Concern 2: Risks imposed on Employers and Trustees.

- Trustees, principal officers, and regulated service providers will have to measure up to professional standards or face hefty penalties, yet our training institutions do not have undergraduate, let alone post-graduate curriculums to allow these role players to achieve the levels of skill that will be required of them by the FIMA.

- In addition to this challenge the Namibian education system and qualification verification authorities do not recognize short courses for accreditation or for qualification to an NQA level of some sort, yet the Standard published under the FIMA sets clear educational requirements and experience which would be impossible to obtain in the absence of allowing new market entrants

- Employers are discouraged and excluded because of the risks they face and the removal of the incentives under the current PFA. This is even though they are the backbone of employment and the sponsors of retirement schemes.

Concern 3: Excessive Penalties and Fines:

- The Retirement Funds Chapter of FIMA contains 13 contraventions that are criminal offences which in most cases may be relevant to ensure enforceability of or compliance with the law, but are however not commensurate to the punishment which includes fines of between N$1 million and N$10 million and or imprisonment of up to between 2 and 10 years for contraventions of an administrative nature such as –
    - Failure to notify NAMFISA of the appointment of the principal officer;
    - Failure to notify NAMFISA of any material matter that may seriously prejudice the financial viability of the fund;
    - Failure to disclose to NAMFISA any payment received from a contractor of the fund;
    - Failure to deposit a copy of the actuarial valuation report within the prescribed time;
    - Failure to pay over the contributions to a fund;
    - Failure to observe the prescriptions concerning the receiving and processing of contributions;
    - Failure to provide members and beneficiaries with copies of the rules of the fund;
    - Failure to provide a member on request with copies of certain documents.

Concern 4: Inconsistency with the Income Tax Act

- The PFA broadly defines a pension fund as a pension fund organization, and the Income Tax Act goes a step further and creates specific pension fund organizations being either a:
    - pension fund
    - provident fund

- provident / pension preservation and
- retirement annuity fund

- These respective funds are required to be registered with NAMFISA first and then with the Minister of Finance.

- FIMA on the other hand only makes provision for a retirement fund that is related to an employer and further prohibits the operation of funds such as provident or provident preservation funds which permit a member to commute their entire benefit in cash and do not require annuitisation of the retirement benefit.

- It is therefore unclear how these funds will be governed should FIMA and the Income Tax Act not be aligned.

- If FIMA does not expressly recognize and protect commutation rights, members of pension, provident, preservation, or retirement annuity funds must annuitize their entire individual account proceeds
    - No encashment will be permitted, and yet RFLAUN has conducted a survey which shows that more than 80% reject what is proposed, resulting in mistrust between the Trustees and Members, as Trustees will be tasked with enforcing the requirements.

- Despite the conflict with Income Tax Act, FIMA states under section 466 that FIMA prevails if in conflict with another law governing matters governed related to FIMA.

- It Appears FIMA does not affect commutation rights conferred on members of Defined Benefit Funds e.g. GIPF, thus creating an anomaly, and does not provide for equity between Defined Benefit and Defined Contribution Funds e.g RFLAUN.

Concern 6: Omnibus of Critical Laws

- The entire FIMA is a voluminous piece of legislation comprising over 405 pages, 468 sections, and 11 Chapters of which 6 Chapters are relevant to retirement funds. It will in addition also include Regulations and Standards which to date amount to 37 and quite a few more to follow.

- These provisions are directly relevant to trustees, principal officers, and service providers of retirement funds and these parties must not only ensure compliance with the relevant provisions of FIMA but must also be able to demonstrate proficiency and meet the 'fit and proper' requirements imposed by FIMA failing which they will be exposed to the hefty penalties.

- This presents a major challenge, in an industry where there is a critical shortage of skill, in identifying and appointing "fit and proper" persons who would be willing to take on the risk of managing a retirement fund.

Concern 7: Passing of Standards

- NAMFISA is vested with immense subordinate legislative power without any proper checks and balances to ensure fair and equitable use of power, thus empowering NAMFISA to enact subordinate legislation in any form or manner allowing for potential abuse of discretionary power. Coupled with this NAMFISA will be empowered to impose hefty administrative penalties which will be payable to NAMFISA.

- The purpose of these Standards are to operationalize the provisions of the law as enacted under FIMA, but we have seen that through the Standards and Regulations, new legislative provisions being introduced which is actually contrary to the spirit and purport of the provisions and the Standards, which are not designed to be a law making document.

- The legislative process is entrusted by the Namibian people through the parliamentary system, which allows the election of the parliamentarian to ensure that the interests of their constituents are upheld.

- NAMFISA's process of issuing standards does not follow this important legislative process and therefore there is no mechanism for ensuring that the interests of the members and the industry are upheld when a standard is issued.

- Furthermore, the process does not allow for constructive consultation, it is in fact dictatorial because what NAMFISA deems fit is what will be implemented.

Concern 8: Protection of Retirement Benefits

- At the core of our key concern is that the FIMA amends the key provisions of the current legislation that protect retirement savings, ensure financial income to the dependents of deceased members and encourage employers to offer voluntary occupational retirement schemes to their employees.
  The Act achieves this by:

    - permitting deductions from a member's benefit in respect of 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 sections 37A and 37B of the Pension Funds Act of 1956 (PFA);

    - permitting NAMFISA to determine which loans may be offered by a retirement fund, whereas under section 19(5) read with sections 37 A and D of the PFA, only housing loans may be offered by a retirement fund. Retirement benefits should be encouraged for the purpose of retirement and not to alleviate immediate financial needs.

- amending the current provisions of section 37C of the PFA by providing that the member's nomination form will, in the event of the death of the member, be instructive to the trustees, even if a known dependant was not nominated, with limited discretion concerning 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;

- Removing the provision under the current 37D, that permits an employer to deduct monies from the member's benefit that is due to the employer as a result of theft, misconduct dishonesty, or fraud committed by the member.

Concern 9: Risk Benefits

- FIMA makes provisions for a *beneficiary fund*, a *retirement fund*, or a *prescribed fund.*

- "Retirement fund" definition states object to be receiving, holding, and investing of contributions of individuals and employers *for the purpose of providing retirement benefits*".

- "Retirement benefits" definition refers to benefits payable on retirement, death, disability or when leaving employment or fund membership, but excludes insured benefits if regard is had to the "insured benefits" definition.

- However, FIMA provides that registered fund may not carry on any business other than the business of a fund.

- In its Standards (RF.S.5.4) it is determined that the rules of a retirement fund must contain a description of "the nature and extent of the *retirement benefits* granted by the retirement fund..." This implies that no insured benefits should be included in the rules.

- RF.S.5.5, however, contains a definition for "insured benefits" defining it as a death, disability or funeral benefit which does not form part of the retirement benefit, but *"for which the retirement fund holds an insurance policy"* This again seems to intimate that insured benefits may be provided by a retirement fund.

- Insured products are lawful and must be recognized as a pension benefit because of the social protection they provide.

- The ultimate position under FIMA on whether insured benefits may be provided by retirement funds is not clear.

Example of an Insured Death Benefit

Age Bands	Insurer (Multiple of Sal.)
Younger than 30	7.0 plus Fund Credit
31-40	6.0 plus Fund Credit
41-50	5.0 plus Fund Credit
51-60	5.0 plus Fund Credit

Without the insured death benefit multiple, a member on death would only receive a fund credit. And where a member does not have enough fund credit, his/her family will not have the financial security provided for by the multiple of salary the insured death benefit provides.

Concern 10: Extremely tight Reporting Timelines

- Annual financial statements which under the current legislation are to be submitted to NAMFISA within 6 months from financial year end will under FIMA be required to be submitted within 90 days, requiring performance of interim testing before year-end, which would lead to increased time and increased costs of these audits, and there may also be an increased element of estimation involved from the administrator to close out the records earlier.

- This is despite the requirement that funds will be required to report extensively, within 30 days of the end of every quarter.

Concern 11: Impractical Transitional Provisions

- The management or board of trustees of retirement funds is responsible to ascertain that the rules of a retirement fund comply with the enabling act and any other relevant law.

- FIMA affords the trustees only 12 months from the date of implementation to ensure full compliance with FIMA or face the consequences of non-compliance.

- This is impractical considering that FIMA is in most aspects introducing completely new principles to the retirement industry, which will almost be impossible to implement in 12 months.

Concern 12: Lack of Public Consultation

- An important step in the law-making process is public consultation. In my view, no meaningful public consultation took place on FIMA. The process, at least from a retirement fund industry perspective, did not include employers and trade unions at all and ignored industry stakeholders' most serious concerns.

- The Minister is also required to receive the public's submissions and comments. Even if the Minister did receive the public's suggestions and comments, it is unlikely that he would have been able to deal with them meaningfully due to their overwhelming volume.

- NAMFISA has not as far as I am aware shared the research paper that substantiates the need for a complete overall of the Namibian non-banking financial institution laws

Request to Parliament

- **Recall FIMA for proper Review.**

- **Ensure Social Protection by recognizing the insured products.**

- **Parliament's direct involvement in the consultation with the Industry.**

- **Avoid provisions that discourage industry growth and lead to greater reliance on state grants.**

- **Mandatory for provisions that have a material impact on the Constitution, the economy, and the social environment to be legislated by Parliament and not provided for under subordinated legislation such as regulations and standards.**