the trust account referred to in section 245; and

(iv) participatory interests and participatory interests of a specific class in a portfolio of a collective investment scheme;

(d) for the purposes of Chapter 5 on Retirement Funds, the assets of a retirement fund;

(e) for the purposes of Chapter 6 on Friendly Societies, claims of members of a friendly society against the society;

(f) for the purposes of Chapter 7 on Medical Aid Funds, benefits or rights in respect of benefits payable to a member or beneficiary of a medical aid fund;

(g) for the purposes of Chapter 8 on Fund and Society Administrators, the assets and other property of a retirement fund or medical aid fund held on behalf of the retirement fund or medical aid fund by a fund administrator, and the assets and other property of a friendly society held on behalf of the friendly society by a society administrator;

(h) for the purposes of Chapter 9 on Property Held in Trust, trust property within the meaning of section 377,

and includes accrued interest and income, mark to market accruals from derivatives, proceeds on the sale of assets and documents evidencing the ownership, title, rights or obligations in respect of such money, assets, participatory interests, trust property or other property and any other asset or property declared by the Minister to be a client asset by notice made under subsection (6).

(2) In this section client assets received, held, kept in safe custody, controlled, administered, invested or otherwise handled or dealt with by a financial institution or a financial intermediary are referred to as client assets "under the control, administration or management" of the financial institution or financial intermediary.

(3) Every financial institution or financial intermediary that has client assets under the control, administration or management of that financial institution or financial intermediary must -

(a) separate those client assets from the assets of the financial institution or financial intermediary;

(b) maintain separate, accurate, detailed and up to date records of those client assets; and

(c) exercise the utmost good faith, care and diligence with respect to those client assets.

(4) Despite anything to the contrary in any provision of the Companies Act, the Insolvency Act or any other law, if a financial institution or financial intermediary becomes insolvent or any claim is made against, or a statutory manager is appointed for, the financial institution or financial intermediary -

(a) client assets under the control, administration or management of the financial institution or financial intermediary must be excluded from the assets or estate of that financial institution or financial intermediary; and

(b) in a case where the client assets under the control, administration or management of the financial institution or financial intermediary -

(i) are misappropriated through the theft, fraud, defalcation, diversion or misuse, conversion or trespass of the financial institution or financial intermediary; or

(ii) are mismanaged or are unaccounted for through the negligence, recklessness, co-mingling, shirking of duty, conflicts of interest or self-regarding acts, lack of effort or undue risk-taking of the financial institution or financial intermediary,

an amount equal to the loss must be set aside from the assets or estate of that financial institution or financial intermediary and is recoverable by way of legal action or by way of any other remedies set out in this Act.

(5) Any amount referred to in subsection (4)(b) is deemed to be the property of the client or clients concerned and constitutes a first charge against the assets and estate of the financial institution or financial intermediary and takes precedence over -

(a) any claim of or payment to any creditor, other than a creditor holding security on specific and identified moveable or immoveable property to the extent of that property, including any special mortgage, legal hypothec, pledge or right of retention; or

(b) any payment to shareholders or other owners,

including, without limitation, those claims and payments referred to in sections 95 to 104 of the Insolvency Act.

(6) The Minister may by notice in the *Gazette* declare any asset or property to be a client asset for the purposes of subsection (1).

(7) The Minister may make regulations and NAMFISA may issue standards with respect to the further protection of client assets under this section.

Limitation of liability

461. The Minister, a member of the Board of NAMFISA, a member of a committee of the Board of NAMFISA, the chief executive of NAMFISA or any other officer or employee of NAMFISA, a member of the advisory committee or a member of the Appeal Board is not personally liable in respect of anything done or omitted to be done in good faith and without gross negligence in the exercise of any power or the performance of any duty under this Act.

General offences and provisions relating to offences and sentences

462. (1) A person who in connection with a matter covered by this Act -

(a) makes any statement, promise or forecast knowing it to be misleading, false or deceptive;

(b) intentionally or knowingly conceals any material facts; or

(c) is reckless or negligent in making any statement, promise or forecast which is misleading, false or deceptive in a material respect for the purposes of inducing or attempting to induce another person, whether or not that other person is the person to whom the statement, promise or forecast was made or from whom the material facts were concealed -

(i) to enter into or offer to enter into, or to refrain from entering into, or offering to enter into, any contract with a financial institution or financial intermediary; or

(ii) to exercise or refrain from exercising any rights under such contract,

commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) A person who prepares or issues any document required for the purposes of this Act or participates in the preparation or issue of any such document, knowing the document to be false in any material respect commits an offence and is liable on conviction to a fine not exceeding N$2 500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Unless where it is otherwise expressly provided for in this Act, where a person is charged with an offence under this Act and that person is liable to be sentenced to -

(a) a fine exceeding N$1 000 000 or to imprisonment for a period exceeding two years or to both such fine and imprisonment, it is sufficient for the prosecution to establish that the person -

(i) had the intention to commit the offence;

(ii) had knowledge of the existence of the facts or circumstances constituting the offence; or

(iii) even if the person lacked the requisite intention or knowledge as described in subparagraph (i) or (ii), that person was reckless with respect to the existence of the facts or circumstances constituting the offence or to the consequences of his or her actions; or

(b) a fine of N$1 000 000 or a lesser amount or to imprisonment for a period of two years or a lesser period or to both such fine and imprisonment, it is sufficient for the prosecution to establish that the person -

(i) had the intention to commit the offence;

(ii) had knowledge of the existence of the facts or circumstances constituting the offence;

(iii) even if the person lacked the requisite intention or knowledge as described in subparagraph (i) or (ii), that person was reckless with respect to the existence of the facts or circumstances constituting the offence or to the consequences of his or her actions; or

(iv) even if the person lacked the requisite intention or knowledge as described in subparagraph (i) or (ii) or was not reckless as described in subparagraph (iii), that person was negligent with respect to the existence of the facts or circumstances constituting the offence or to the consequences of his or her actions.

(4) If a person is convicted of an offence under this Act the court convicting the person may, in addition to any penalty it may otherwise impose, order the person to

comply with the provisions of this Act in respect of which the person was convicted of the offence.

(5) If a person is convicted of an offence under this Act, and the court is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary benefits accrued to the convicted person or to the spouse or other dependant of the convicted person, the court may order the convicted person to pay an additional fine in an amount equal to the court's estimation of the amount of those monetary benefits, despite the maximum amount of any fine that may otherwise be imposed under this Act.

(6) If an entity has committed an offence under this Act, any director, officer, employee, agent, shareholder or other owner of the entity who directed, authorised, assented to, acquiesced in or participated in the commission of the offence is a party to the offence and is, on conviction liable for the penalty provided for the offence and, in a case where a sentence of imprisonment is provided for the offence, that director, officer, employee, agent, shareholder or other owner of the entity is liable to be sentenced to that sentence of imprisonment, whether or not the entity concerned has been prosecuted or convicted.

(7) Unless otherwise expressly provided in this Act, a contravention of any provision of this Act does not invalidate any contract entered into in contravention of that provision.

Jurisdiction of magistrates' court

463. Despite anything to the contrary in the Magistrates Court's Act, 1944 (Act No. 32 of 1944) or in any other law -

(a) a magistrate's court of a regional division convicting a person under this Act for any offence has jurisdiction to impose a fine which does not exceed N$5 000 000;

(b) a magistrate's court of a district division convicting a person under this Act for any offence has jurisdiction to impose a fine which does not exceed N$2 500 000;

(c) a magistrate's court of a regional division has jurisdiction to grant an award for compensation arising from, or damages suffered as result of, a contravention of, or failure to comply with, this Act up to a maximum of N$1 000 000; and

(d) a magistrate's court of a district division has jurisdiction to grant an award for compensation arising from, or damages suffered as result of, a contravention of, or failure to comply with, this Act up to a maximum of N$500 000.

Application to State and public entities

464. (1) The provisions of this Act relating to the manner in which financial services are to be rendered apply to any natural person or group of natural persons acting within the scope of their official duties as employees of the State, any organ of the State as defined in section 427(2) or any public enterprise as defined in section 1 of the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019), unless the

Minister by notice under subsection (2) determines otherwise in respect of the employee or employees of the State, organ of the State or public enterprise.

(2) The Minister may by notice in the *Gazette* declare any employee or employees of the State, organ of the State or public enterprise to which subsection (1) does not apply.

Regulations

465. (1) The Minister may make regulations that the Minister considers necessary or advisable for the due carrying out of the provisions of this Act and to achieve the objects of this Act.

(2) The Minister may make a regulation if satisfied that the regulation is -

(a) not inconsistent with this Act;

(b) necessary for the protection of present and future consumers of any financial service that is the subject of the regulation;

(c) necessary for the protection and furtherance of the integrity, stability and growth of the financial services sector in Namibia;

(d) in conformity with generally accepted principles of sound and ethical business practice and public regulation; and

(e) in the public interest.

(3) Without derogating from the generality of subsection (1) the Minister may make regulations relating to any of the matters specified in subregulations (4) to (13).

(4) The Minister may make regulations relating to -

(a) the requirements relating to the ownership and to the citizenship, residency status and the place of residence of the members of a board of directors or other board members or officers of a financial institution or financial intermediary or of an entity that controls a financial institution or financial intermediary;

(b) the criteria and guidelines that must be used or taken into consideration by NAMFISA or any other person in determining what constitutes or amounts to "public interest" or "in the public interest" for purposes of this Act; and

(c) any other matters in respect of which the Minister is authorised to prescribe by or under any provision of this Act or considers it necessary or expedient to make regulations in order to achieve the objects and purposes of this Act.

(5) For the purposes of Chapter 2, the Minister may make regulations relating to -

(a) the meaning of micro-insurance;

(b) a different maximum amount per member of a friendly society than the amount referred to in section 5(4)(b), which must not be exceeded by the total value of the policy benefits, other than an annuity or the total amount of the premium in return for which an annuity is to be provided, under long-term policies which a friendly society may enter into in order for the friendly society not to be prohibited from carrying on the business of insurance or reinsurance in Namibia as set out in section 5(1);

(c) other persons, arrangements or businesses for the purposes of the definition of "fund" in section 8(1);

(d) the meaning of "gap insurance";

(e) the meaning of "health policy" for the purposes of section 8(1);

(f) the meaning of "sickness" for the purposes of item 6(b) of Part 2 of Schedule 1;

(g) business that will be deemed not to be long-term insurance business for the purposes of the definition of "long-term insurance business" in section 8(1);

(h) a greater amount for the purposes of paid up capital and surplus than that referred to in section 10(1)(e);

(i) the amount of protection that will be afforded in respect of a life policy referred to in Part 5 of Chapter 2;

(j) the aggregate amount that may be paid under, and the aggregate realisable value of, life policies, and other matters referred to in Part 5 of Chapter 2;

(k) the manner in which any amount, security or bank guarantee deposited with NAMFISA is to be dealt with, including the payment of interest accruing to such deposit;

(l) the minimum or maximum or both the minimum and maximum amounts which an insurer and reinsurer may invest -

(i) in or outside Namibia; and

(ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere;

and the basis on which the amounts will be determined and defining the kinds or categories of assets to which the amounts will apply;

(m) any other matter in respect of which the Minister is empowered, permitted or required to make regulations or considers it necessary or expedient to make regulations in order to achieve the objects of Chapter 2.

(6) For the purposes of Chapter 3, the Minister may make regulations relating to -

(a) the meaning of "money market instruments" for the purposes of the definition in section 78;

(b) the maximum amount of a fine that a registered exchange or a person to whom the exchange has delegated its disciplinary functions may impose for a contravention of the listing requirements, pursuant to section 106(1)(g);

(c) the maximum amount of any penalty that NAMFISA may impose on a self-regulatory organisation pursuant to section 142(3);

(d) interest, for the purposes of section 160(2)(d), (4)(d), (6)(d) and (7)(d);

(e) any additional amount to which NAMFISA may be entitled pursuant to section 161(2)(a)(ii); and

(f) any other matter in respect of which the Minister is empowered, permitted or required to make regulations or considers it necessary or expedient to make regulations in order to achieve the objects of Chapter 3.

(7) For the purposes of Chapter 4, the Minister may make regulations relating to -

(a) assets which qualify as unlisted investments in Namibia for the purposes of the portfolio of a collective investment scheme in unlisted securities as referred to in paragraph (a) of the definition of "collective investment scheme in unlisted securities" in section 210;

(b) the application of different rules to managers which are members of a self-regulatory organisation and managers which are not, and to managers of different types of collective investment schemes or different types of portfolios; and

(c) any other matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of Chapter 4.

(8) For the purposes of Chapter 5, the Minister may make regulations relating to -

(a) funds and classes of funds for inclusion in the definition of "fund" in section 249;

(b) funds for inclusion in the definition of "prescribed fund" in section 249;

(c) funds for inclusion in the definition of "retirement fund" in section 249;

(d) the prescribed funds or beneficiary funds that may be exempted pursuant to section 262(1)(b);

(e) provisions for a board for a retirement fund to which the State contributes financially, the requirements to which such a board must adhere and the qualifications of its members;

(f) the terms and conditions on which the board of a fund may distribute some or all of an actuarial surplus pursuant to section 268(8);

(g) the rate of interest payable on contributions not transmitted or received and on the value of a benefit or right to a benefit not transferred before the expiration of the applicable period, pursuant to section 270(9);

(h) the protection of unpaid contributions of an employer;

(i) the rules of a fund;

(j) loans which may be granted to a member and guarantees which may be furnished to a person in respect of a loan granted or to be granted by such person to a member, pursuant to section 277(1)(b);

(k) the investments of a fund;

(l) the minimum or maximum or both the minimum and maximum amounts which a fund may invest -

(i) in or outside Namibia; and

(ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere;

and the basis on which the amounts will be determined and defining the kinds or categories of assets to which the amounts will apply;

(m) the preservation of retirement benefits;

(n) matters regarding the voluntary dissolution of a fund pursuant to section 278 and winding-up by the court pursuant to section 279; and

(o) any other matter in respect of which the Minister is empowered, permitted or required to make regulations or considers it necessary or expedient to make regulations in order to achieve the objects of Chapter 5.

(9) For the purposes of Chapter 6, the Minister may make regulations relating to -

(a) the amount which the aggregate value of the income of a society must not exceed in order for Chapter 6 not to apply to such society pursuant to section 286(1);

(b) the valuation of the assets and liability of a friendly society and the basis upon which benefits derived from investments of funds of the society may be paid out to beneficiaries;

(c) the investments of a friendly society pursuant to section 306;

(d) the minimum or maximum or both the minimum and maximum amounts which a friendly society may invest -

(i) in or outside Namibia; and

(ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere;

and the basis on which the amounts will be determined and defining the kinds or categories of assets to which the amounts will apply;

(e) the authorisation of NAMFISA to grant unconditional or conditional exemptions, whether unlimited or limited in duration, from provisions of the regulations referred to in paragraph (d);

(f) the rules of a society;

(g) matters regarding the voluntary dissolution of a friendly society pursuant to section 316 and winding-up by the court pursuant to section 317;

(h) any other matter in respect of which the Minister is empowered, permitted or required to make regulations or considers it necessary or expedient to make regulations in order to achieve the objects of Chapter 6.

(10) For the purposes of Chapter 7, the Minister may make regulations relating to -

(a) the insurance policies to be excluded from the definition of "business of a medical aid fund" in section 321;

(b) the rules of a medical aid fund;

(c) the investments of a medical aid fund pursuant to section 350;

(d) the minimum or maximum or both the minimum and maximum amounts which a medical aid fund may invest -

(i) in or outside Namibia; and

(ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere;

and the basis on which the amounts will be determined and defining the kinds or categories of assets to which the amounts will apply;

(e) matters regarding the voluntary dissolution of a medical aid fund pursuant to section 358 and winding-up by the court pursuant to section 359;

(f) any other matter in respect of which the Minister is empowered, permitted or required to make regulations or considers it necessary or

expedient to make regulations in order to achieve the objects of Chapter 7.

(11) For the purposes of Chapter 8, the Minister may make regulations relating to any matter which the Minister is empowered, permitted or required to make regulations on or for which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of Chapter 8.

(12) For the purposes of Chapter 9, the Minister may make regulations relating to any matter which the Minister is empowered, permitted or required to make regulations on or for which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of Chapter 9.

(13) For the purposes of Chapter 10, the Minister may make regulations relating to -

(a) the rate of interest applicable to the late payment of annual fees;

(b) the maximum amount of any penalties for the contravention of any standard issued by NAMFISA; and

(c) any other matter in respect of which the Minister is empowered, permitted or required to make regulations or considers it necessary or expedient to make regulations in order to achieve the objects of Chapter 10.

(14) For the purposes of this Chapter, the Minister may make regulations relating to -

(a) the protection of client assets; and

(b) any other matter in respect of which the Minister is empowered, permitted or required to make regulations or considers it necessary or expedient to make regulations in order to achieve the objects of this Chapter.

(15) Regulations made under this section may prescribe penalties in respect of a contravention of, or a failure to comply with, any provision of such regulations and the maximum amount of such penalties which may not exceed a fine of N$1 000 000 or imprisonment for a period which may not exceed two years or both such fine and such imprisonment.

(16) Before making any regulation pursuant to subsection (8)(e) the Minister must first consult with NAMFISA and the Prime Minister.

Conflict or inconsistency

466. (1) If there is a conflict or inconsistency between a provision of this Act and a provision of any other law of Namibia in relation to a matter governed by this Act, the provision of this Act prevails to the extent of the conflict or inconsistency.

(2) If there is a conflict or inconsistency between a provision of this Act, a provision of the regulations or a provision of the standards, the provision of this Act prevails to the extent of the conflict or inconsistency.

(3) If there is a conflict or inconsistency between a provision of the regulations and a provision of the standards, the provision of the regulations prevails to the extent of the conflict or inconsistency.

(4) If there is a conflict or inconsistency between a provision of the regulations or the standards and a provision of the guidelines, directives, rules or other subordinate measures, the provision of the regulations or the standards prevails to the extent of the conflict or inconsistency.

Repeal and amendment of laws and transitional arrangements

467. (1) The laws set out in Schedule 2 are repealed or amended to the extent set out in that Schedule.

(2) The repeal or amendment of the laws referred to in Schedule 2 does not affect any transitional arrangements set out in Schedule 3.

(3) The transitional arrangements in Schedule 3 must be read and applied as substantive provisions of this Act.

Short title and commencement

468. (1) This Act is called the Financial Institutions and Markets Act, 2021, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions or Chapters of this Act.

(3) Any reference in this Act to the commencement of this Act must be construed as a reference to the date determined under subsection (1) or (2).

SCHEDULE 1

CLASSES OF INSURANCE
(Section 8(1) and (2))

PART 1
CLASSES OF LONG-TERM INSURANCE BUSINESS

(a) disability insurance business.

(b) fund insurance business.

(c) funeral insurance business.

(d) health insurance business.

(e) life insurance business.

(f) sinking fund insurance business.

PART 2
CLASSES OF SHORT-TERM INSURANCE BUSINESS

1. Fire

(a) Fire and natural forces

Effecting and carrying out short-term insurance contracts against loss of, or damage to, property other than property referred to in items 2(a), 3(a), 4(a), 6(d) and 7(a), (b), (c) and (d) as a result of fire and natural forces.

(b) Miscellaneous financial loss

Effecting and carrying out short-term insurance contracts against any of the following risks, namely -

(i) risks of loss to the person insured attributable to interruptions of the carrying on of business by such person or to reduction of the scope of business so carried on;

(ii) risks of loss to the person insured attributable to the incurring of unforeseen expenses;

(iii) risks neither falling within the ambit of paragraph (i) or (ii), nor being of such a kind that the carrying on of the business of effecting and carrying out short-term insurance contracts against the risks constitutes the carrying on of short-term insurance business of some other class.

2. Marine

(a) Ships

Effecting and carrying out short-term insurance contracts upon vessels at sea or on inland waters or upon the machinery, tackle, furniture, equipment or cargo of such vessels.

(b) *Liability for ships*

Effecting and carrying out short-term insurance contracts against damage arising from or in connection with the use of vessels at sea or on inland waters, including third party risks and carrier's liability, and against the risk of pecuniary loss to the person insured attributable to the incurring of legal costs (including costs of litigation).

3. Aviation

(a) *Aircraft*

Effecting and carrying out short-term insurance contracts upon aircraft or upon the machinery, tackle, furniture or equipment of the aircraft.

(*b)* *Liability for aircraft*

Effecting and carrying out short-term insurance contracts against damage arising from or in connection with the use of aircraft, including third party risks, carrier's liability and aerodrome liability, and against the risk of pecuniary loss to the person insured attributable to the incurring of legal costs (including costs of litigation).

4. Vehicles

(a) *Land vehicles*

Effecting and carrying out short-term insurance contracts against loss of or damage to vehicles used on land, including motor vehicles, but excluding railway rolling stock.

(b) *Liability for motor vehicles*

Effecting and carrying out short-term insurance contracts against damage arising from or in connection with the use of motor vehicles other than railway rolling stock on land, including third party risks, carrier's liability and the risk of pecuniary loss to the person insured attributable to the incurring of legal costs (including cost of litigation).

5. Guarantee

Effecting and carrying out guarantee insurance business, including -

(a) contracts of short-term insurance against risks of loss to the person insured attributable to such person having to perform contracts of guarantee entered into by him or her; and

(b) contracts of fidelity bonds, performance bonds, administration bonds, bail bonds or custom bonds or similar contracts of guarantee.

6. Miscellaneous

(a) Personal accident

Effecting and carrying out short-term insurance contracts providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured -

(i) sustaining injury as a result of any accident or an accident of a specific class;

(ii) dying as a result of any accident or an accident of a specific class;

(iii) becoming incapacitated as a result of any disease or a disease of a specific class, including contracts relating to industrial injury and occupational disease, but excluding contracts referred to in sub-item (b).

(b) Sickness as defined in the regulations

Effecting and carrying out short-term insurance contracts providing fixed pecuniary benefits or benefits in the nature of indemnity or a combination of both against risks of loss to the person insured attributable to sickness or infirmity.

(c) General liability

Effecting and carrying out short-term insurance contracts against risks other than risks referred to in items 2(b), 3(b) and 4(b) of the person insured incurring liability to third parties.

(d) Damage to property

Effecting and carrying out short-term insurance contracts against loss of, or damage to, property other than property referred to in items 1(a), 2(a), 3(a), 4(a), sub-item (e) and item 7(a), (b), (c) and (d) as a result of any event.

(e) Goods in transit

Effecting and carrying out short-term insurance contracts against loss of, or damage to, merchandise, baggage or any other goods in transit by any means of conveyance, excluding conveyance referred to in item 2(a)

(f) Credit

Effecting and carrying out short-term insurance contracts against risks of loss to the person insured attributable to the insolvency of any debtor of such person or from the failure (otherwise than through insolvency) of any such debtor to pay his or her debt when due and payable.

(g) *Railway rolling stock*

Effecting and carrying out short-term insurance contracts against loss of or damage to railway rolling stock.

(h) *Legal expenses*

Effecting and carrying out short-term insurance contracts against risks of loss to the person insured attributable to the incurring of legal costs (including costs of litigation).

(i) *Expropriation and confiscation of property*

Effecting and carrying out short-term insurance contracts against loss of damage to property or risks of loss as a result of expropriation or confiscation.

7. Personal

Effecting and carrying out short-term insurance contracts primarily designed to cover the interests of any natural person against -

(a) loss of, or damage to, property other than property referred to in sub-items (b) and (d) as a result of fire, explosion, storm, water and certain natural forces, excluding the risks of riot, strike, war and nuclear energy;

(b) loss of, or damage to, any motor vehicle used on land, including liability risks arising from the use of such vehicle, third party risks, passenger's liability and the risk of pecuniary loss to the person insured attributable to the incurring of legal costs (including costs of litigation);

(c) loss of, or damage to, property other than property referred to in sub-items (b) and (d) as a result of any event other than those mentioned in sub-item (a);

(d) loss of, or damage to, specified property other than property referred to in sub-items (a) and (c) as a result of any accidental incident;

(e) risks other than risks referred to in sub-item (b) of the person insured incurring liability to third parties;

(f) risks of the person insured -

(i) sustaining injury as a result of any accident or an accident of a specific class;

(ii) dying as a result of any accident or an accident of a specific class;

(iii) becoming incapacitated as a result of any accident or disease and providing fixed pecuniary benefits or benefits in the nature of indemnity or a combination of both.

8. Co-insurance business

Effecting and carrying out short-term insurance contracts in respect of one or more of the other classes of short-term insurance business specified in this Schedule.

SCHEDULE 2

LAWS REPEALED OR AMENDED

(Section 467)

1. Act No. 24 of 1936 Insolvency Act, 1936

The Insolvency Act, 1936 is amended by the insertion after section 102 of the following section:

"Preference with regard to claims under Financial Institutions and Markets Act

104A. Notwithstanding anything contained in sections 95 to 104, where the provisions of section 270 or section 460 of the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021) apply, any contribution referred to in subsection (11) of section 270 or any amount referred to in subsections (4) and (5) of section 460 of that Act shall be deemed to be a secured and preferent claim against the estate in priority to all other claims, except those claims secured by specific and identified moveable or immoveable property, to the extent of that property.".

2.	**Act No. 24 of 1956**	**Pension Funds Act, 1956**	Repeals the whole
3.	**Act No. 25 of 1956**	**Friendly Societies Act, 1956**	Repeals the whole
4.	**Act No. 81 of 1957**	**Finance Act, 1957**	Repeals sections 14 to 17, inclusive
5.	**Act No. 80 of 1959**	**Finance Act, 1959**	Repeals sections 13 to 16, inclusive
6.	**Act No. 68 of 1962**	**Inspection of Financial Institutions Act, 1962**	Repeals section 11
7.	**Act No. 60 of 1963**	**Friendly Societies Amendment Act, 1963**	Repeals the whole
8.	**Act No. 67 of 1965**	**Friendly Societies Amendment Act, 1965**	Repeals the whole
9.	**Act No. 58 of 1966**	**Second Finance Act, 1966**	Repeals section 9
10.	**Act No. 65 of 1968**	**Financial Institutions Amendment Act, 1968**	Repeals sections 11 to 15, inclusive
11.	**Act No. 80 of 1969**	**Financial Institutions Amendment Act, 1969**	Repeals section 1
12.	**Act No. 23 of 1970**	**Financial Institutions Amendment Act, 1970**	Repeals section 2
13.	**Act No. 91 of 1972**	**Financial Institutions Amendment Act, 1972**	Repeals sections 7 and 8
14.	**Act No. 101 of 1976**	**Financial Institutions Amendment Act, 1976**	Repeals sections 21 to 31, inclusive
15.	**Act No. 94 of 1977**	**Financial Institutions Amendment Act, 1977**	Repeals sections 9 to 14, inclusive
16.	**Act No. 80 of 1978**	**Financial Institutions Amendment Act, 1978**	Repeals sections 10 to 14, inclusive
17.	**Act No. 103 of 1979**	**Financial Institutions Amendment Act, 1979**	Repeals sections 13 to 26, inclusive
18.	**Act No. 99 of 1980**	**Financial Institutions Amendment Act, 1980**	Repeals sections 38 to 43, inclusive

19.	**Act No. 54 of 1981**	**Unit Trusts Control Act, 1981**	Repeals the whole
20.	**Act No. 55 of 1981**	**Participation Bonds Act, 1981**	Repeals the whole
21.	**Act No. 82 of 1982**	**Financial Institutions Amendment Act, 1982**	Repeals section 14
22.	**Act No. 38 of 1984**	**Inspection of Financial Institutions Act, 1984**	Repeals the whole
23.	**Act No. 39 of 1984**	**Financial Institutions (Investment of Funds) Act, 1984**	

The Financial Institutions (Investment of Funds) Act, 1984 is amended-

(a) in section 1, by the substitution for the definitions of "financial institution" and "registrar" of the following definitions:

""financial institution" means -

[(a) an insurer registered in terms of the Insurance Act 9, 1943 (Act No. 27 of 1943);

(b) a pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956);

(c) a friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956);

(d) a banking institution registered in terms of the Banks Act, 1965 (Act No. 23 of 1965);

(e) a mutual building society registered in terms of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), or a building society registered in terms of the Building Societies Act, 1986 (Act No. 82 of 1986);

(f) a unit trust scheme as defined in the Unit Trusts Control Act, 1981(Act No. 54 of 1981);

(g) a board of executors or a trust company or any other company which invests, keeps in safe custody, controls or administers any trust property;

(h) a manager who in terms of the provisions of the Participation Bonds Act, 1981 (Act No. 55 of 1981), controls or administers a scheme;]

(a) a banking institution registered in terms of the Banking Institutions Act 1998 (Act No. 2 of 1998);

(b) a building society registered in terms of the Building Societies Act, 1986 (Act No. 2 of 1986);

(c) a board of executors or a trust company or any other company which invests, keeps in safe custody, controls or administers any trust property;";

"registrar" means the registrar appointed under the Acts referred to in paragraph (a) or (b), **[paragraph (a), (b), (c), (d), (e) or (f),]** as the case may be, of the definition of "financial institution;";

(b) in section 5 -

(i) by the substitution for subsections (1) and (3) of the following subsections:

"(1) The registrar **[An inspector appointed under section 2 of the Inspection of Financial Institutions Act, 1984, may at any time at the direction of the registrar of a financial institution referred to in the said Act]** may at any time, cause **[inspect]** the affairs of a board of executors, trust company or other company mentioned in paragraph (c) **[g]** of the definition of "financial institution" **[in section 1 of this Act]** and of a nominee company controlled by the financial institution in respect of which the registrar concerned was appointed, to be inspected in order to ascertain whether the provisions of this Act are being complied with.;

"(3) A registrar referred to in subsections (1) and (2) and an inspector appointed by such registrar under subsection (4) shall, in addition to the powers, duties and functions he or she has in terms of this Act, have the powers and duties in all respects corresponding to the powers and duties conferred upon the Namibia Financial Institutions Supervisory Authority referred to in section 2 of the Namibia Financial Institutions Supervisory Authority Act, 2021 (Act No. 3 of 2021) and upon an inspector under sections 418 to 429 of the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021). **[The provisions of the Inspection of Financial Institutions Act, 1984, apply in respect of an inspection carried out in terms of subsection (1) or (2).]";**

(ii) by the addition after subsection (3) of the following subsection:

"(4) The registrar may appoint an inspector to perform the functions or exercise the powers conferred on the inspector by or under this Act or assigned to the inspector by such registrar under the provisions of this Act.";

(c) by the substitution for section 7 of the following section:

"**7.** The records of a financial institution and of a nominee company or trust controlled or administered by that institution and the books of account of the institution, company or trust are, in any proceedings under this Act, admissible as *prima facie* evidence of the matters, transactions and accounts therein recorded, on the production of a document purporting to be an affidavit by one of the directors, officials, employees or agents of the institution or company or by an inspector appointed under subsection (4) of section 5, **[the Inspection of Financial Institutions Act, 1984, or section 8A of the South African Reserve Bank Act, 1944 (Act No. 29 of 1944),]** or of other

sufficient evidence, to the effect that those records or books of account are or have been the ordinary records and books of account of the institution, company or trust and that those records have been kept or those entries have been made in the books of account in the ordinary course ofbusiness.".

24.	**Act No. 46 of 1984**	**Corporation for Public Deposits Act, 1984**	Repeals so much of the Schedule as amend Act No. 24 of 1956
25.	**Act No. 86 of 1984**	**Financial Institutions Amendment Act, 1984**	Repeals sections 14 to 21, inclusive
26.	**Act No. 1 of 1985**	**Stock Exchanges Control Act, 1985**	Repeals the whole
27.	**Act No. 50 of 1986**	**Financial Institutions Amendment Act, 1986**	Repeals sections 9 to 16, inclusive
28.	**Act No. 51 of 1988**	**Financial Institutions Amendment Act, 1988**	Repeals sections 3 to 32, inclusive
29.	**Act No. 53 of 1989**	**Financial Institutions Amendment Act, 1989**	Repeals sections 8 to 11, inclusive
30.	**Act No. 54 of 1989**	**Financial Institutions Second Amendment Act, 1989**	Repeals sections 20 to 31, inclusive
31.	**Act No. 26 of 1992**	**Stock Exchanges Control Amendment Act, 1992**	Repeals the whole
32.	**Act No.4 of 1994**	**Pension Funds Amendment Act, 1994**	Repeals the whole
33.	**Act No. 23 of 1995**	**Medical Aid Funds Act, 1995**	

The Medical Aid Funds Act, 1995 is amended -

(a) in section 1 -

(i) by the deletion of the definitions of "financial year", "medical service", "officer", "principal officer", "registrar", "staff member", "the repealed Act" and "trustee";

(ii) by the substitution for the definitions of "dependant", "fund", "member", "registered fund", "rules", and "this Act" of the following definitions:

"dependant" **[,in relation to a member of a registered fund, means -**

(a) the spouse of such member;

(b) any minor child (including any stepchild or adopted child) of such member who is not self-supporting; and

(c) any other person, who, under the rules of the fund, is recognised as a dependant of such member and is entitled to receive benefits under the fund by virtue of such member's membership, and who is not a member of that fund or any other registered

fund;] has the meaning given to it in section 321 of the Financial Institutions and Markets Act;

"fund" **[means any business carried on under a scheme established with the object of providing financial or other assistance to a member of the fund and their dependants in defraying expenditure incurred by them in connection with the rendering of any medical service, but does not include any such scheme which has been established in terms of an insurance policy;]** has the meaning given to it in section 321 of the Financial Institutions and Markets Act;

"member" [, **in relation to a registered fund, means any person who is, under its rules, a member of the fund;]** has the meaning given to it in section 321 of the Financial Institutions and Markets Act;

"registered fund" **[means a fund registered or reregistered under the provisions of this Act;]** means a fund registered under Chapter 7 of the Financial Institutions and Markets Act;

"rules" [, **in relation to a registered fund, means the rules of the fund referred to in section 30;)** means the rules made by the Association under section 18; and

"this Act" includes [, **except for the purposes of section 45,]** any regulations made or in force thereunder;";

(iii) by the insertion after the definition of "dependant" of the following definition:

'"Financial Institutions and Markets Act" means the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021);":

(iv) by the insertion after the definition of "fund" of the following definition:

'"insurer" means an insurer registered under Chapter 2 of the Financial Institutions and Markets Act;";

(v) by the insertion after the definition of "Minister" of the following definition:

'"NAMFISA" means the Namibia Financial Institutions Supervisory Authority referred to in section 2 of the Namibia Financial Institutions Authority Act, 2021 (Act No. 3 of 2021);";

(b) by the repeal of sections 2 to 8, inclusive;

(c) in section 15, by the substitution for subsection (2) of the following subsection:

"(2) **[The Registrar]** NAMFISA may attend any meeting of the management or any committee contemplated under subsection (1).";

(d) in section 18, by the substitution for paragraph (b) of subsection (4) of the following paragraph:

"(b) a fine not exceeding [**N$2 000.**] N$30 000.";

(e) by the repeal of sections 22 to 43, inclusive;

(f) in section 44, by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, after consultation with the Association, make regulations relating to[-]

[(a) the administration of the affairs of registered funds;

(b) the fees to be paid to the Registrar in respect of -

(i) an application for the registration of a fund;

(ii) the registration of a fund;

(iii) an application for permission to change the name of a registered fund;

(iv) the change of the name of a registered fund;

(v) the registration, in terms of section 31, of an amendment of a rule of a registered fund;

(c) the maximum amount which and the extent to which a registered fund may invest -

(i) outside Namibia;

(ii) in particular assets or in particular kinds or categories of assets, prescribing the basis on which such prescribed maximum amount shall be determined and defining the kinds or categories of assets to which it applies;

(d) all other matters] all matters which are by this Act required or permitted to be prescribed, and generally relating to all matters which he or she considers it necessary or expedient to prescribe in order that the objects and purposes of this Act may be achieved."; and

(g) by the repeal of section 45.

34. Act No. 2 of 1998 Banking Institutions Act, 1998

The Banking Institutions Act, 1998 is amended -

(a) in section 2, by the substitution for paragraph (q) of subsection (2) of the following paragraph:

"'(q) any non-banking financial institution governed by statute and regulated by the Namibia Financial Institutions Supervisory Authority **[established by]** referred to in section 2 of the Namibia Financial Institutions Supervisory Authority Act, **[2001 (Act No. 3 of 2001)]** 2021 (Act No. 3 of 2021).";

(b) in section 52, by the substitution for subsection (3) of the following subsection:

"(3) In the conducting of an examination in terms of subsection (1), the Bank, or the person appointed by the Bank under that subsection, in addition to the powers, duties and functions he or she or it has in terms of this Act, has the powers and duties in all respects corresponding to the powers and duties conferred or imposed by -

(a) the [**law regulating financial institutions and markets**] Namibia Financial Institutions Supervisory Authority Act, 2021 (Act No. 3 of 2021) upon the [**Authority or inspector contemplated in that law]** Namibia Financial Institutions Supervisory Authority referred to in section 2 of that Act; and

(b) sections 418 to 429 of the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021) upon an inspector appointed under that Act.".

35.	**Act No. 4 of 1998**	**Short-term Insurance Act, 1998**	Repeals the whole
36.	**Act No. 5 of 1998**	**Long-term Insurance Act, 1998**	Repeals the whole

37. Act No. 22 of 1998 Namibia National Reinsurance Corporation Act, 1998

The Namibia National Reinsurance Corporation Act, 1998 is amended-

(a) in section 1 -

(i) the deletion of the definitions of "deposit premium", "guarantee policy", Long- term Insurance Act" and "Short-term Insurance Act";

(ii) by the substitution for the definition of "class", of the following definition:

"class of insurance" [, **in relation to insurance business, means any class of insurance business specified in -**

(a) Schedule 1 to the Short-term Insurance Act; or

(b) **section 13(1) of the Long-term Insurance Act;]** has the meaning given to it in section 4 of the Financial Institutions and Markets Act;";

(iii) by the insertion after the definition of "equal percentage" of following definition:

""Financial Institutions and Markets Act" means the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021);";

(iv) by the substitution for the definitions of "long term insurance business", "policy", "premium", "registered insurer", "registered reinsurer", "reinsurance business" and "short-term insurance business", of the following definitions:

""long-term insurance" **[business" means long-term insurance business as defined in section 1(1) of the Long-term Insurance Act;]** means carrying on the business of insurance on a long-term basis as contemplated in Chapter 2 of the Financial Institutions and Markets Act;

"policy" **[means any insurance contract, irrespective of the form in which the rights and obligations of the parties thereto are expressed or created, and includes a guarantee policy;]** has the meaning given to it in section 4 of the Financial Institutions and Markets Act;

"premium" **[means the consideration given or to be given in return for an undertaking to provide policy benefits, and includes a deposit premium;]** has the meaning given to it in section 4 of the Financial Institutions and Markets Act;

"registered reinsurer" **[means a person registered as a reinsurer in terms of-**

(a) **section 16(3) of the Short-term Insurance Act to carry on short-term insurance business; or**

(b) **section 16(3) of the Long-term Insurance Act to carry on long-term insurance business, as the case may be;]** has the meaning given to it in section 4 of the Financial Institutions and Markets Act;

"reinsurance" **[business" means the business of insuring any registered insurer or registered reinsurer or any foreign insurer or foreign reinsurer in respect of any such insurer's or reinsurer's contractual obligations under any policy or reinsurance contract;]** means carrying on the business of re-insurance as contemplated in Chapter 2 of the Financial Institutions and Markets Act;

"short-term insurance" **[business" means short-term insurance business as defined in section 1(1) of the Short-term Insurance Act;]** means carrying on the business of

insurance on a short-term basis as contemplated in Chapter 3 of the Financial Institutions and Markets Act;";

(b) in section 2, by the substitution for subsections (4) and (5) of the following subsections:

"(4) The Corporation shall, **[apply to the Registrar of Short-term Insurance and to the Registrar of Long-term Insurance in terms of the Short-term Insurance Act and the Long-term Insurance Act, respectively, for registration as a reinsurer, and the provisions of both said Acts shall, subject to the provisions of subsection (5), apply in respect of the Corporation.]** on the date of the commencement of the Financial Institutions and Markets Act, be deemed to be registered as a reinsurer as contemplated in section 11 of that Act and, subject to the provisions of subsection (5), the provisions of that Act shall apply in respect of the Corporation.

(5) The provisions of the **[Short-term Insurance Act and of the Long term Insurance Act]** Financial Institutions and Markets Act shall apply in respect of the Corporation only in so far as those provisions are not clearly inappropriate or inconsistent with the provisions of this Act.";

(c) by the substitution for the opening sentence of section 22 of the following sentence:

"22. Notwithstanding anything to the contrary contained in the **[Short-term Insurance Act or the Long-term Insurance Act]** Financial Institutions and Markets Act, the functions of the Corporation are - ".

38.	**Act No. 29 of 2000**	**Stock Exchanges Control Amendment Act, 2000**	Repeals the whole
39.	**Act No. 5 of 2011**	**Pension Funds Amendment Act, 2011**	Repeals the whole
40.	**Act No. 10 of 2011**	**Unit Trusts Control Amendment Act, 2011**	Repeals the whole

41. Act No. 13 of 2012 Financial Intelligence Act, 2012

The Financial Intelligence Act, 2012 is amended -

(a) by the substitution for Schedule 2 of the following Schedule:

"The Namibia Financial Institutions Supervisory Authority **[established in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act 3 of 2001) by]** referred to in section 2 of the Namibia Financial Institutions Supervisory Authority Act, 2021 (Act No. 3 of 2021).";

(b) by the substitution for item 5 of Schedule 4 of the following item:

"5. **[The Namibia Stock Exchange established in terms of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)]** An exchange registered or deemed to be registered under Chapter 3 of the Financial Markets and Institutions Act, 2021 (Act No. 2 of 2021).".

42.	**Act No. 6 of 2014**	**Pension Funds Amendment Act, 2014**	Repeals the whole
43.	**Act No. 12 of 2016**	**Long-term Insurance Amendment Act, 2016**	Repeals the whole
44.	**Act No. 13 of 2016**	**Short-term Insurance Amendment Act, 2016**	Repeals the whole
45.	**Act No. 14 of 2016**	**Unit Trusts Control Amendment Act, 2016**	Repeals the whole

SCHEDULE 3

TRANSITIONAL PROVISIONS
(Section 467)

Definitions

1. In this schedule -

"effective date" means the date on which this Act or any Chapter or relevant provision of this Act comes into operation pursuant to section 468;

"repealed law" means a law repealed under section 467.

General preservation of subordinate measures and other actions

2. (1) Any subordinate legislation or measure made under a repealed law remains in force unless it is in conflict with this Act and is deemed to be made thereunder until superseded by a subordinate measure made under this Act.

(2) The rules of a financial institution made under a repealed law and in force immediately before the effective date continue to be in force so far as they are not inconsistent with this Act, except that the financial institution must within six months from the effective date amend or replace its rules so as to comply with the requirements of this Act.

(3) Any appointment made, agreement conducted or any other steps taken or things done by or under any provision of a repealed law is deemed to have been made, concluded, held, taken or done, by or under a corresponding provision of this Act.

(4) In the case of an appointment which expires after a specified period, the appointment remains in force for so much of that period as falls after the effective date.

(5) Any right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of a repealed law, that had not been spent or fulfilled immediately before the effective date is a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.

(6) A notice given by any person to another person in terms of any provision of a repealed law must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the repealed law.

(7) A document that, before the effective date, had been served in accordance with a repealed law must be regarded as having been satisfactorily served for any comparable purpose of this Act.

(8) An order given by an inspector in terms of a repealed law and in effect immediately before the effective date continues in effect, subject to the provisions of this Act.

Continuation of authorisation

3. The registration, licence or authorisation of a financial institution or financial intermediary which before the effective date was registered, licensed or authorised under a repealed law -

(a) has effect as from the effective date as if a registration had been granted under a corresponding provision of this Act;

(b) in the case of a registration, licence or authorisation which expires after a specified period, remains in force, subject to this Act, as a registration for so much of that period as falls after the effective date.

Delayed application of required registration

4. Unless otherwise provided in this Act, a requirement of this Act for a financial institution or financial intermediary to be registered by NAMFISA -

(a) takes effect 30 days after the effective date; or

(b) during the first six months after the effective date such requirement is temporarily satisfied from the time that a person applies for registration as a financial institution or financial intermediary until NAMFISA has made a final decision with respect to that application.

Delayed application of required filing dates

5. The provisions of section 402(10) take effect on the date that is the later of -

(a) 12 months after the effective date; or

(b) the date published by NAMFISA in the *Gazette.*

Continued enforcement of repealed laws

6. Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Subordinate measures

7. On the effective date and for a period of 60 days after the effective date, the Minister and NAMFISA may make any subordinate measure of a legislative nature contemplated in the Act without meeting the procedural requirements set out in this Act, provided the Minister and NAMFISA have published such proposed subordinate measure in the *Gazette*, allowing a period of at least 30 days for comment.