

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY

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Ref: PF/02/2010

**TO: Principal Officers of Pension Funds
Pension Fund Administrators**

Dear Sir/Madam

RE: INFORMATION ON CONTROLLERS

1. The purpose of this circular is to provide you with information regarding Section 65 of the Non-Bank Financial Institutions Regulatory Authority ("NBFIRA") Act and to outline a process to assist the industry and NBFIRA in meeting the requirements of the section.

Section 65(1) of the NBFIRA Act states: "If a person takes a step intending thereby to become a controller of a prudentially regulated non-bank financial institution, then, unless the Regulatory Authority has approved the person's becoming a controller of the institution, the person shall be liable to a civil penalty not exceeding P10 000 to be imposed by the Regulatory Authority".

2. As per Section 49(2) of the NBFIRA Act, a "prudently regulated non-bank financial institution" includes among other persons a pension fund or provident fund and a pension fund administrator.
3. Section 4 of the NBFIRA Act provides a very comprehensive definition of a "controller" and prescribes a number of different types of persons as controllers. The most common types of controllers include: a director or member of the governing body of the body corporate and a person who is in a position to control or exert significant influence over the business or financial operations of the company or fund. NBFIRA considers that the senior management employees of the company and fund including the General Manager or Chief Executive Officer, the Principal Officer, the most senior financial officer, Board of Directors/Trustees and shareholders as persons who are in a position to exert significant influence over the business or financial operations of the company or fund.
4. The purpose of Section 65(1) is to ensure that those in positions of influence and control in the pensions industry are fit and proper persons. General Prudential Requirements on fit and proper indicate that those that are not fit and proper include any person who:
 - a. Has been declared bankrupt or insolvent in any country;
 - b. Has been convicted by any court in any country of an offence involving dishonesty; or

Directors: M. Dube (Chairperson) N. Greenland L. G. Matenge T. T. K. Matome L.K. Mohohlo S. M. Sekwakwa

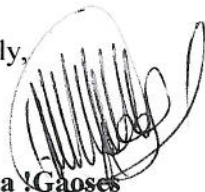


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- c. Is, in the opinion of NBFIRA, an unfit person to hold the office
5. It is also clear that fit and proper persons must have sufficient education, experience and skill to hold the office in question although no specific qualifications have generally been prescribed.
6. Section 65 is very clear that NBFIRA must approve all controllers before they take office. Before NBFIRA will be in a position to approve a controller, it will require the following:
 - a. A biographical sketch (curriculum vita) of the person in question;
 - b. A sworn declaration that the person is not any one of the first three types of persons outlined in terms of paragraph 4 above;
 - c. A Police and Security clearance; and
 - d. In addition, if the controller is an entity rather than an individual, a copy of the most recent audited financial statements of the entity must be received before approval will be granted.
7. NBFIRA intends to enforce this requirement effective July 15, 2010. In summary, the requirement is that all new senior officers, directors and significant owners (20% + ownership share) must be approved by NBFIRA in advance of their appointment. To assist NBFIRA in undertaking this approval, the information outlined in the previous paragraph must be submitted. NBFIRA will undertake to ensure that the time taken for approvals will not be lengthy if the necessary information has been provided.
8. Some might argue that existing controllers should also be approved by NBFIRA. However, in the opinion of NBFIRA, this not a practical approach and would involve unnecessary work in obtaining declarations etc. for a significant number of individuals. Therefore, NBFIRA does not feel that existing senior officers, board members and significant owners should be subject to the approval process.
9. Nevertheless, NBFIRA must compile a complete list of these persons in order to have the ability to monitor compliance to the Section 65 approval requirements. In this context, NBFIRA would ask that all registered entities provide the information requested in the appendix to this letter and forward it to NBFIRA no later than July 15, 2010.

Any questions regarding this letter can be addressed to Mr. Erulu, Manager Pensions.

Yours truly,



Marcelina Gaoses
DIRECTOR: INSURANCE AND PENSIONS

APPENDIX –IDENTIFICATION OF CONTROLLERS:

Part one: Identification of Controllers (To be completed by Fund Administrators, Investment Managers, Sponsors of Funds, etc.)

Name of Company: _____

Head Office Address: _____

Contact Person: _____

Telephone: _____

Email Address: _____

Table 1: Significant Owners (20% or more):

	Name of Owner	Address	Percentage Ownership	Date of Acquisition
1				
2				
3				
4				
5	Owners with a less than 20% interest			
	Total			

Table 2: Directors:

	Name of Director	Address	Date of Appointment
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

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Table 3: Senior Officers:

	Name of Officer	Address	Position Occupied	Date of Appointment
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

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APPENDIX –IDENTIFICATION OF CONTROLLERS:

Part Two: Identification of Controllers (To be completed by Pension Funds)

Fund Name: _____

Fund Address: _____

Principal Officer: _____

Telephone: _____

Email Address: _____

Chairperson of the Board of Trustees: _____

Telephone: _____

Email Address: _____

Table 1 - Trustees

	Name	Address	Date of Appointment
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			



Table 2: Senior Officers: (Self administered Funds):

	Name of Officer	Address	Position Occupied	Date of Appointment
1				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

