CONTRIBUTION TO THE FINANCIAL INSTITUTIONS AND MARKETS BILL

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OCTOBER 2019

Contribution to the Financial Institutions and Markets Bill

that deals with

My contribution on this Bill will mostly focus on Chapter 5 Retirement funds.

Firstly let me start by appreciating those who were involved in the long and overdue process of repelling the Pension Fund act no. 24 of 1956 which was not only old but outdated. However I have my own view as I felt that this bill needed to be a stand-alone legislation since I feel a number of issues that are catered for under regulations needed to be incorporated on the Act.

While talking about Regulations please allow me to first and foremost appreciate NAMFISA for continuous information dissemination and member education on the various financial matters but I have a special request to them to also include new developments on the amendments of Regulations as well as on the issuance of various Practice Notes. Currently these information is only shared with actors in the Industry and many of us who like to follow activities as unfolding on the Industry are sometimes left out. would

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Let me also make use of this opportunity to appreciate the Ministry of Finance for amending the regulation on ~~local~~ investment from 35% to 45% in 2018. I raised this concern during the budget discussion/debate in 2016 by improving the threshold

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took note of the fact that

Only 30 days granted to industry to comment on new Standards and Regulations. [NAMFISA Circular RPS/04/2015] I believe the ~~Industry~~ the period is too short sometimes research need to be carried out at least 3 months will be adequate to give ample time for well informed ~~and~~ input.

After perusing the FIM Bill, I looked at various clauses and have the following inputs to make.:

1. The definition of a dependant

On Section 249 page 209 I have reservation on the definition of a child as a dependant especially on (iii) "Is a child who has not attained 18 years, of the member including a posthumous child, an **adopted child** ~~and~~ a child born out of marriage"

There are adopted children who sometimes benefit from their original or biological parents, the lingering question is, should these children still benefit from the adopting parent at the expense of other children who will never receive pension benefits elsewhere?

I also need to know the status of benefits to fostered children because the Bill is silence on this and I know it use to be a disputable issue on whether they should be classified as dependants or not.

2 Submission of Annual Financial Statements **[Section 401(12)]**

Under the current legislation, audited Annual Financial Statement are required to be submitted to NAMFISA within 6 months from end of the financial year. The FIM Bill's requirement for submission of audited Annual Financial Statement within 90 days will lead to

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the administrator having to make accounting estimations in a predominantly defined contribution environment where contributions are paid in arrears, and are always paid few days after month end. This literally means a statement can only reflect contribution of 2 months, as opposed to insurance and medical aid funds where premiums are pre-paid. This is despite extensive fund reporting within 30 days of the end of every quarter, ~~already~~ at the cost of the fund and ultimately reducing the fund members' retirement saving. Making estimations in an environment that actually requires accurate accounting will be to detriment members.

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The fact that sometimes a pension fund administrator also provide service to a number of pension funds (as opposed to medical aid funds that carry out the administration of a single fund only) it, increases pressure on the time constraint and also increases costs due to increased capacity requirements and increased inefficiencies.

3 Amendments & Protection of Benefits [Section 276]

The FIM Bill will amend the key provisions of the current legislation that protect retirement savings, ensure financial income to the dependants of deceased members and encourage employers to offer voluntary occupational retirement schemes to their employees. The Bill achieves this by:

- Permitting deductions from a member's benefit, any court order served on the fund against a member's benefit, even a court order resulting from the member's insolvency. This is currently prohibited under section 37A and 37B of the Pension Funds Act of 1956;
- Permitting NAMFISA to determine which loans may be offered by a retirement fund, whereas under section 19(5) read with sections 37A and 37D of the Pension Funds Act, only housing loans may be offered by a retirement fund.
- Amending the current provision of section 37C of the Pension Funds Act by providing that the member's nomination form will, in the event of death of the member, be instructive to the allocation proportions to the persons nominated. The effect will then be that the deceased member's wishes will supersede the current legislative social welfare intention of ensuring the financial provision of all dependants of a deceased member. (give example of unknown children)
- Removing the provision under the current section 37D, that permits an employer to deduct monies from the member's benefit that are due to the employer as result of theft, misconduct, dishonesty, fraud committed by the member. This was allowed in the past provided there is a court judgement that find such an employee guilty or whenever there was an admission of guilt. However on the removal of this clause an employee will lose out.

If pension fund becomes part of the loan facility members benefits will be drastically reduce or depleted before retirement and pensioners will eventually become a burden to the state.

employees

4 Regulator's Powers [Sections 408,409,411,412]

FIM Bill allows for delegation of immense subordinate legislative power to NAMFISA _regulator = legislator) without putting sufficient safeguards measures to guard against the potential arbitrary exercise of wide discretionary powers and passing of laws that are fair and reasonable and in the interest of promoting the stability of the industry.

NAMFISA also has power to veto the decisions of the Board of Trustees in a number of instances, one can conclude that effectively NAMFISA will manage the pension funds.

NAMFISA is empowered to impose hefty administrative penalties and fines that will become revenue to the regulator (refer to paragraph 5 below). Is this a sound principle? Who will oversee the management and utilization of such funds by NAMFISA or are they going to be paid over somewhere?

Any dispute with NAMFISA will have to be litigated, I hope that a lengthy and costly exercise of litigation where will the budget for sourced that I hope that will not reduce the fund members' retirement savings. Cut.

5 Fines & penalties for non-compliance

The Bill provides for hefty penalties on trustees for up to N$ 10 million or 10 years of imprisonment in the event of non-compliance, or alternatively deregistration of the fund. Increased cost of Professional Indemnity cover for trustees, not available locally, will be borne by the fund member, and it will reduce his/her retirement savings.

The Retirement Funds Chapter 5 contains 13 contraventions that are classifieds criminal offences with fines between N$ 1 and N$ 5 million and imprisonment of up to between 2 and 10 years for contraventions of an administrative nature such as –

a. Failure to notify NAMFISA of appointment of the principal officer; **[Section 260]**
b. Failure to notify NAMFISA of any material matter that may seriously prejudice the financial viability of the fund; **[Section 261]**
c. Failure to disclose to NAMFISA any payment received from a contractor of the fund; **[Section 264]**
d. Failure to deposit a copy of the actuarial valuation report with 180 days of the end of the valuation report; **[Section 268]**
e. Failure to pay over the contributions to a fund; **[Section 270]**
f. Failure to observe the prescription concerning the receiving and processing of contributions; **[Section 270]**
g. Failure to provide members and beneficiaries with copies of the fund Rules; **[Section 271]** (Is this practical for funds such as GIPF given the size of the fund the members and their dependants)
h. Failure to provide a member on request with copies of certain documents, etc. **[Section 281]**

Significant penalties will cause ~~no~~ the fund ~~will~~ to have no trustees anymore as nobody will want to be a trustee under those circumstances; I feel penalties are totally out of ~~sync~~ depth. It is also my view that some of these activities are administratively cumbersome and costly and may eat in the saving of the funds.

6 Administration & Governance , one can take an example if

1) On Exclusion of sponsor ~~refer to~~ GIPF, asking if Government as sponsor will be comfortable not to be represented on the board of any of the state-owned entities.

- Sponsor of an umbrella fund cannot have seats on the fund's board of trustees and therefore cannot protect its interests. **[Section 261(5)(a)]**
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- Trustees, principal officers and service providers must
  - ✓ Ensure compliance with relevant provisions of the voluminous FIM Bill **[Sections 264,367,372]**
  - ✓ Demonstrate proficiency **[Sections 253,260,367,401,402, GEN S 9-2]**, and
  - ✓ Meet the 'fit & proper's requirements ~~imposed~~ as indicated by the FIM Bill **[Section 253,260,261,367,401,402, GEN S 9-2]**

Failing which will expose them to hefty penalties.

- Trustees, principal officers and administrator will have measure up to professional standards (in the absence of related curriculums to acquire the skill at training institutions) failing which will expose them to hefty penalties. So far there is no Institution that provide comprehensive training on matters related to retirement fund and pension Industry locally. I recommend that MHETI ensure incorporation of this in the curriculum of the existing Training Institutions
- Management or board of trustees of retirement fund to ensure that rules of retirement funds comply with enabling act and all other relevant law within 12 months from promulgation of FIM Bill into an Act. **[Section 388]**
- Will a 12-month respite for registration of a fund be sufficient time considering that there may have to be intensive communication and proper training of the Industry participant, members and beneficiaries.

I feel some of these concerns are worth revisiting before we pass the bill or maybe during the committee stage.

I support the Bill and

I thank you.