NAMFISA
NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

LEGISLATIVE REFORM

EAN – NaSIA PUBLIC DISCUSSION

Kenneth S. Matomola

Chief Executive Officer

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OUTLINE

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3. Legislative Reform
4. NAMFISA Supervision Toolkit
5. NAMFISA Risk Based Methodology Overview
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INTRODUCTION

NAMFISA
NAMIBIA FINANCIAL
INSTITUTIONS SUPERVISORY AUTHORITY

THE SUPERVISORY AUTHORITY

Namibia Financial Institutions Supervisory Authority (NAMFISA)

… was established by an Act of Parliament: the NAMFISA Act, 2001 (No.3 of 2001)

THE SUPERVISORY AUTHORITY

Function 1

Supervision

To regulate and supervise the business of financial institutions and financial services

Function 2

Advice

To advise the Minister of Finance on matters relating to financial institutions and financial services

Auxiliary Function

Anti-money Laundering/Combating the Financing of Terrorism/Combating Proliferation Financing (AML/CFT/CPF) Supervision

To supervise, monitor and enforce compliance with the Financial Intelligence Act, 2012 (No. 13 of 2012) in respect of all accountable and reporting institutions supervised by NAMFISA in terms of the NAMFISA Act

THE SUPERVISORY AUTHORITY

MISSION

The Authority's mission is to regulate and supervise financial institutions and financial intermediaries to foster a stable, fair non- banking financial sector and to promote consumer protection and provide sound advice to the Minister of Finance.

VISION

To have a safe, stable and fair financial system contributing to the economic development of Namibia in which consumers are protected.

VALUES

Teamwork; Integrity; Service Excellence; Accountability; and Agility

NAMFISA REGULATORY SCOPE AT A GLANCE

Regulated financial institution or intermediary, by subsector	Number of entities per subsector, 31 December 2020
Active pension funds	129
Active medical aid funds	9
Active friendly societies	1
Long-term insurance companies (Intermediaries)	14 (7,791)
Short-term insurance companies (Intermediaries)	14 (2,000)
Special purpose vehicles	23
Unit trust management companies	17
Investment managers	30
Unlisted investment managers	26
Microlenders	350
Reinsurers for long- and short-term insurance	1
Stock exchanges	1
Linked investment services providers	4
Stockbrokers, including sponsors	4
Total (Intermediaries)	**623 (9,791)**

Regulated entities

10,414

NAMFISA regulates 623 financial institutions and 9,791 financial intermediaries .

Value of total assets of the non-banking financial institutions regulated by NAMFISA

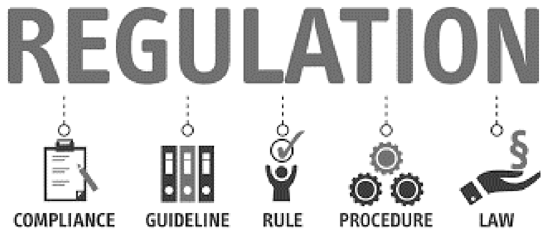
N$341.3 billion

FINANCIAL REGULATION OBJECTIVES

The principal objects of regulating the financial sector are to:

- Protect consumers of financial services;
- Maintain confidence in the financial system; and
- Correct market inefficiencies and promote efficient and orderly markets in financial services.

Regulation incurs both direct costs (administering regulation, compliance, etc) and indirect costs (behaviour of consumers, reduced innovation and competition, etc).



VIEWS ON EXISTING LAWS

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REGULATORY CHALLENGES

- Deficiencies in current legislation:
  - **Archaic (old)** legislative framework
  - Reliance on a **compliance** driven approach to supervision, approaches to supervision over the last 50 years have evolved
  - Inadequate **supervisory and enforcement powers** and tools
  - The Board of NAMFISA is an administrative board and has no **regulatory functions**
  - The regulatory measures are **fragmented, inconsistent** and exacerbate the cost of regulation
  - Inadequate consumer **recourse mechanism**

REGULATORY CHALLENGES

- Does not encourage **innovation and entrepreneurship**

- Does not recognize the **inter-linkages** within the financial sector, locally, regionally and internationally

- NAMFISA's mandate does not explicitly include **consumer education and financial stability.**
- **Concerns** about the **ineffectiveness of regulation and supervision** in the Namibian financial sector have been raised by various stakeholders (IMF/WB, Parliamentary Committee).

LEGISLATIVE REFORM

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NEW LEGISLATION

The NBFIs legislative reform process commenced over 10 years ago, and introduces 5 key Acts:

- ✓ Microlending Act, 2018 (Act No. 7 of 2018)
- ✓ NAMFISA Act, 2021 (Act No.3 of 2021)
- ✓ Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021)(FIMA)
- ✓ Financial Services Adjudicator Bill (FSA Bill)
- ✓ Consumer Credit Bill (CCB)

LEGISLATIVE INSTRUMENTS

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Current Legislation

Namibia Financial Institutions Supervisory Authority Act, 2001 (No. 3 of 2001)

Future

Namibia Financial Institutions Supervisory Authority Act, 2021 (No. 3 of 2021

Current Legislation

- Financial Institutions (Investment Funds) Act, 1984 (No. 39 of 1984
- Financial Intelligence Act, 20121 (No. 13 of 2012)
- Friendly Societies Act 1956 (No. 25 of 1956)
- Long-term Insurance Act, 1998 (No. 5 of 1998)
- Medical Aid Funds Act, 2018 (No. 7 of 2018)
- Pension Funds Act, 1956 (No. 24 of 1956)
- Short-term Insurance Act, 1998 (No.4 of 1998)
- Stock Control Exchanges Act, 1985 (No. 1 of 1985)
- Unit Trusts Control Act, 1981 (No. 54 of 1981)
- Inspection of Financial Institutions Act, 1984 (No.38 of 1984)

Future

Financial Institutions and Markets Act (FIMA) (Act No. 2 of 2021)

LEGISLATIVE INSTRUMENTS

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Current Legislation

- Usury Act, 1968
- Credit Agreements Act, 1980
- Microlending Act, 2018

Future

- Consumer Credit Bill

Current Legislation

- Financial Consumer Recourse Mechanism

(No specific law in place)

Future

- Financial Services Adjudicator Bill

NEW NAMFISA ACT, NO. 3 OF 2021

The New NAMFISA Act was drafted in the context of internationally accepted principles of regulation for financial sector regulators. The NAMFISA Act:-

- Introduces provisions relating to "Objects" of the Authority and the way the Authority pursues the attainment of the objects;
- Affords the Authority adequate powers to execute its statutory duties and responsibilities.
- Permits the Minister to make regulations for the due carrying out of the provisions of the NAMFISA Act and the FIMA that the Minister deems necessary or advisable.
- Provides for the Authority to issue standards, guidelines, bulletins, rules, and other measures; and
- Requires the Chief Executive Officer to ensure that the provisions of the NAMFISA Act and the FIMA are applied consistently.

FINANCIAL INSTITUTIONS AND MARKETS ACT, No. 2 of 2021 (FIMA)

The object of the FIM and NAMFISA Acts is to consolidate and harmonise the laws regulating the non-banking financial institutions, financial intermediaries and financial markets in Namibia. In particular, the Acts seek to foster:

- the financial soundness of financial institutions and financial intermediaries;
- the stability of the financial institutions and markets sector;
- the highest standards of conduct of business by financial institutions and financial intermediaries;
- the fairness, efficiency and orderliness of the financial institutions and markets sector;
- the protection of consumers of financial services;
- the promotion of public awareness and understanding of financial institutions and financial intermediaries; and
- the reduction and deterrence of financial crime.

FINANCIAL INSTITUTIONS AND MARKETS ACT No. 2 of 2021 (FIMA)

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FIMA takes a wider approach not only to address prudential matters but also addresses market conduct and governance issues.

FIMA provides for the regulation and supervision of:

- Insurance companies, agents and brokers (Chapter 2)
- Financial Markets (Chapter 3)
- Collective Investment Schemes (Chapter 4)
- Retirement Funds, Beneficiary Funds and Administrators (Chapter 5)
- Medical Aid Funds (Chapter 6)
- Friendly Societies (Chapter 7)
- Fund and Society Administrators (Chapter 8)
- Property held in trust (Chapter 9)
- General matters across all financial institutions – Chapter 10

FIMA – CHAPTER 2: INSURANCE (HIGHLIGHTS)

- Chapter 2 of the FIM Act introduces the following concepts:

  - Gap Insurance:
    - Is defined for purposes of differentiating insurance business from medical aid fund business to prevent overlapping of insurance and medical aid fund activities.
    - Section 4(1) read with section 465(5)(d) empowers the Minister to define “gap insurance” by Regulation. Draft Regulation 2.2 in place.

  - Capital Adequacy Requirement:
    - Aim is to set capital control levels to ensure solvency at all times to protect the interests of policyholders and to maintain market stability.
    - Section 20(1)(a) provides that assets of an insurer must exceed the CAR.CAR to be defined by NAMFISA in a Standard. Draft Standards 2.1, 2.2 and 2.12 in place.

  - Cell captives:
    - Cell captive insurance defined with specific reporting requirements

FIMA – CHAPTER 2: INSURANCE (HIGHLIGHTS)

- Ancillary Activity:
  - Section 7(2)(c) empowers NAMFISA to allow an insurer to perform business activities that are ancillary to the class or classes of insurance business for which it is registered;
  - Section 7(3) lists which activities can be regarded to be included as ancillary to the business of an insurer; and
  - Section 410(3) (d) provides that NAMFISA may issue standards relating to the business that will be considered to be ancillary to the class or classes of insurance for which an insurer is registered.
- Micro-insurance:
  - Encourages coverage of insurance products and services to the low-income population ;
  - Specific registration for micro-insurance in order to underwrite micro-insurance products; and
  - Section 465(5)(a) empowers the Minister to define meaning of micro-insurance. Draft Regulation 2.1 sets out benefit thresholds and other criteria for micro-insurance products.

FIMA – CHAPTERS 3 AND 4 : FINANCIAL MARKETS AND COLLECTIVE INVESTMENT SCHEMES (HIGHLIGHTS)

- Regarding financial markets and collective investment schemes (unit trust schemes), the Act –

  - broadens the **scope of an exchange** by making provision for different **types of exchanges** to be formed and additional **securities and types of securities** that may be listed;

  - introduces **market abuse and insider trading offences**, and **widens the scope of custody and administration of securities** while it introduces, for example, **uncertificated securities** and provides for how to deal with certificated securities;

  - introduces a **central securities depository** and a **securities clearing house** to make the markets more efficient and to protect investors; and

  - widens the scope of unit trust schemes by introducing **different collective investment schemes** and how these are administered. It sets out broad principles for **investor protection**, including the **separation and segregation** of assets and funds.

FIMA – CHAPTER 5: RETIREMENT FUNDS (HIGHLIGHTS)

- Chapter 5 introduces Beneficiary Funds, which is aimed at managing funds (benefits) payable on the death of a member of a retirement fund to beneficiaries.
- Specific provisions detail how and when fund contributions must be paid and non-compliance may result in personal liability of the officers responsible.
- Deductions from benefits are strictly regulated and benefits remain, in general, not reducible, transferable or executable.
- The Minister may make regulations relating to the preservation of retirement benefits.

FIMA – CHAPTER 6 : FRIENDLY SOCIETIES (HIGHLIGHTS)

- Chapter 6 outlines the scope of the benefits that can be provided under a friendly society scheme.

FIMA – CHAPTER 7 : MEDICAL AID FUNDS (HIGHLIGHTS)

- Provision is made for the registration of medical aid fund brokers.

- The provisions relating to the establishment, functions and powers of NAMAF in the current Medical Aid Funds Act remain

FIMA– CHAPTER 8 : FUND AND SOCIETY ADMINISTRATORS (HIGHLIGHTS)

- Fund and society administrators are now regarded as financial intermediaries, subject to supervision and regulation.
- The Chapter prescribes the administration services that can be provided by an administrator

FIMA – CHAPTER 10 (HIGHLIGHTS)

- General provisions under Chapter 10 provides for incidences across all financial institutions such as:

  - Registration which requires key persons to be fit and proper;
  - Prohibits operation of unregistered entities;
  - Powers to impose conditions for registration; and
  - Financial institutions to maintain principal office and principal officer.
  - NAMFISA to carry out on-site inspections;
  - NAMFISA's powers in respect of market conduct;

FIMA – CHAPTER 10 HIGHLIGHTS (CONT.)

- NAMFISA's powers to issue Standards, Directives and Guidelines;
- Winding up, mergers and transfers of financial institutions;
- Creation of Financial Services Compensation Scheme; and
- Transitional provisions;

- General Sections of the Act also provides NAMFISA with broad powers to require compliance:
  - Impose administrative penalties for non-compliance;
  - Power to cancel registration; and
  - Winding-up of financial institutions and appointment of statutory managers.

FIMA - GOVERNANCE AND RISK MANAGEMENT

- Main governance and risk management provisions include:

  - Composition and duties of Boards of financial institutions;
  - One third of the Board must be independent;
  - Board members and key persons to be fit and proper;
  - Board to comply with code of conduct, act prudently and avoid conflicts of interest;
  - Board mandated to perform specific functions and manage risks;
  - Principal officers are required to be a part of the Board
  - NAMFISA may direct replacement of key persons or board members; and
  - Board members to comply with “duty of care” provisions, requiring that they take account of interests of stakeholders, act honestly and in good faith.

FIMA - GOVERNANCE AND RISK MANAGEMENT

- Controls regarding Auditors and Valuators:
  - Appointment of auditors and valuators;
  - Required to be independent and fit and proper;
  - Must follow generally accepted standards of practice;
  - Must report on any observation having a potentially significant adverse effect on a financial institution;
  - May be directed by NAMFISA to undertake special evaluations or examinations; and
  - Auditor and valuator must keep each other informed.

FIMA - SUBORDINATE LEGISLATION

- The critical Standards to be issued under FIMA were published in the Government Gazette on 22 December 2021.
- All financial institutions, financial intermediaries, industry associations or self-regulatory organisations were invited to make representations in writing to NAMFISA with respect to the draft proposed regulations and standards not later than 28 February 2022.
- Such representations will be considered in determining whether to issue the regulations and standards as originally published or in a modified form.
- NAMFISA further allowed consultation on the subordinate legislation for trade unions, civil societies and interested parties – due date 19 May 2022
- The Minister of Finance in consultation with NAMFISA, postponed the implementation of a regulation dealing with preservation of pension benefits

FIMA - MARKET CONDUCT PROVISIONS

NBFI Sector	Some key Provisions
Insurance	Section 23: Prohibition against tied selling Section 29: Use of plain language Section 30: Misleading, false and deceptive statements
Capital Markets	Section 109: Disclosure of information by issuers Section 149: Disclosure of information Section 154: Principles on code of conduct Section 156: Insider trading offences Section 158: Confidentiality and insider trading Section 159: False, misleading or deceptive statements, promises and forecasts Section 166: Confidentiality and sharing of information
Collective Investment Schemes	Section 172: Disclosure of information
Retirement Funds	Section 250: Registration prohibitions
Medical Aid Funds	Section 323: Registration prohibitions Section 325: Prohibited marketing
General Market Conduct Requirements	Section 406: Prohibition against false and misleading statements Section 407: Declaration of practices as irregular or undesirable Section 408: Market Conduct powers of NAMFISA

NAMFISA SUPERVISION TOOLKIT

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SUPERVISORY TOOLKIT

Off-site Inspection

Desktop reviews with focus on gathering information.

Includes the following;

- Statutory returns filed by regulated entities
- Observing Media reports and social media platforms
- Mystery shopping (enquiries calls or visits)
- Financial service providers self assessments/returns
- Consumer advocacy groups

On-site inspection

Validating information gathering from off-site inspection and any other source.

- Assists the Authority to monitor the evolution of risks for NBFIs over certain supervisory cycles.
- Scope and length of onsite inspections will be determined by the risk profile of an institution.

NAMFISA RISK BASED SUPERVISION METHODOLGY OVERVIEW

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RISK BASED SUPERVISION

- Risk-based supervision provides a structured approach focusing on
  - identifying potential risks faced by regulated entities, and
  - assessing the financial and operational factors in place to mitigate those risks.

- RBS allows NAMFISA to direct its resources towards the issues and institutions which pose the greatest threat to its supervisory objectives.

- RBS can improve supervisory outcomes such as safety and soundness and can also lead to more efficient allocation of resources, i.e., human and other resources.

RBS is more proactive as opposed to the current compliance (rule based) approach which is static and reactive in nature.

NAMFISA RBS APROACH – 10 PRINCIPLES

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1. SUPERVISORY METHODOLOGY

Risk and principle based, forward looking and outcome focused for timely interventions.

2. BOARD OF DIRECTORS, TRUSTEES AND SENIOR MANAGEMENT ACCOUNTIBILITY

Financial institutions' Boards of Directors and Pension Fund Trustees have a fiduciary duty and, together with Senior Management, are ultimately accountable for prudent management and financial soundness of their institutions and their compliance with market conduct and legislative requirements.

3.RISK TOLERANCE

To reduce the likelihood and impact of failure of financial institutions and pension funds, rather than prevent all failures;

To identify and address material market conduct and legislative

4. CONSOLIDATED SUPERVISION

Financial conglomerates are supervised on a consolidated basis in conjunction with other supervisors.

5. SOUND PREDICTIVE JUDGEMENT

Sound predictive judgement in identifying and assessing risk is fundamental to the effectiveness.

NAMFISA RBS APPROACH – 10 PRINCIPLES

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6. USE OF GOVERNANCE AND OVERSIGHT FUNCTIONS

Where appropriate, leveraging off the work of the financial institutions' governance and oversight functions to minimize duplication of effort.

7. RELIANCE ON AND USE OF WORK DONE BY EXTERNAL STAKEHOLDERS

Relies on the external auditors for the fairness of the financial statements and uses their work to modify the scope of supervision to minimize duplication of effort. Relies on actuaries for the adequacy of policy liabilities and uses their work to modify the scope of supervision of financial institutions and pension funds.

8. TIMELY RISK FOCUSED REPORTING

Communications of assessments and requirements to financial institutions and pension funds are risk focused and timely.

9. CONTINUOUS AND DYNAMIC

Supervision is continuous and dynamic. It requires monitoring and identifying changes in risks, arising both from the financial institutions and pension funds and their operating environments, and readily assessing their impact on the risk profiles of financial institutions and pension funds and dynamically adjusting supervisory priorities as warranted for timely intervention.

10. ALLOCATION OF RESOURCES

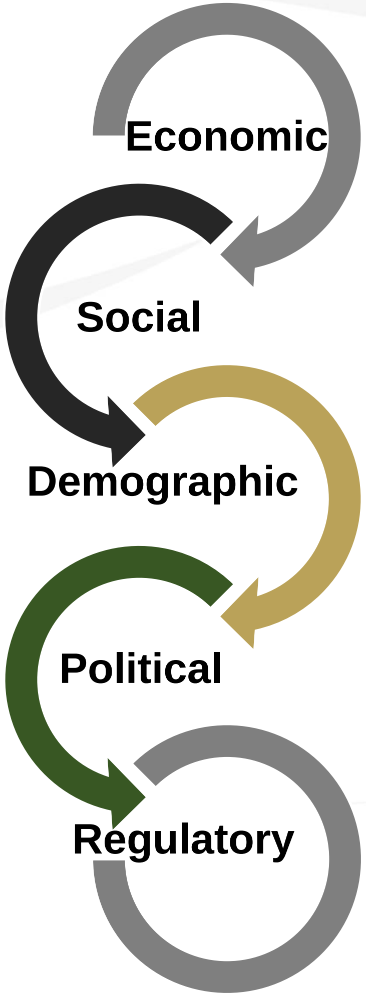
Allocates supervisory resources based on risk profiles of financial institutions and pension funds, and their systemic importance.

RBS METHODOLOGY

Understanding the Impact Factors on a NBFI

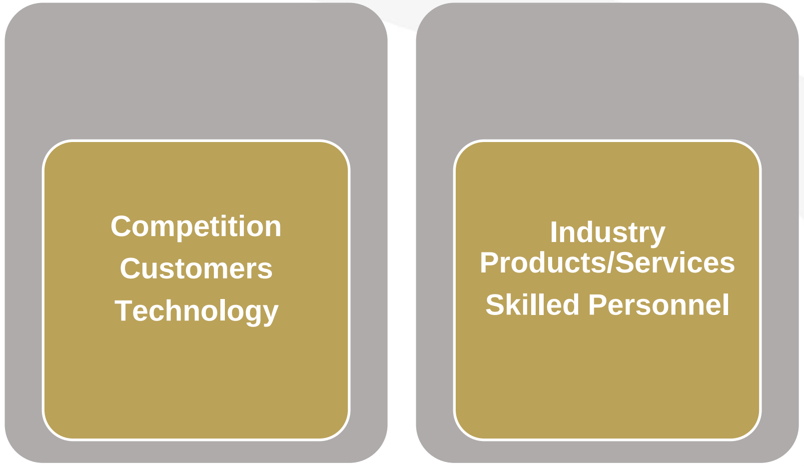
Macro

Environmental Factors



Meso

Industry Analysis



Micro

NBFIs Business Profile

RBS METHODOLOGY

RISK MATRIX						
Significant Activities	**Materiality**	Inherent Risks		Quality of Risk Management	Residual Risk	Direction of Risk
Activity 1 **Activity 2** Question 1 **Etc….**		□ Credit □ Market Question 2 □ Insurance □ Operational □ Legal & Regulatory □ Strategic	Operational Management	Oversight □ Compliance □ Actuarial Question 3 □ Risk Management □ Internal Audit □ Senior Management □ Board Oversight		
Overall Rating				Overall Assessment		

Question 4

Capital		Earnings		Liquidity	
Risk Profile		Direction of Risk		Time Frame	

Intervention	

Key questions

Q1 – What are the key significant activities affecting entity's strategy

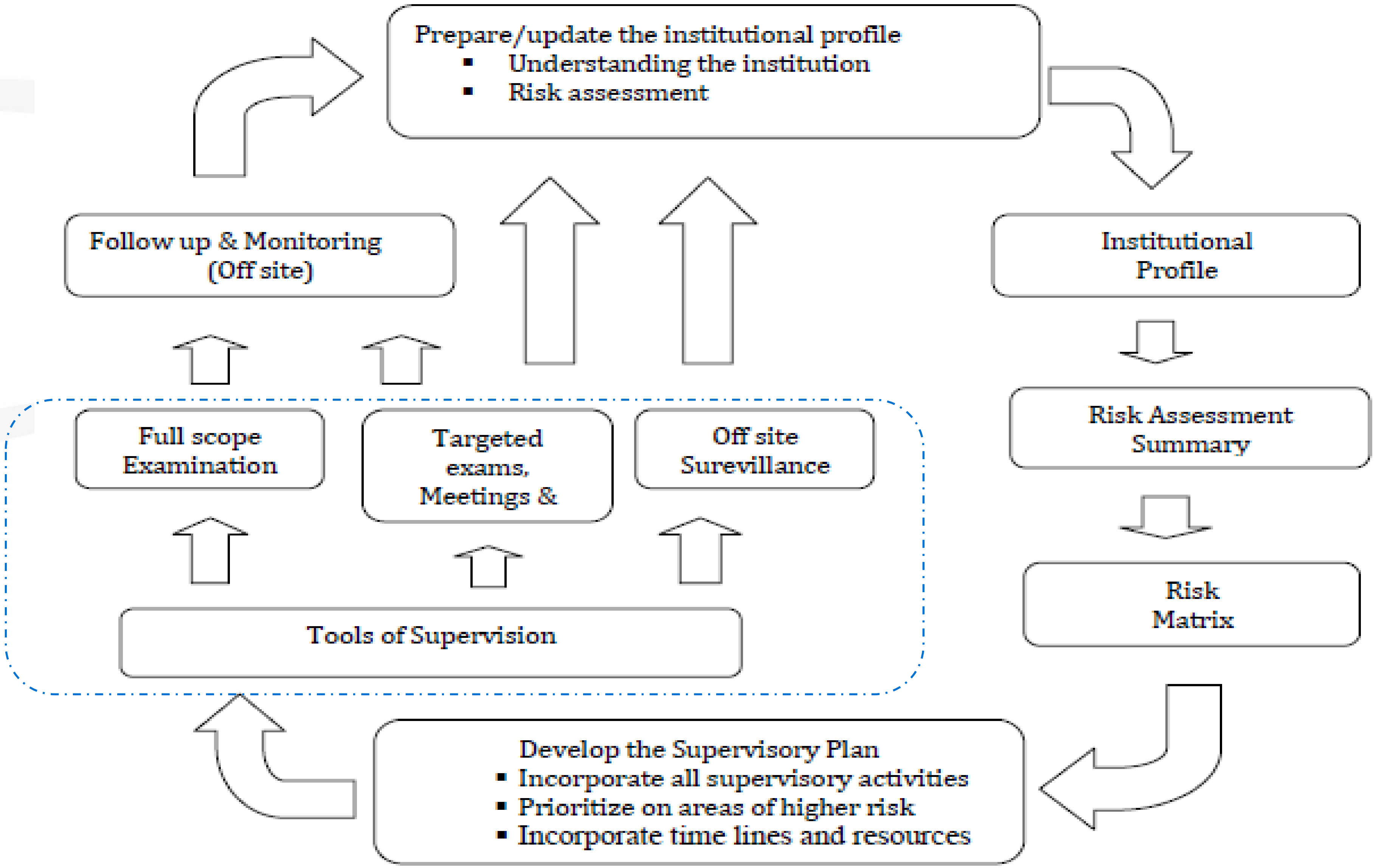
Q2 – What key risks are inherent or emanates from each significant activity identified

Q3 – Adequacy of quality of risk management (controls) to mitigate risks as a primary measure

Q4 – Does the NBFI have enough capital to mitigate risks (residual risk)

The overall level of intervention is determined based on the net risk.

RBS SUPERVISORY CYCLE



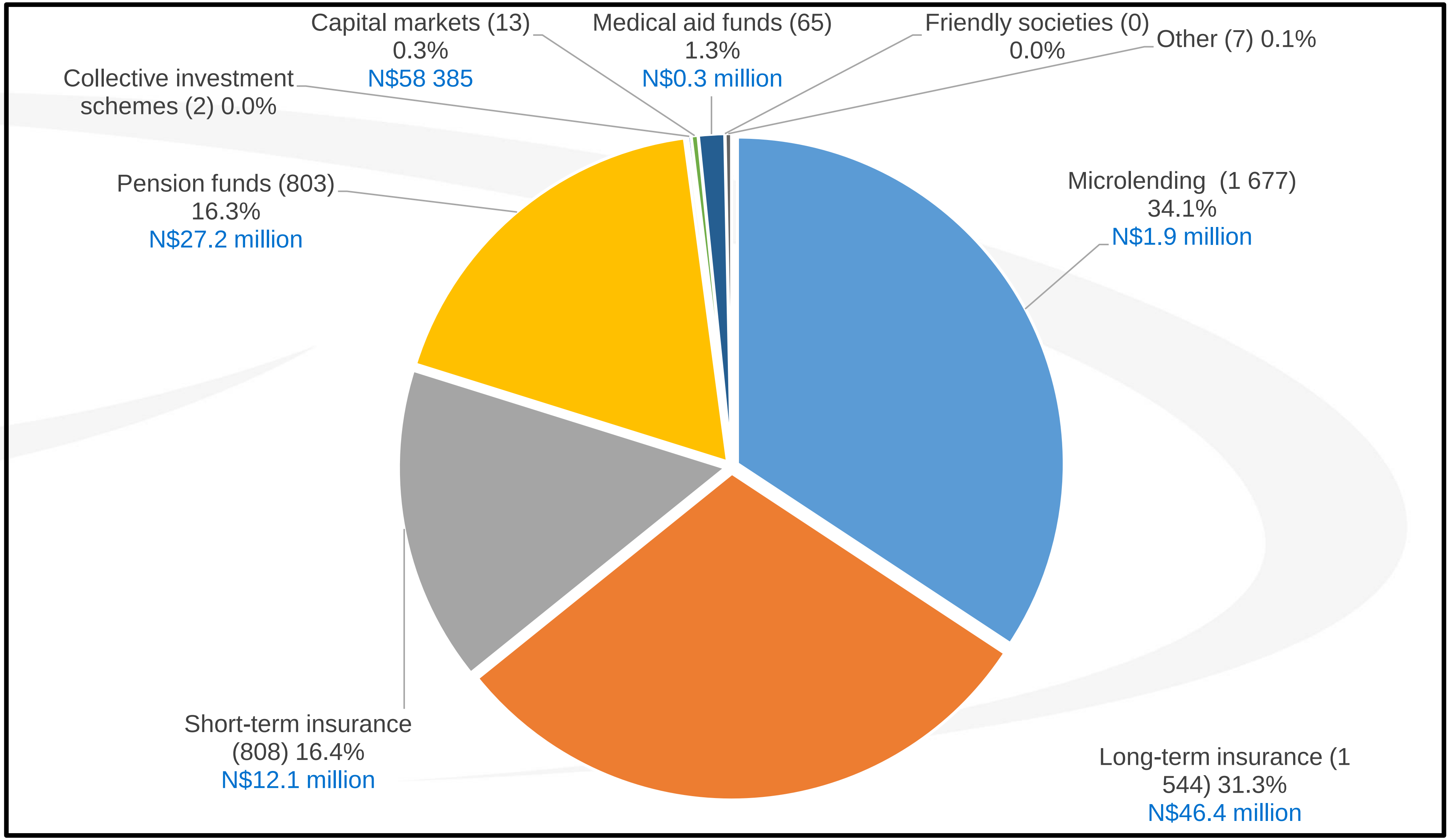
Steps	Activity	Output
1	**Understanding the institution**	Institutional profile
2	**Risk assessment**	Risk matrix
3	**Supervisory planning**	Supervisory plan
4.	**Execution**	exam report
5	**M&E**	Agree on remedial actions and The cycle repeats

MARKET CONDUCT

REPORTED COMPLAINTS (2017-2021)

Industries	Types of Complaints
Microlenders	Overcharged interest Non-payment of refunds; Illegal deductions Non-cancellation of contracts
Long-term insurance companies	Non-cancellation of insurance contracts Repudiation of funeral benefit claims Non-payments of death benefits Non-provision of information Low investment/savings values
Short-term insurance companies	Repudiation of motor vehicle accident, property insurance, legal representation claims and Non-payment of refunds Service not acceptable;
Pension funds	Non-payment of pension benefits Non-payment of death benefits Non-payment of retirement annuity benefits Non-payment of pension contributions Non-provision of information

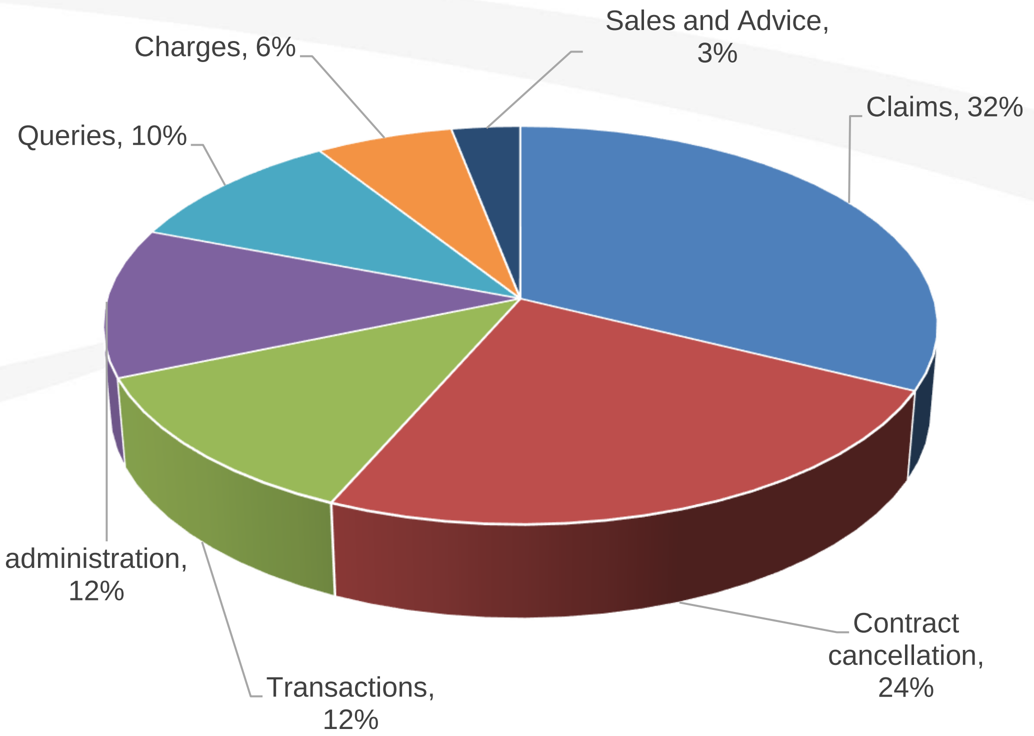
REPORTED COMPLAINTS (2017-2021)



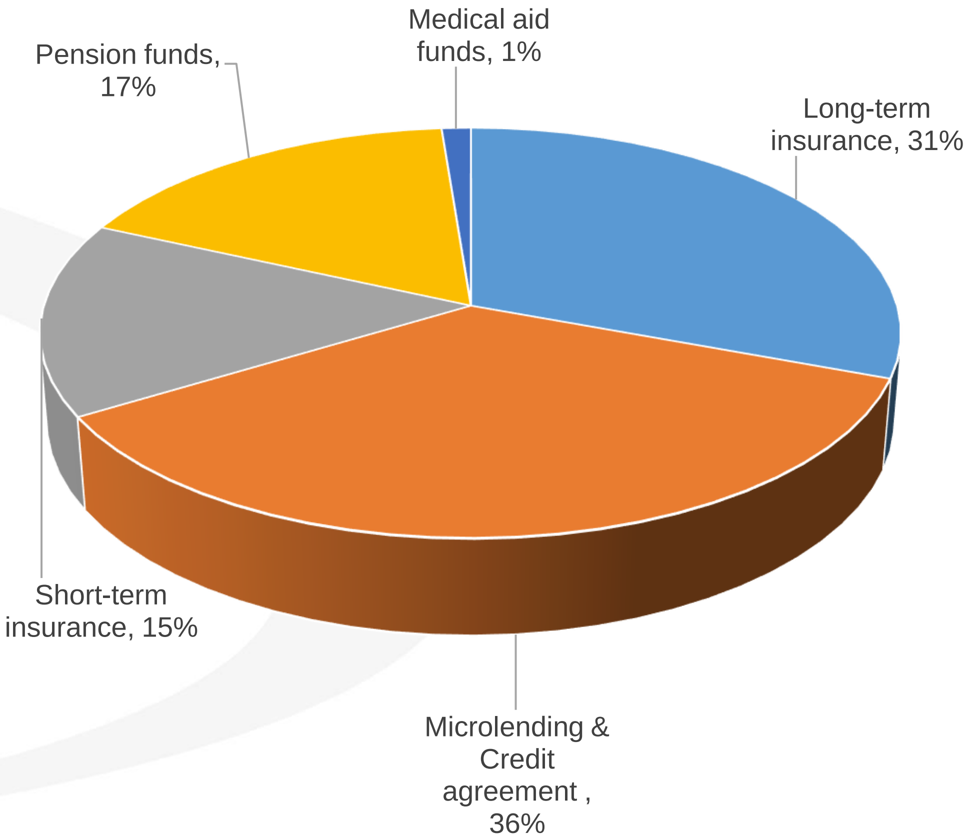
N$88 million to consumers

TOP TEN REPORTED COMPLAINTS (2012-2021)

A : Types



B : Sectoral Concentration



REPORTED COMPLAINTS (2017-2021)

<table>
<tr><th>Industries</th><th>Causes</th></tr>
<tr><td>Microlenders</td><td rowspan="4">▪ Consumers signed blank or incomplete documents;
▪ Consumers did not understand a specific financial benefit or product offered because of insufficient, inappropriate or no explanations given when it was sold to them;
▪ Service providers’ cumbersome cancellation processes;
▪ Information asymmetry between consumers and financial service providers;
▪ Lack of effective in-house complaints management systems;
▪ Service providers delayed assessing and finalising claims; and
▪ Poor customer service offered to consumers.</td></tr>
<tr><td>Long-term insurance companies</td></tr>
<tr><td>Short-term insurance companies</td></tr>
<tr><td>Pension funds</td></tr>
</table>

FIMA - TREATING CUSTOMER FAIRLY STANDARD

Treating Customer Fairly (TCF) Standard under FIMA addresses the root causes of complaints and ensure that consumers of financial services are protected.

TCF standard aims at improving outcome on market conduct.

TCF Standard places a requirement on all NBFIs to provide fair treatment to consumers across all stages of the product life cycle. This is done in order to achieve the expected seven desired outcomes, which are*:*

- Fair Treatment Culture;
- Appropriate Product Design and Distribution of Products and Services;
- Clear and relevant information is provided;
- Proper advice to consumers;
- Products and services perform as promised and at an acceptable standard;
- No unreasonable post sale barriers;
- Privacy and data protection.

FINANCIAL STABILITY

FINANCIAL SYSTEM STABILITY

- ❖ NAMFISA and FIM Acts foster financial system stability of the NBFI Sector

Rationale for Financial System Stability

- Financial stability is important because:
  - it reflects a sound financial system,
  - it reinforces trust in the financial system; and
  - prevents phenomena such as a run NBFIs, which can destabilize an economy
- A stable financial system is capable of
  - efficiently allocating resources,
  - assessing and managing financial risks,
  - maintaining employment levels close to the economy's natural rate, and
  - eliminating relative price movements of financial assets that will affect monetary stability or employment levels.

Financial stability is paramount for economic growth, as most transactions in the real economy are made through the financial system.

FINANCIAL STABILITY OF THE NBFI

- The key risks in the Non-bank industry have remained broadly unchanged since the last FSR
- Solvency Risk is up due to lower profit levels compared to previous periods.
- Continuous monitoring of risk by the Authorities

Key Risks to keep an eye on	Direction of risk since April 2021	Probability of risk materialising in 2022	Impact of risk materialising in 2022
Funding position	Unchanged		
Cash flow risk	Up		
Market risk	Unchanged		
Solvency position	Up		

CONCLUSION

- NAMFISA and FIM Acts to come in force 1 October 2022
- Subordinate legislation to be finalized and be ready for implementation by 1 October 2022
- RBS to be implemented by 1 October 2022
- Consumer Credit Bill to be drafted and submitted to the Ministry of Finance for promulgation process
- Legislative tools that robust and aligned to generally acceptable internal standards of financial regulation, such as FIMA and NAMFISA Act, are imperative for
  - Financial system stability
  - Development and deepening of the financial markets
  - Consumer protection and awareness
  - Ultimately for economic development for Namibia

THANK YOU

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