REPUBLIC OF NAMIBIA

Ministry of Finance

RESPONSE
ON MATTERS
ON THE FINANCIAL INSTITUTIONS AND MARKETS BILL AND THE NAMFISA BILL

Honourable Calle Schlettwein, MP
MINISTER OF FINANCE

24 October 2019

Honourable Speaker,

Honourable Members,

1. I wish to thank and respond to the main matters raised by the Honourable Members who have taken the floor to on the specific provisions of the Financial Institutions and Markets (FIM) Bill and also the Namibia Financial Institutions Supervisory Authority (NAMFISA) Bill.

2. *Honourable Lucia Iipumbu* made input on Chapter 5 of the FIM Bill regarding the Pension Fund Industry, *Honourable Nico Smit* considered various provisions of the FIM Bill and Namfisa Bill, while *Honourable Mike Kavekotora* offered input on the matters related to Medical Aid Funds and the clinical aspects which naturally relate to the health sector.

3. Honourable Speaker, as I have put forth during the tabling of these interrelated Bills for the non-banking financial sector, the Bills seek to bring the legislation up to date and to foster national development objectives. The Bills seek to:-

    - modernization of the various pieces of legislation, some of which are as old as 30 or 50 years and to consolidate these laws for the broader economic impact and effective supervision for an otherwise interconnected industry,
    - the shift from mere compliance-based and standalone supervision, to a risk-based and integrated supervision, allowing for better preparedness, risk mitigation and efficiency in the supervision framework, and
    - correcting for market inefficiencies, fostering confidence in the financial system and soundness of financial institutions and financial intermediaries,

4. Honourable Smit raised specific matters in regard to the preponderance of administrative fees and penalties, the regulatory powers to be vested in Namfisa and the perceived lack of the recourse mechanism, restrictive and short time for making comments on the regulations and standards, the 90 days for submission of audited financial statements and the need for adequate transitional period for both Namfisa and the industry as reporting the prescriptive nature of the Bill.

5. On these specific matters, I wish to clarify the following and reassure the House the implementation of the Bill will take a gradual course and optimal time will be provided for the transitional arrangements.

6. **First**, with regard to administrative penalties and criminal fines, these are retained and instituted to deter non-compliance and encourage best market conducts. Professional liability cover does not cover one against criminal liability. Even the current legislation provides for the criminal offence such as

    - failure to pay over contribution section 37(1)(a)
    - failure to deposit actuarial report 37(1)(b)

7. We must bear in mind that allowing pension funds to :-

    - withhold information from the regulator as to their financial soundness,
    - keep payments made to trustees from service providers hidden,
    - not to have and keep proper records of contributions received and the processing thereof, and
    - withhold key documents from their members, such as the rules;

leaves the members without protection against the misconduct of those managing the business of the fund. Pension fund Trustees are entrusted with managing savings made over the productive years of their members. To enable the member to have financial support in the later years of their lives. It therefore follows that a high standard of conduct is required and should expected of them.

8. The requirements on trustees are not dissimilar to those placed on directors of companies. Criminal fines and penalties are not for the purpose of raising funds for the cost of supervision. These fines and penalties should, in the best case scenario of an industry that is compliant, be at a bare minimum. The cost of supervision is covered through the levy which is, as a standard, revised after every five years.

9. ***Second***, with respect to the powers of Namfisa, the risk-based supervision framework and the modernization of the legislation brings with an increasing need for visible supervision, not dissimilar from the regulators in other jurisdictions. The separation of powers is set forth in the Bill whereby principle policy matters are vested with the legislature, policy matters which do not change the most are catered for in the regulations by the Minister and the matters which change often due to market dynamics are vested in the regular through market standards. Such a framework is in accordance with best international practices. These powers are necessary for the effective regulation and supervision of the sector. These powers are akin to those currently conferred over the Banking sector supervisor.

10. ***Thirdly***, a perceived concern was raised in regard to the apparent lack of the recourse mechanism in the presence of too much power for the regulator. In this regard Honourable Speaker, Honourable Members, the NAMFISA Bill makes explicit provision for an Appeal Board to deal with disputes with NAMFISA. This allows for speedy and cost free mechanism to adjudicate complaints raised by the industry (unless they choose to engage the services of paid persons). For the consumers, the entirety of the

Financial Services Adjudicator Bill is to allow for the settlement of consumer complaints and foster consumer protection.

11. ***Fourth***, comments were made about the perceived overregulation as a result of the regulatory overhaul and that we should not saddle the economy with too much regulation. In this Hourable Speaker, I which state that the Namibian non-banking financial sector regulatory framework is too archaic relative to the region and advances in international financial sector regulation. Admittedly some of the current laws are 50 or 30 years old such that they are not aligned to the national development policy nor are they better placed to encourage innovation and market efficiency in an era of technological advancement and prudential regulatory requirements. Leap frogging a framework that is 50 years old to today's norms and best practices may seem to be overwhelming for the business as usual mode of operations. To mitigate this concern, a gradual approach will be taken and optimal time granted for the transitional arrangements.

12. ***Fifth***, in regard to the time period for the industry to make comments on the regulations and standards, Section 409(3)(c) of the bill prescribes "not less than 30 days". It important to note that the period is not limited to 30 days. Thus, the period of extension is not limited to 30 days. Also, as current practice, NAMFISA consults the industry informally on the standards and regulations before the formal consultations on the standards in terms of the FIM Bill take place. The consultation on the Regulations and Standards have commenced already and more formal consultation will be undertaken once the legislation passes.

13. In respect of the 90 days for the submission of audited financial statements, this will enable timely supervision and to resolve and arrest systemic

problems timely consistent with best practices. Risk-based supervision is data intensive and cannot operate behind the curve.

14. **Honourable Lucia Iipumbu** made comments on matters pertaining to the pension funds, particularly on adopted children and children in foster care. The differential treatment of these children is due to the stipulations of the Child Care and Protection Act, Act 3 of 2015, which confers different rights and obligations on adoptive parents and foster care providers.

15. Regarding the protection of pension benefits, all existing protections in the current Pension Funds Act have been carried over by Part 6 of Chapter 5 of the Bill. Section 274(1)(c) of the Bill protects pension benefits, rights to such benefits and rights in respect of contributions made to a fund from attachment or execution under a judgement or court order.

16. Section 275 of the Bill protects pension benefits, from forming part of an insolvent estate and from attachment and appropriation in any insolvency proceedings. The only allowable deductions are set out in Section 277 of the Bill. (improved current section 37D)

Honourabe Speaker,

17. Let me also address the matters of concern raised by Honourable Kavekotora on the Medical Aid Funds and the needed regulation for the clinical aspects relating to the Health Sector.

18. The FIM Bill retains regulation of the financial aspects of Medical Aid Funds contemplated in the Medical Aid Funds Act 23 of 1995. Financial aspects and financial management thereof are better regulated through financial sector regulation and by a competent regulatory authority. The clinical matters are to be dealt with in the Health sector. To this effect, the

policy proposal on how these aspects could regulated in the health sector is now being coordinated with the Ministry of Health and Social Services.

19. Indeed, *Honourable Speaker*, the provisions of the FIM Bill in respect of the Medical Aid Funds and the necessary coordination on the clinical issues have been discussed and the principle agreement reached for the FIM Bill to proceed, while health related regulatory aspects are being simultaneously considered with the health sector and with the support of the Ministry of Finance and Namfisa.

Conclusion

Honourable Speaker,

20. The matters which the Honourable Members raised have been consulted upon at length with the non-banking financial services industry.

21. Apart from the iterative consultations over the past 10 years or so, constructive and final consultations were held with the retirement Funds Institute of Namibia last year and the concluding consultations with the Namibia Savings and Investment Association (NaSIA) and the Namibia Association of Medical Funds (NAMAF).

22. The industry is supportive of the FIM Bill. The main matter of mutual agreement for the the industry to be given sufficient time before the Bill takes effect and sufficient consultation on the Regulations and Standards.

23. In this regard, optimal time will be provided on the consultations on the subsidiary legislation before the Bills come into force.

I therefore appeal for your support for us as a jurisdiction to make quantum progress on this reform.

I thank you.