

NaSIA

# Newsletter

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# Editorial by

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## Judicial Review of Administrative Decisions or Actions taken by Policymakers and Regulators

### Introduction

Our members as industry practitioners engage with policymakers and regulators who often take discretionary administrative decisions which are met with different or mixed retorts. This month's editorial aims to briefly highlight the legal basis of the administrative discretion that is exercised by administrative officials, as well as the legal principles governing administrative justice. These principles can often assist in weighing which decisions to take under judicial review and which to accept.

### Administrative Discretion and Administrative Justice

Article 18 of the Namibian Constitution constitutes the grounds for the expectation of administrative justice in Namibia. Article 18 states:

*“Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.”*

The above Article therefore forms the basis upon which decisions, made by Ministers and other administrative officials, may be reviewed by a competent court. In exercising administrative discretion that is granted to Ministers and other administrative officials through different statutes or the Constitution, Ministers and other officials are supposed to comply with certain legal principles. SK Amoo (In *An Introduction to Namibian Law* at p. 319) states that administrative discretion is indispensable for the effective and expeditious day to day running of government. SK Amoo further states that an administrative official is said to have discretion in a matter when that official has the liberty to choose between alternate courses of action and the correctness or incorrectness of the decision cannot be demonstrated. It becomes clear then that administrative discretion is susceptible to abuse, and even the judicial control over that discretion is actually limited.

### Legal Principles

To circumvent the risk of abuse in taking administrative decisions there are certain legal principles that administrative officials should comply with, the lack of compliance with those principles forms the basis of judicial review. The fairness concept embedded in Article 18 has been interpreted through Namibian case law to mean compliance with the rules of natural justice, which are:

1. The *audi alteram partem* rule requires the Minister to grant a fair hearing, which can be in written form, when carrying out their administrative decision, and this includes providing reasons for the decision; and
2. The *nemo iudex in causa sua* rule which provides that a person should not be a judge in his or her own case, the rule is aimed at preventing bias. Unfortunately, this rule has limited application in our space because of how our public sector administration is set up, an administrative official may be both the decision-maker and judge. Thus, through case law, it was decided that the rule is more aimed at preventing person bias in discretionary decision making and for the court to set aside an official's decision, real or substantial bias must be established.

The reasonableness concept in Article 18 deals with the substance of the discretion or the act itself. This concept requires the courts to go beyond looking at the procedural aspects of the decision and weigh in on the substance as well, this is how courts may assess if there was an abuse of discretionary power.

SK Amoo states that abuse of discretionary power may include bad faith, ulterior purpose and an administrative official failing to apply his mind to the issue or failing to consider extraneous factors.

### **Conclusion**

For the efficient running of a Government, Ministers and other officials are granted discretionary powers to make certain decisions. However, those decisions must be made within the procedural and substantive confines of the legal principles highlighted herein. The legal principles around administrative actions are well imbedded in our legal system to prevent abuse and arbitrariness.

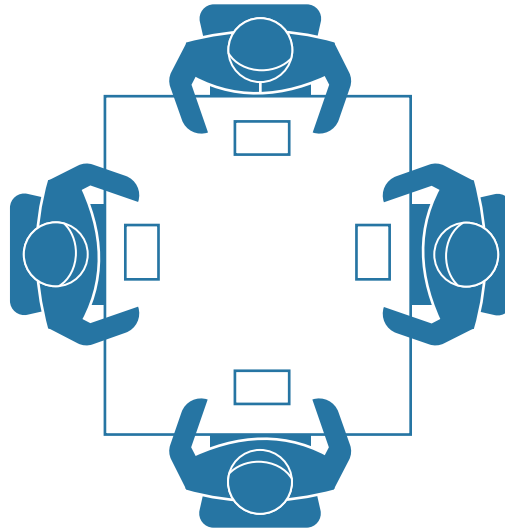
Our courts are not entitled to replace a decision made by an administrative official, however they can declare that a decision is *ultra vires* (outside the scope of the legal requirements) and instruct the administrative official to go back and follow the legal requirements and make a new decision.

Thus, in assessing whether to take a policymaker's decision under judicial review, and beyond the Statute that granted the power, consideration should be given to the Constitutional requirements, weighing both the procedural and substantive requirements that the policymaker is supposed to comply with.

Administrative justice is a Constitutionally protected right.

*Happy Reading!*

## 1. Upcoming Committee Meetings



The Committee meeting dates for 2026 will be announced in due course.

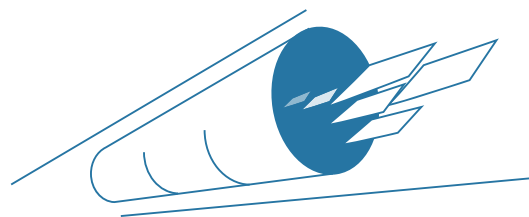


## 2. Submissions done:

Stakeholder	Dates of Submission	Matter	Committee
Ministry of Finance	24 September 2025	Discontinuation of Government Payroll Deduction Management System and Impact on the Local Insurance Industry.	NaSIA Industry
NAMFISA, Public Accountants and Auditors (PAAB)	25 September 2025	IFRS 17 Working Group Approval of the Namibian Long-Term Insurance Regulatory Returns Guideline	NaSIA Industry

### 3. In The Pipeline

The Secretariat has initiated research studies focused on long-term sector development and policy reform in key strategic areas. These will be shared with relevant Committees for discussion in due course.



### 4. IFRS 17 Working Group

NaSIA facilitated the establishment of the IFRS 17 Working Group to coordinate and streamline industry collective effort in developing the regulatory returns guideline needed to assist with the implementation of NAMFISA's Directives issued on 27 December 2024 (I/STI/02/2024, I/LTI/02/2024, I/MAF/02/2024).

The Long-Term Insurance (LTI) Returns Guide was finalized during the final IFRS 17 Working Group review session held with NAMFISA on 16 September 2025. A formal IFRS 17 Working Group endorsement letter was sent to NAMFISA and PAAB on 25 September 2025.

The final LTI regulatory returns guideline is the product of a collaborative effort between long-term insurance industry participants, supported by NaSIA, and NAMFISA as the regulators. The participation of technical experts from both the industry and the regulator in this process was critical to ensure that the guide is consistent across industry and fit for purpose to the auditors and the regulator.



## 5. NaSIA Career Days

Phase two of the NaSIA Career Day kicked off on 11 September 2025 with a guest lecture delivered by Ms. Mahevo Kadhepa from Ashburton Investments. Ms. Kashepa’s presentation focused on classification of financial markets, the role of financial institutions, and the use of equity and debt instruments in mobilising funds for growth. This session also provided students from the University of Namibia (UNAM) School of Accounting valuable insights into how businesses raise and manage capital to drive sustainable development.




The next guest lecture will focus on risk management strategies, derivative instruments, and risk-reducing approaches, and will be delivered by Ms. Erry lipumbu from Sanlam Allianz Investments on 2 October 2025.

## 6. Stakeholder Engagements

Stakeholder	Date of Engagement	Key Outcomes
Ministry of Finance (MoF), Bank of Namibia, NAMFISA	16 September 2025	<p><b>Discontinuation of Government Deductions Codes</b></p> <ul style="list-style-type: none"> <li>Payroll Deduction Management System Committee comprising of representative from Ministry of Finance (MoF), Bank of Namibia (BoN) and NAMFISA invited NaSIA and its members to a consultative meeting. The meeting was held on 16 September 2025 and was aimed at presenting the outcome of the review study that was conducted on effectiveness of the current Government PDMS and to also consult industry on their decision to discontinue deduction codes issued through the PDMS due to the expiry of the contract between Avil Payroll Deduction Management Pty Ltd and the Ministry of Finance.</li> <li>During the engagement, several concerns were raised. One of the key concerns include the 3-months transition period afforded by the MoF. The PDMS Committee indicated that it is amenable to stakeholders providing recommendations in terms of what would be the most feasible and practical timeline for implementation</li> </ul>
Financial Literacy Initiative (FLI)	25 September 2025	<p><b>NaSIA Joins FLI's Retire Wise Booklet Launch</b></p> <ul style="list-style-type: none"> <li>NaSIA was honored to be invited to the official launch of the Retire Wise booklet, a flagship initiative by the Financial Literacy Initiative (FLI) under the Ministry of Finance. The event, officiated by the Minister of Finance, highlighted the national importance of strengthening financial literacy and retirement preparedness for all Namibians.</li> <li>The Retire Wise booklet serves as a practical guide for individuals and households, covering key areas such as savings, pensions, debt management, budgeting and fraud prevention. It is designed to equip citizens with the tools to plan effectively for a secure and dignified retirement. Distributed through FLI's broad partner network, the booklet aims to reach diverse communities across the country.</li> </ul>

## 6. Stakeholder Engagements continue...

Stakeholder	Date of Engagement	Key Outcomes
Financial Literacy Initiative (FLI)	25 September 2025	<p><b>NaSIA Joins FLI's Retire Wise Booklet Launch</b></p> <ul style="list-style-type: none"> <li>NaSIA is proud to have contributed to the content of this important publication, specifically offering expertise on savings, investments and estate planning. This contribution reflects our commitment to promoting long-term financial security and ensuring that Namibians are empowered with knowledge to make sound financial decisions for their future.</li> </ul>
Bank of Namibia (BoN)	30 September 2025	<p>The Bank of Namibia announced the official launch of the Namibia Sustainable Finance Alliance (NSFA) on the 30th September 2025 in Windhoek.</p> <p>NaSIA is proud to have been part of this important milestone. At the inaugural meeting, members of the Alliance, including NaSIA, formally endorsed the Terms of Reference, which set out the governance framework and operational mandate of the NSFA. This step establishes the Alliance as a national platform for cooperation, dialogue, and collective action on sustainable finance.</p> <p>The Alliance unites regulators, financial institutions, industry associations such as NaSIA, and Government to:</p> <ul style="list-style-type: none"> <li>Promote sustainable finance across the financial system.</li> <li>Facilitate knowledge sharing and capacity building within the sector.</li> <li>Support Namibia's climate and development goals, including the ambition of achieving a net-zero energy-based economy by 2050.</li> </ul> <p>Through this collaboration, the Alliance seeks to strengthen the resilience of the financial sector, channel investment into climate-smart and sustainable projects, and ensure that Namibia's financial system plays its full role in advancing long-term national prosperity.</p> <div data-bbox="619 1738 1402 1998">  </div>

# NaSIA

Namibia Savings Insurance and Investment Association (“NaSIA”) is incorporated as a not-for profit company and represents the interest of its members; financial institutions such as unit trusts companies, investment managers and long-term insurers. NaSIA’s strategic purpose and mandate is to continue to strengthen relationships with key stakeholders and to remain a trusted partner to these stakeholders in the financial services industry. NaSIA has been tasked with ensuring that as a collective the industry remains relevant and sustainable.

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