



LEGISLATING IN A VACUUM

ALIGNING REGULATORY GOALS



OUR RETIREMENT
RESPONSIBILITY

2023 R³ CONFERENCE: Towards a **RELEVANT, RESILIENT** and **RESOURCED** future

Putting the “R” back into Savings

Agenda

- Purpose of legislation
- Features of good legislation
- Gaps in current PFA
- FIMA – concept & purpose
- FIMA – dissonance with ITA
- FIMA – measuring success
- FIMA – will it work as intended
- FIMA – the way forward



Purpose of legislation

- Establish rules, regulations & guidelines
- That –
 - Govern society
 - Promote order
 - Protect rights
 - Encourage equitable treatment
 - Advance collective interests



Features of good legislation

- Supportive of and in line with Constitution
- Clear
- Consistent
- Fair
- Enforceable
- In line with societal values
- Adaptable to changing circumstances
- Created through a transparent and participatory process



Gaps – current pension fund legislation

- Pension Funds Act 24 of 1956 (as amended)
- Legislation is old and hails from a time when funds were DB funds, whilst currently most are DC funds
 - DB funds – investment & longevity risk carried by fund, member gets a defined benefit
 - DC funds – investment & longevity risk (generally) not carried by fund – investment linked
- Defines only umbrella term “pension fund organization” and no specific definitions for various types of funds in operation (leaves this to ITA) –
 - Retirement annuity funds
 - Pension funds
 - Provident funds
 - Preservation funds
- Lacks certain key definitions (e.g. “annuity”, also not defined in ITA)
- Lacks specifics of options at retirement in line with modern, international trends (e.g. purchasing of untied member-owned life annuities)



FIMA – concept and purpose

- FIMA Gazetted 1 Oct 2021, yet to come into operation
- “To consolidate and harmonise the laws regulating financial institutions, financial intermediaries and financial markets in Namibia; and to provide for incidental matters.”
- Registered retirement fund is a financial institution
- Thus: FIMA to consolidate and harmonise retirement fund- and other NBFS legislation (i.e. it should address the weaknesses and gaps in current legislation)
- Takes an omnibus approach
- Espouses a risk-based vs old rules-based approach
- FIMA (Act – “skeleton” and stipulates for what Regulations/Standards can be made
 - Regulations (Minister)
 - Standards (Namfisa)
- Retirement chapter to a large extent similar to current PFA



FIMA – dissonance with ITA

- ITA defines
 - Retirement annuity funds
 - Pension funds
 - Provident funds
 - Preservation funds
- FIMA silent about the above
 - Only defines “retirement fund”
 - On the face of it – funds without “employer participation” not even allowable (RA’s, Preservation Funds ?)
 - Minister can prescribe funds, but always subject to FIMA
 - Simply defining the above funds in FIMA would have created much more certainty and clarity and would have avoided these concerns



FIMA – measuring success

- By all accounts the pension fund industry in Namibia has been a big success under the current dispensation
 - No pressing need to change something that is working well
- How will we measure FIMA's success?
 - Seamless transition
 - Fund members' interests remain properly protected (and even improved)
 - Better outcomes for fund members
 - Access to affordable and effective retirement funding instruments
 - Clarity and certainty as to rules governing retirement funds – greater efficiency in “running a fund”
 - No loss of membership numbers and/or number of registered funds
 - Proper alignment between FIMA and other Acts, e.g. ITA
 - No market failures



FIMA – will it work as intended

- The Act-Regulations-Standards scheme of FIMA is aimed at facilitating more nimble responses to changing circumstances
- This it will achieve, but at what price?
 - Clarity & certainty will suffer – lowers innovation and increases compliance costs
 - Fairness (and constitutional) concerns when the enforcer of rules also dons the mantle of the maker of rules with very wide and unchecked powers to do so
 - The less robust process for making standards may lead to practical enforceability problems
 - Process for making standards not particularly transparent and participatory – i.e. no broad-based consumer/stakeholder level participation (only FI's/Intermediaries/Industry associations tasked to reply)
 - Example: out of 59 Nasia submissions, 18 accepted, 41 (69.5%) rejected
 - Recent public lash-out wrt compulsory preservation draft regulation a point-in-case
 - If NAMFISA deems it necessary on urgency, consultation not even necessary
 - Still very rule-based despite the ambition of being risk-based



FIMA – the way forward

- “Ruling by decree” flavour of FIMA must be addressed
- NAMFISA is Regulator, Supervisor & Policy adviser – too much power concentrated in one entity not answerable to Parliament or the people
- Consultation is key
- Current process of publishing draft standards and only getting written comments on it before deciding on final standards, does not constitute adequate consultation
 - Too narrow i.t.o stakeholder participation
 - Only relying on written comments opens up huge opportunity for misunderstanding of bot draft standard and the written comments thereon – round-table consultations can easily cure this
 - No separation between rule-maker and rule-enforcer with obvious risks attaching to the conflicted situation it will leave NAMFISA in
 - Grassroots concerns that this is indicative of the Legislature abdicating its responsibility
- Balance between agility to respond to changes and legislative certainty must be found – as is, favours agility over certainty
- More key things should be dealt with in Act or Regulations and not left to Standards – greater certainty

