

## PENSION FUNDS ACT 24 OF 1956

[ASSENTED TO 28 APRIL 1956]

[DATE OF COMMENCEMENT: 1 JANUARY 1958]

*(English text signed by the Governor-General)*

**as amended by**

Finance Act 81 of 1957

Finance Act 80 of 1959

Inspection of Financial Institutions Act 68 of 1962

Second Finance Act 58 of 1966

Financial Institutions Amendment Act 65 of 1968

Financial Institutions Amendment Act 80 of 1969

Financial Institutions Amendment Act 23 of 1970

Financial Institutions Amendment Act 91 of 1972

Financial Institutions Amendment Act 101 of 1976

Financial Institutions Amendment Act 94 of 1977

Financial Institutions Amendment Act 80 of 1978

Financial Institutions Amendment Act 103 of 1979

Financial Institutions Act 99 of 1980

Financial Institutions Amendment Act 82 of 1982

Corporation for Public Deposits Act 46 of 1984

Financial Institutions Amendment Act 86 of 1984

Financial Institutions Amendment Act 50 of 1986

Financial Institutions Amendment Act 51 of 1988

Legal Succession to the South African Transport Services Act 9 of 1989

Financial Institutions Amendment Act 53 of 1989

Financial Institutions Second Amendment Act 54 of 1989

Financial Institutions Amendment Act 64 of 1990

Financial Services Board Act 97 of 1990

Financial Institutions Amendment Act 54 of 1991

Financial Institutions Second Amendment Act 119 of 1991

Financial Services Board Amendment Act 41 of 1992

Financial Institutions Amendment Act 83 of 1992

Financial Institutions Amendment Act 7 of 1993

Financial Institutions Second Amendment Act 104 of 1993

Labour Relations Act 66 of 1995

Pension Funds Amendment Act 22 of 1996

Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996

Judicial Matters Amendment Act 104 of 1996

Pension Funds Amendment Act 94 of 1997

Long-term Insurance Act 52 of 1998

Maintenance Act 99 of 1998

Pension Funds Second Amendment Act 39 of 2001

Pension Funds Amendment Act 65 of 2001

Pension Funds Amendment Act 11 of 2007

Revenue Laws Amendment Act 35 of 2007

Financial Services Laws General Amendment Act 22 of 2008

Revenue Laws Amendment Act 60 of 2008

**Regulations under this Act**

ASSUMPTIONS FOR THE DETERMINATION OF MINIMUM INDIVIDUAL RESERVES OF MEMBERS OF DEFINED CATEGORIES OF PENSION FUNDS (BN 37 in GG 29767 of 2 April 2007)

CATEGORISATION AND PRESCRIBED FINANCIAL STATEMENTS APPLICABLE TO THE DIFFERENT CATEGORIES OF FUNDS (BN 99 in GG 31481 of 3 October 2008)

CONDITIONS FOR SCHEMES FOR APPORTIONMENT OF ACTUARIAL SURPLUSES OF UMBRELLA FUNDS (BN 36 in GG 24809 of 25 April 2003)

DIRECTIVE PF 3: SURPLUS APPORTIONMENT SCHEMES AND NIL RETURNS (BN 22 in GG 31904 of 16 February 2009)

DIRECTIVE PF 4: VOLUNTARY DISSOLUTION OR PARTIAL DISSOLUTION OF A FUND (BN 75 in GG 32328 of 18 June 2009)

FINANCIAL SERVICES BOARD: DIRECTIVE PF 2: AMALGAMATIONS AND TRANSFERS (BN 134 in GG 31664 of 2 December 2008)

METHODS OF APPORTIONMENT DEEMED TO BE EQUITABLE (BN 37 in GG 24809 of 25 April 2003)

PENSION FUNDS: REGULATIONS (GN R98 in GG 162 of 26 January 1962)

RATE OF INTEREST IN RESPECT OF INTEREST PAYABLE ON CERTAIN AMOUNTS AND VALUES IN TERMS OF SECTION 13A (7) (GN 338 in GG 22210 of 6 April 2001)

REGULATORY REPORTING REQUIREMENTS FOR RETIREMENT FUNDS (BN 14 in GG 31838 of 4 February 2009)

REPORT OF THE INDEPENDENT AUDITORS OF RETIREMENT ANNUITY FUNDS, UMBRELLA FUNDS AND PRESERVATION FUNDS (BN 64 in GG 31228 of 8 July 2008)

REPORT OF THE INDEPENDENT AUDITORS OF PENSION FUNDS, OTHER THAN RETIREMENT ANNUITY FUNDS, UMBRELLA FUNDS AND PRESERVATION FUNDS (BN 75 in GG 31306 of 4 August 2008)

REQUIREMENTS IMPOSED BY THE FINANCIAL SERVICES BOARD FOR NOMINEES TO OPERATE IN SOUTH AFRICA (BN 106 in GG 29274 of 5 October 2006)

REQUIREMENTS IMPOSED BY THE FINANCIAL SERVICES BOARD FOR NOMINEES TO OPERATE IN SOUTH AFRICA, 2007 (BN 63 in GG 29911 of 25 May 2007)

RULE RELATING TO THE CODE OF CONDUCT (BN 108 in GG 31534 of 24 October 2008)

**ACT**

**To provide for the registration, incorporation, regulation and dissolution of pension funds and for matters incidental thereto.**

**CHAPTER I**

**ADMINISTRATION AND APPLICATION OF ACT AND INTERPRETATION OF TERMS (ss 1-3B)**

**1 Definitions**

(1) In this Act, unless the context indicates otherwise-

**'actuarial surplus'**, in relation to a fund which is-

(a) subject to actuarial valuation, means the difference between-

(i) the value that the valuator has placed on the assets of the fund less any credit balances in the member and employer surplus accounts; and

- (ii) the value that the valuator has placed on the liabilities of the fund in respect of pensionable service accrued by members prior to the valuation date together with the value of the amounts standing to the credit of those contingency reserve accounts which are established or which the board deems prudent to establish on the advice of the valuator;
- (b) exempt from actuarial valuation, means the difference between-
  - (i) the fair value of the assets of the fund less any credit balances in the member and employer surplus accounts; and
  - (ii) the sum of the values of the amounts standing to the credit of all the accounts held for individual members, whether contributory or paid-up, plus the value of any other liabilities plus the amounts standing to the credit of any investment reserve account set up to facilitate the smoothing of fund return credited to member accounts and such contingency reserve accounts which are established or which the board deems prudent to establish:  
 Provided that, for the purpose of quantifying the actuarial surplus in terms of section 15B, the surplus utilised improperly by the employer in terms of section 15B (6) shall be added to the difference calculated in paragraph (a) or (b), as the case may be;

[Definition of 'actuarial surplus' inserted by s. 1 (a) of Act 39 of 2001 and substituted by s. 1 (a) of Act 11 of 2007.]

**'actuary'** means a person admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the Minister by notice in the *Gazette*;

[Definition of 'actuary' substituted by s. 21 (a) of Act 104 of 1993 and by s. 1 (a) of Act 22 of 2008.]

**'Adjudicator'** means the Pension Funds Adjudicator or Deputy Pension Funds Adjudicator and any acting Pension Funds Adjudicator appointed under section 30C (1);

[Definition of 'Adjudicator' inserted by s. 1 (a) of Act 22 of 1996 and substituted by s. 1 (b) of Act 11 of 2007.]

**'administrative penalty'** .....

[Definition of 'administrative penalty' inserted by s. 1 (c) of Act 11 of 2007 and deleted by s. 1 (b) of Act 22 of 2008.]

**'administrator'** means a person approved by the registrar in terms of section 13B (1);

[Definition of 'administrator' inserted by s. 1 (c) of Act 11 of 2007.]

**'advisory committee'** means the Pension Funds Advisory Committee established by section 3B;

[Definition of 'advisory committee' inserted by s. 1 (c) of Act 11 of 2007.]

**'audit-exempt fund'** means a fund which has been exempted by the registrar in terms of section 2 (5) (a) from being required to be subject to audit;

[Definition of 'audit-exempt fund' inserted by s. 1 (c) of Act 11 of 2007.]

**'beneficiary'** means a nominee of a member or a dependant who is entitled to a benefit, as provided for in the rules of the relevant fund;

[Definition of 'beneficiary' inserted by s. 1 (c) of Act 11 of 2007.]

**'beneficiary fund'** means a fund referred to in paragraph (c) of the definition of 'pension funds organisation';

[Definition of 'beneficiary fund' inserted by s. 1 (c) of Act 22 of 2008.]

**'benefit'**, in relation to a fund, means any amount payable to a member or beneficiary in terms of the rules of that fund;

[Definition of 'benefit' inserted by s. 1 (c) of Act 11 of 2007.]

**'board'** means the board of a fund contemplated in section 7A of this Act;

[Definition of 'board' inserted by s. 1 (a) of Act 22 of 1996.]

**'board member'** means any member of a board;

[Definition of 'board member' inserted by s. 1 (d) of Act 11 of 2007.]

**'commencement date'** means the date of commencement of the Pension Funds Second Amendment Act, 2001;

[Definition of 'commencement date' inserted by s. 1 (b) of Act 39 of 2001.]

**'complainant'** means-

- (a) any person who is, or who claims to be-
  - (i) a member or former member of a fund;
  - (ii) a beneficiary or former beneficiary of a fund;
  - (iii) an employer who participates in a fund;
- (b) any group of persons referred to in paragraph (a) (i), (ii) or (iii);
- (c) a board of a fund or member thereof; or
- (d) any person who has an interest in a complaint;

[Definition of 'complainant' inserted by s. 1 (a) of Act 22 of 1996.]

**'complaint'** means a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging-

- (a) that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;
- (b) that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;
- (c) that a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant; or
- (d) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund;

but shall not include a complaint which does not relate to a specific complainant;

[Definition of 'complaint' inserted by s. 1 (a) of Act 22 of 1996.]

**'contingency reserve account'**, in relation to a fund, means an account of the fund, which has been amended in accordance with the requirements of the registrar, or which has not been disallowed by the registrar, and to which shall be credited or debited such amounts as the board shall determine, on the advice of the valuator where the fund is not exempt from actuarial valuations, in order to provide for explicit contingencies;

[Definition of 'contingency reserve account' inserted by s. 1 (c) of Act 39 of 2001 and substituted by s. 1 (e) of Act 11 of 2007.]

**'contribution holiday'**, in relation to a-

- (a) defined benefit category of a fund, means payment by the employer of less than the contribution rate the valuator recommends be payable by the employer, taking into account the circumstances of the fund and ignoring any surplus or deficit; or

[Para. (a) substituted by s. 1 (f) of Act 11 of 2007.]

- (b) defined contribution category of a fund, means payment by the employer of less than the employer contribution rate defined in the rules prior to application of any credit balance in any employer reserve account as defined in the rules or employer surplus account;

[Definition of 'contribution holiday' inserted by s. 1 (c) of Act 39 of 2001.]

**'conversion'**, in relation to a category of a fund, means the change of the basis of the retirement benefit from defined benefit to defined contribution, or *vice versa*;

[Definition of 'conversion' inserted by s. 1 (c) of Act 39 of 2001.]

**'court'** means a court of the provincial or local division of the High Court of South Africa;

[Definition of 'court' substituted by s. 14 (b) of Act 83 of 1992 and by s. 1 (g) of Act 11 of 2007.]

**'deferred pensioner'** means a member who has not yet retired but has left the service of the employer concerned prior to normal retirement date, as defined in the rules, leaving in the fund the member's rights to such benefits as may be defined in the rules;

[Definition of 'deferred pensioner' inserted by s. 1 (d) of Act 39 of 2001.]

**'defined benefit category of a fund'** means a category of a fund other than a defined contribution category of a fund;

[Definition of 'defined benefit category' inserted by s. 1 (d) of Act 39 of 2001.]

**'defined contribution category of a fund'** means a category of members in respect of whom the benefit on retirement has a value equal to the value of-

- (a) the contributions paid by the member and by the employer in terms of the rules of the fund that determine the rates of both their contributions at a fixed rate;
- (b) less such expenses as the board determines should be deducted from the contributions paid;
- (c) plus any amount credited to the member's individual account upon the commencement of the member's membership of the fund or upon the conversion of the category of the fund to which the member belongs from a defined benefit category to a defined contribution category of a fund or upon the amalgamation of his or her fund with any other fund, if any, other than amounts taken into account in terms of subparagraph (d);
- (d) plus any other amounts lawfully permitted, credited to or debited from the member's individual account, if any,

as increased or decreased by fund return: Provided that the board may elect to smooth the fund return;

[Definition of 'defined contribution category of a fund' inserted by s. 1 (d) of Act 39 of 2001 and substituted by s. 1 (h) of Act 11 of 2007.]

**'dependant'**, in relation to a member, means-

- (a) a person in respect of whom the member is legally liable for maintenance;
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person-
- (i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;
- (ii) is the spouse of the member;
- (iii) is a child of the member, including a posthumous child, an adopted child and a child born out of wedlock;

- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died;

[Definition of 'dependant' inserted by s. 21 (a) of Act 101 of 1976, substituted by s. 10 of Act 80 of 1978, amended by s. 38 of Act 99 of 1980, substituted by s. 20 of Act 54 of 1989, amended by s. 1 (b) and s. 6 of Act 22 of 1996 and substituted by s. 1 (i) of Act 11 of 2007.]

**'employer'**, in relation to a fund, means an employer participating in the fund;

[Definition of 'employer' inserted by s. 1 (e) of Act 39 of 2001.]

**'employer surplus account'**, in relation to a fund, means an account of the fund to which shall be credited-

- (a) amounts allocated by the board in terms of sections 15B, 15C and 15F or transferred into the fund for the credit of the account in terms of section 15E (1) (e);
- (b) such contributions as are specified in the rules to be credited to this account; and
- (c) fund return on the balance in the account from time to time: Provided that the board may elect to smooth the fund return,
- and to which shall be debited-
- (d) any actuarial surplus utilised by the employer; and
- (e) any actuarial surplus transferred to any other account in the fund at the request of the employer or transferred to another fund in terms of section 15E (1) (e);

[Definition of 'employer surplus account' inserted by s. 1 (e) of Act 39 of 2001 and substituted by s. 1 (j) of Act 11 of 2007.]

**'fair value'**, in relation to an asset of a fund, means the fair value of that asset determined in accordance with South African Statements of Generally Accepted Accounting Practice;

[Definition of 'fair value' inserted by s. 1 of Act 65 of 2001.]

**'financial year'**, in relation to a fund, means-

- (a) each period of twelve months, at the end of which the balance of its accounts is required to be struck in terms of its rules; or
- (b) such other period as may on any particular occasion be determined by the registrar at the written request of the fund, on such conditions as the registrar may impose; or
- (c) in the case of a fund which is registered at the commencement of the Financial Institutions Amendment Act, 1977, and which notifies the registrar in writing before 1 January 1979 that it intends changing the date on which its financial year ends from 31 December to another date, the period extending from its last financial year, which ends on 31 December, to such other date, provided such period does not exceed eighteen months;

[Definition of 'financial year' substituted by s. 9 of Act 94 of 1977.]

**'fund'** means a pension fund organisation, and 'pension fund' or 'registered fund' has the same meaning;

[Definition of 'fund' substituted by s. 1 (k) of Act 11 of 2007.]

**'fund return'**, in relation to-

- (a) the assets of a fund, means any income (received or accrued) and capital gains and losses (realised or unrealised) earned on the assets of the fund, net of expenses and tax charges, associated with the acquisition, holding or disposal of assets; or

- (b) any portion of the assets of a fund if the assets are separately identifiable, means any income (received or accrued) and capital gains and losses (realised or unrealised) earned on those assets, net of expenses and tax charges associated with the acquisition, holding or disposal of assets; or
- (c) the assets of a fund, to the extent that those assets consist of long-term policies which are 'fund member policies' as defined in Part 5 of the Regulations under the Long-term Insurance Act, 1998 (Act 52 of 1998), means the 'growth rate' (as defined in those Regulations) applicable to those policies, as determined in accordance with those Regulations,

which in any such case may be positive, negative or nil;

[Definition of 'fund return' inserted by s. 1 (l) of Act 11 of 2007.]

**'Gazette'** .....

[Definition of 'Gazette' deleted by s. 14 (a) of Act 83 of 1992.]

**'investment reserve account'**, in relation to a fund which has a defined contribution category, means the difference between-

- (a) the value of the assets held in respect of the members' individual accounts and for any smoothing of investment returns to be credited to such accounts, with allowances for expenses; and
- (b) the value of the balances in the members' individual accounts;

[Definition of 'investment reserve account' inserted by s. 1 (f) of Act 39 of 2001.]

**'member'** means, in relation to-

- (a) a fund referred to in paragraph (a) of the definition of 'pension fund organization', any member or former member of the association by which such fund has been established;
- (b) a fund referred to in paragraph (b) of that definition, a person who belongs or belonged to a class of persons for whose benefit that fund has been established,

but does not include any such member or former member or person who has received all the benefits which may be due to him from the fund and whose membership has thereafter been terminated in accordance with the rules of the fund;

[Definition of 'member' substituted by s. 21 (b) of Act 101 of 1976.]

**'member's individual account'**, in relation to an individual member of a defined contribution category of a fund, means the amount determined in terms of section 14B (1);

[Definition of 'member's individual account' inserted by s. 1 (g) of Act 39 of 2001.]

**'member surplus account'**, in relation to a fund, means an account of the fund to which shall be-

- (a) credited-
  - (i) amounts allocated by the board in terms of sections 15B and 15C to be used for the benefit of members;
  - (ii) fund return on the balance in the account from time to time: Provided that the board may elect to smooth the fund return; and
  - (iii) amounts reallocated from the employer surplus account to the account in terms of section 15E; and
- (b) debited-
  - (i) the cost of any benefit improvements funded from the account; and
  - (ii) any expenses which would otherwise reduce benefits payable to members;

[Definition of 'member surplus account' inserted by s. 1 (g) of Act 39 of 2001 and substituted by s. 1 (m) of Act 11 of 2007.]

**'minimum individual reserve'**-

- (a) in relation to a member of a defined benefit category of a fund, means the amount determined in terms of section 14B (2) (a);
- (b) in relation to a member of a defined contribution category of a fund, means the amount determined in terms of section 14B (2) (b); and
- (c) in relation to a pensioner or a deferred pensioner, means the amount determined in terms of section 14B (6);

[Definition of 'minimal individual reserve' inserted by s. 1 (g) of Act 39 of 2001 and substituted by s. 1 (n) of Act 11 of 2007.]

**'minimum pension increase'** means the amount determined in terms of section 14B (4);

[Definition of 'minimum pension increase' inserted by s. 1 (g) of Act 39 of 2001.]

**'Minister'** means the Minister of Finance;

**'non-member spouse'**, in relation to a member of a fund, means a person who is no longer the spouse of that member due to the dissolution or confirmation of the dissolution of the relationship by court order and to whom the court ordering or confirming the dissolution of the relationship has granted a share of the member's pension interest in the fund;

[Definition of 'non-member spouse' inserted by s. 1 (o) of Act 11 of 2007.]

**'normal retirement age'** has the meaning assigned to it in section 1 of the Income Tax Act, 1962 (Act 58 of 1962);

[Definition of 'normal retirement age' inserted by s. 1 (d) of Act 22 of 2008.]

**'officer'**, in relation to a fund, means any member of a board, any manager, principal officer, treasurer, clerk or employee of the fund, but does not include an auditor appointed under section 9 or a valuator appointed under section 9A;

[Definition of 'officer' substituted by s. 1 (c) of Act 22 of 1996.]

**'pensioner'**, in relation to a fund, means a person who is in receipt of a pension paid from the fund;

[Definition of 'pensioner' inserted by s. 1 (h) of Act 39 of 2001.]

**'pension fund'** means a pension fund organization;

**'pension fund organisation'** means-

- (a) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members; or
- (b) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons; or
- (c) any association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits, referred to in section 37C on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds,

and includes any such association or business which in addition to carrying on business in



connection with any of the objects specified in paragraph (a), (b) or (c) also carries on business in connection with any of the objects for which a friendly society may be established, as specified in section 2 of the Friendly Societies Act, 1956, or which is or may become liable for the payment of any benefits provided for in its rules, whether or not it continues to admit, or collect contributions from or on behalf, of members;

[Definition of 'pension fund organisation' substituted by s. 21 (c) of Act 101 of 1976 and by s. 1 (e) of Act 22 of 2008.]

**'person'** .....

[Definition of 'person' deleted by s. 1 (d) of Act 22 of 1996.]

**'Policy Board'** .....

[Definition of 'Policy Board' inserted by s. 1 (e) of Act 22 of 1996 and deleted by s. 1 (p) of Act 11 of 2007.]

**'prescribed'** means prescribed by the registrar by notice in the *Gazette*;

[Definition of 'prescribed' substituted by s. 1 (q) of Act 11 of 2007.]

**'prescribed by regulation'** means prescribed by the Minister by regulation;

[Definition of 'prescribed by regulation' inserted by s. 1 (r) of Act 11 of 2007.]

**'principal employer'**, in relation to a fund, means the employer defined as the principal employer in the rules;

[Definition of 'principal employer' inserted by s. 1 (i) of Act 39 of 2001.]

**'principal officer'** means the officer referred to in section *eight*;

**'registered'**, in relation to a fund, means registered or provisionally registered under section *four*, and **'registration'** has a corresponding meaning;

**'registered office'**, means the registered office referred to in section *seven*;

**'registrar'** means the Registrar or the Deputy Registrar of Pension Funds mentioned in section 3;

[Definition of 'registrar' substituted by s. 21 (d) of Act 101 of 1976 and by s. 29 of Act 97 of 1990.]

**'regulation'** means a regulation made and in force under this Act;

**'reserve account'**, in relation to a fund, means a contingency or investment reserve account, as the case may be;

[Definition of 'reserve account' inserted by s. 1 (j) of Act 39 of 2001.]

**'retirement'** means the period commencing on the member's retirement date;

[Definition of 'retirement' inserted by s. 1 (f) of Act 22 of 2008.]

**'retirement annuity fund'** means a retirement annuity fund as defined in section 1 of the Income Tax Act, 1962 (Act 58 of 1962);

[Definition of 'retirement annuity fund' inserted by s. 1 (s) of Act 11 of 2007.]

**'retirement date'** has the meaning assigned to it in section 1 of the Income Tax Act, 1962 (Act 58 of 1962);

[Definition of 'retirement date' inserted by s. 21 (e) of Act 101 of 1976 and substituted by s. 1 (g) of Act 22 of 2008.]

**'retrenchment'**, in relation to a member, means dismissal from employment based on the operational requirements of the relevant employer;

[Definition of 'retrenchment' inserted by s. 1 (j) of Act 39 of 2001.]

**'rules'** means the rules of a fund, and includes-

(a) the act, charter, deed of settlement, memorandum of association, or other

document by which the fund is constituted;

- (b) the articles of association or other rules for the conduct of the business of the fund; and
- (c) the provisions relating to any rights, obligations or benefits which may be granted or imposed by and the contributions which may become payable to the fund, or provisions in accordance with which the rights, obligations and benefits will be calculated or determined;

[Definition of 'rules' substituted by s. 1 (t) of Act 11 of 2007.]

**'spouse'** means a person who is the permanent life partner or spouse or civil union partner of a member in accordance with the Marriage Act, 1961 (Act 68 of 1961), the Recognition of Customary Marriages Act, 1998 (Act 68 of 1997), or the Civil Union Act, 2006 (Act 17 of 2006), or the tenets of a religion;

[Definition of 'spouse' inserted by s. 1 (u) of Act 11 of 2007.]

**'stakeholder'**, in respect of a fund, means a current member, including a pensioner and a deferred pensioner, a former member and an employer participating in the fund;

[Definition of 'stakeholder' inserted by s. 1 (k) of Act 39 of 2001.]

**'statutory actuarial valuation'**, in relation to a fund, means an investigation by a valuator contemplated in section 16;

[Definition of 'statutory actuarial valuation' inserted by s. 1 (k) of Act 39 of 2001.]

**'surplus apportionment date'** in relation to a fund, means the first statutory actuarial valuation date following the commencement date;

[Definition of 'surplus apportionment date' inserted by s. 1 (k) of Act 39 of 2001 and substituted by s. 1 (v) of Act 11 of 2007.]

**'Territory'** .....

[Definition of 'Territory' deleted by s. 14 (a) of Act 83 of 1992.]

**'this Act'** includes any regulation;

[Definition of 'this Act' inserted by s. 21 (b) of Act 104 of 1993.]

**'unclaimed benefit'** means-

- (a) any benefit, other than a benefit referred to in paragraphs (b), (c) and (d), not paid by a fund to a member, former member or beneficiary within 24 months of the date on which it, in terms of the rules of the fund, became legally due and payable; or
- (b) in relation to a benefit payable as a pension or annuity, any benefit which has not been paid by a fund to a member, former member or beneficiary within 24 months of-
  - (i) the expiry date of any guarantee period for pension payments provided for in the rules of the fund; or
  - (ii) the date on which any pension payment or annuity legally due and payable in terms of the rules of the fund became unpaid; or
- (c) in relation to a benefit payable to a former member who cannot be traced in accordance with section 15B (5) (e) of this Act, any benefit that has become legally due and payable to a former member in terms of a surplus apportionment scheme approved in terms of this Act not paid to that former member within 24 months of the date on which it became legally due and payable; or
- (d) any benefit that remained unclaimed or unpaid to a member, former member or

beneficiary when a fund applies for cancellation of registration in terms of section 27 or where the liquidator is satisfied that benefits remain unclaimed or unpaid, excluding-

(aa) a benefit due to be transferred as part of a transfer of business in terms of section 14, where an annuity is purchased in respect of a pensioner or otherwise in terms of this Act; or

(bb) a death benefit payable to a beneficiary in terms of section 37C of this Act not paid within 24 months from the date of the death of the member or such longer period as reasonably justifiable by the board of the fund;

[Definition of 'unclaimed benefit' inserted by s. 1 (h) of Act 22 of 2008.]

**'Union'** .....

[Definition of 'Union' deleted by s. 14 (a) of Act 83 of 1992.]

**'valuation exempt'**, in relation to a fund, means a fund which has been exempted by the registrar under section 2 (5) (a) from the requirement to submit a report on its statutory actuarial valuation;

[Definition of 'valuation exempt' inserted by s. 1 (w) of Act 11 of 2007.]

**'valuator'** means an actuary or any other person who, in the opinion of the registrar, has sufficient actuarial knowledge to perform the duties required of a valuator in terms of this Act.

(2) For the purpose of the application of the provisions of this Act in relation to an organization which is a pension fund organization in terms of paragraph (b) of the definition of 'pension fund organization' in subsection (1), any reference in this Act to a fund shall be construed as a reference to that fund or to the board of that fund, as circumstances may require.

[Sub-s. (2) substituted by s. 1 (f) of Act 22 of 1996.]

## **2 Application of Act**

(1) Subject to section 4A and any other law in terms of which a fund is established, the provisions of this Act apply to any pension fund, including a pension fund established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995 (Act 66 of 1995), and registered in terms of section 4.

(2) (a) A pension fund established or continued in terms of a collective agreement contemplated in subsection (1) and not yet registered in terms of section 4, must register in terms of this Act before or on 1 January 2008.

(b) Despite any other provision of this Act, the first statutory actuarial valuation of a fund registered in accordance with paragraph (a) must be undertaken at the end of the first financial year following registration or such other date approved by the registrar.

(2A) All beneficiary funds established on or after the commencement date of the Financial Services Laws General Amendment Act, 2008, must register in terms of this Act.

[Sub-s. (2A) inserted by s. 2 (a) of Act 22 of 2008.]

(3) A pension fund contemplated in subsection (2) or (2A) must, pending registration in terms of this Act, furnish the registrar with such statistical information as may be requested by the registrar.

[Sub-s. (3) substituted by s. 2 (b) of Act 22 of 2008.]

(4) (a) The provisions of this Act, other than section three and subsections (1) and (2) of section four, shall not apply in relation to a pension fund if the head office of the association which carries on the business of that fund, or, as the case may be, of every employer who is a party to such fund, is outside the Republic, if-

- (i) the registrar is satisfied that the rules of the fund applicable to members resident in the Republic are not less favourable than those applicable to members resident outside the Republic, taking into consideration differences in the conditions of service;
- (ii) the registrar is satisfied that adequate arrangements exist for ensuring the financial soundness of the fund; and
- (iii) the fund furnishes such security as the registrar may from time to time require for the payment of any benefits which may become payable to members resident in the Republic who are South African citizens, or otherwise satisfies the registrar that it will be able to pay such benefits.

(b) The registrar may from time to time require any person carrying on the business in the Republic of a pension fund referred to in paragraph (a), to submit to the registrar such returns and information in connection with that business as the registrar may specify, and if at any time the registrar is no longer satisfied as regards any of the matters specified in paragraph (a) he may advise the person accordingly by notice transmitted to him by registered post, and thereupon the provisions of this Act shall apply in relation to such fund.

(5) (a) The registrar may in his discretion and subject to such conditions as may be prescribed by regulation exempt in writing any pension fund from the provisions of section 5 (2), 9 or 9A, as well as from any other provision of this Act which, in his opinion, is connected with any such exemption.

(aA) (i) The provisions of sections 37A, 37B and 37C shall as from the commencement of the Financial Institutions Amendment Act, 1977, apply also with reference to any registered fund to which those provisions did not apply immediately before the said commencement.

(ii) Any provision inserted in this Act by, or after the commencement of, the Financial Institutions Amendment Act, 1977, shall apply with reference to all registered funds, including any fund previously exempted in terms of this subsection, except in so far as any exemption may have been granted from any such provision in terms of this subsection.

(b) The registrar may at any time by notice in writing to the fund withdraw, wholly or in part and on any ground which he deems sufficient, any exemption granted under paragraph (a).

(5) (a) The registrar may, where practicalities impede the strict application of a specific provision of this Act, exempt any fund from, or in respect of, such provision on conditions determined by the registration.

(aA) Any exemption in terms of paragraph (a) may apply to funds generally or be limited in its application to a particular fund or kind of fund, which may, for the purposes of this subsection, be defined in relation to either a category or type of fund or in any other manner.

(b) The registrar may, subject to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), at any time by notice in the *Gazette* withdraw, wholly or in part and on any ground which he or she deems sufficient, any exemption granted under paragraph (a).

[Sub-s. (5) substituted by s. 2 (c) of Act 22 of 2008.]

[S. 2 amended by s. 10 of Act 94 of 1977, by s. 13 of Act 103 of 1979, by s. 36 (6) of Act 9 of 1989, by s. 15 of Act 83 of 1992, by ss. 22 and 30 of Act 104 of 1993 and by s. 211 of Act 66 of 1995 and substituted by s. 2 of Act 11 of 2007.]

### **3 Registrar and Deputy Registrar of Pension Funds**

The executive officer and a deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990), shall also be the Registrar and the Deputy

Registrar of Pension Funds, respectively.

[S. 3 amended by s. 22 of Act 101 of 1976 and substituted by s. 29 of Act 97 of 1990 and by s. 9 of Act 41 of 1992.]

### 3A .....

[S. 3A inserted by s. 4 of Act 51 of 1988 and deleted by s. 29 of Act 97 of 1990.]

### 3B Pension Funds Advisory Committee

(1) There is hereby established an advisory committee to be known as the Pension Funds Advisory Committee (in this Act referred to as the advisory committee).

(2) (a) The advisory committee consists of the registrar as chairman and such other members-

- (i) as the Minister may from time to time designate;
- (ii) who in the opinion of the Minister have special knowledge regarding matters relating to pension funds;
- (iii) who represent associations and organizations which in the opinion of the Minister have an interest in matters relating to pension funds.

(b) A member of the advisory committee shall hold office for such period as the Minister may determine and shall be eligible for reappointment upon the expiration of his period of office.

(c) The Minister may at any time terminate the membership of any member if in the opinion of the Minister a sufficient reason exists therefor.

(3) The advisory committee may from time to time conduct an investigation and advise or make recommendations to the registrar, or make recommendations to the Minister, regarding any matter relating to pension funds, and shall advise the Minister on any such matter referred to the advisory committee by the Minister.

(4) For the purposes of any investigation by the advisory committee the Commissions Act, 1947 (Act 8 of 1947), shall apply to the advisory committee and witnesses and their evidence as if the advisory committee were a commission to which the said Act applied and the chairman of the advisory committee were the secretary of such a commission.

(5) The registrar may submit to the advisory committee any information which is in his possession or which he may obtain and which is relevant to any matter which is being investigated or considered by the advisory committee.

(6) (a) The first meeting of the advisory committee shall be held at a time and place determined by the chairman, and thereafter the advisory committee shall meet at a time and place determined by the advisory committee.

(b) The chairman may at any time convene an extraordinary meeting of the advisory committee to be held at a time and place determined by him.

(c) The chairman shall determine the procedure at a meeting of the advisory committee.

(d) The quorum for a meeting of the advisory committee shall be a majority of its members.

(e) The decision of a majority of the members of the advisory committee present at any meeting thereof shall constitute the decision of the advisory committee, and in the case of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(7) (a) The advisory committee may nominate one or more subcommittees, which may, subject to the instructions of the advisory committee, perform those functions of the advisory committee that the advisory committee may determine.

(b) Such a subcommittee shall consist of so many members of the advisory committee or

so many other persons as the advisory committee may deem necessary, and the advisory committee may at any time dissolve or reconstitute such a subcommittee.

(c) The advisory committee shall designate one of the members of the subcommittee as chairman thereof, and if any such chairman is absent from any meeting of the subcommittee, the members present from among themselves elect a person to preside at such meeting.

(d) The advisory committee may make rules regarding the manner in which meetings of any subcommittee shall be convened, the procedure at, the functions of, and the quorums for, such meetings and the manner in which minutes of such meetings shall be kept.

(8) The advisory committee may call to its assistance such person or persons as it may deem necessary to assist it, or to investigate matters relating to pension funds.

(9) The administrative work incidental to the performance of the functions of the advisory committee and its subcommittees shall be performed by officers or employees in the office of the registrar designated for that purpose by the registrar.

[S. 3B inserted by s. 2 of Act 54 of 1991.]

## **CHAPTER II**

### **REGISTRATION AND INCORPORATION (ss 4-6)**

#### **4 Registration of pension funds**

(1) Every pension fund shall apply to the registrar for registration under this Act.

(2) An application under subsection (1) shall be accompanied by the particulars and the fee prescribed.

[Sub-s. (2) amended by s. 14 of Act 86 of 1984, substituted by s. 16 (a) of Act 83 of 1992 and amended by s. 17 of Act 22 of 2008.]

(3) The registrar shall, if the fund has complied with such requirements as he may have prescribed and he is satisfied that the registration of the fund is desirable in the public interest, register the fund provisionally and forward to the applicant a certificate of provisional registration.

[Sub-s. (3) substituted by s. 11 (a) of Act 65 of 1968.]

(4) If after considering any such application the registrar is satisfied that the fund complies with the conditions prescribed, he shall register such fund and send to the applicant a certificate of registration as well as a copy of the rules of the fund bearing an endorsement of the date of registration.

[Sub-s. (4) substituted by s. 16 (b) of Act 83 of 1992 and amended by s. 17 of Act 22 of 2008.]

(5) If after considering any such application, the registrar is not satisfied as regards all the matters in respect of which he is in terms of subsection (4) required to be satisfied, he shall in writing indicate to the applicant the requirements to be complied with in order that he may be so satisfied.

(6) Subject to the provisions of subsection (7) the provisional registration of a fund under subsection (3) shall be valid for a period of five years, but may in the discretion of the registrar and subject to such conditions and limitations as he may consider desirable, be renewed from time to time for periods not exceeding twelve months at a time and not exceeding five years in the aggregate.

[Sub-s. (6) substituted by s. 11 (b) of Act 65 of 1968.]

(7) Whenever a fund which is provisionally registered under this section has complied with all the requirements specified in subsection (4), the registrar shall register the fund and

transmit to it a certificate of registration as well as a copy of its rules with the date of registration duly endorsed thereon, and thereupon the fund shall cease to be provisionally registered.

(8) No fund shall be registered or provisionally registered under this Act except as provided in this section.

#### **4A Registration of pension funds to which State contributes financially**

(1) Notwithstanding anything to the contrary contained in any law, the Minister may, after consultation with the Registrar of Pension Funds, by regulation provide for a management board for a pension fund to which the State contributes financially.

(2) If a management board has been established for a pension fund as is contemplated in subsection (1), such pension fund may, with the consent of the Minister, apply in terms of section 4 for registration.

(3) When an application has been made in terms of subsection (2), the provisions of this Act shall apply to the pension fund concerned, in so far as they can be applied, and as if the pension fund were a pension fund as defined in paragraph (b) of the definition of 'pension fund organization' in section 1.

(4) The State President may by proclamation in the *Gazette* make such regulations as he may deem necessary or expedient to give effect to the provisions of subsections (1), (2) and (3), including regulations whereby-

- (a) any provision of this Act or any other law is repealed or amended;
- (b) the carrying on of the business of a pension fund referred to in subsection (1) is regulated from the date of the application for registration thereof until the date of registration.

[S. 4A inserted by s. 2 of Act 119 of 1991.]

#### **4B Effect of registration of pension fund referred to in section 4A**

(1) On the registration of a pension fund referred to in section 4A it shall become a juristic person.

(2) Subject to the provisions of subsections (3) and (4), the registration of a pension fund referred to in section 4A shall not affect the assets, rights, liabilities, obligations and membership of such pension fund.

(3) Regulations referred to in section 4A(4) may also provide for the termination of the membership of certain persons of a pension fund referred to in section 4A which has been registered and for their membership of any other pension fund, and the passing of the obligations of the first-mentioned fund towards dependants and nominees of members thereof to the last-mentioned pension fund.

[S. 4B inserted by s. 2 of Act 119 of 1991.]

#### **4C Transfer to pension fund referred to in section 4A of its assets held by another**

(1) If any person holds any assets on behalf of a pension fund referred to in section 4A or has on behalf of any such pension fund invested any assets in any stock, debentures, securities or financial instruments, he shall, on production to him of the certificate of provisional registration or the certificate of registration in respect of such pension fund-

- (a) transfer those assets into the name of such pension fund;
- (b) take such steps as may be necessary to ensure that on such stock, debentures, securities or financial instruments issued in his name and in any relevant register such endorsements are made as may be necessary to show that the ownership in such stock, debentures, securities or financial instruments vests in such pension



fund; and

- (c) if requested thereto by such pension fund, transfer to such fund the stock, debentures, securities or financial instruments vested in it.

(2) No registration fee or costs shall be payable in respect of any transfer or endorsement referred to in subsection (1).

[Sub-s. (2) substituted by s. 3 (1) of Act 35 of 2007.]

[S. 4C inserted by s. 2 of Act 119 of 1991.]

## **5 Effect of registration of pension fund**

(1) Upon the registration under this Act-

- (a) of a fund which is a pension fund organization in terms of paragraph (a) of the definition of 'pension fund organization' in subsection (1) of section *one*, the fund shall, under the name by which it is so registered, and in so far as its activities are concerned with any of the objects set out in that definition, become a body corporate capable of suing and being sued in its corporate name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules;
- (b) of a fund which is a pension fund organization in terms of paragraph (b) of the said definition, all the assets, rights, liabilities and obligations pertaining to the business of the fund shall, notwithstanding anything contained in any law or in the memorandum, articles of association, constitution or rules of any body corporate or unincorporate having control of the business of the fund, be deemed to be assets, rights, liabilities and obligations of the fund to the exclusion of any other person, and no person shall have any claim on the assets or rights or be responsible for any liabilities or obligations of the fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund;
- (c) of any fund, the assets, rights, liabilities and obligations of the fund (including any assets held by any person in trust for the fund), as existing immediately prior to its registration, shall vest in and devolve upon the registered fund without any formal transfer or cession.

(1)*bis* The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset or right which in terms of paragraph (c) of subsection (1) vests in or devolves upon a registered fund shall, upon production to him by the fund of its certificate of registration or of provisional registration, as the case may be, and of the deed or other document aforesaid, without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his registers that are necessary by reason of such vesting or devolution.

[Sub-s. (1)*bis* inserted by s. 14 of Act 81 of 1957.]

(2) All moneys and assets belonging to a pension fund shall be kept by that fund and every fund shall maintain such books of account and other records as may be necessary for the purpose of such fund: Provided that such money and assets may, subject to the conditions determined by the Minister by notice in the *Gazette*, also be kept in the name of the pension fund by one or more of the following institutions or persons, namely-

- (a) a stockbroker as defined in section 1 of the Securities Services Act, 2004 (Act 36 of 2004);



- (b) a long-term insurer registered in terms of the Long-term Insurance Act, 1998 (Act 52 of 1998);
- (c) a bank registered under the Banks Act, 1990 (Act 94 of 1990);
- (d) a nominee company; or
- (e) a person approved by the registrar, or who is a member of a category of persons approved by the registrar.

[Sub-s. (2) amended by s. 9 (a) of Act 64 of 1990 and substituted by s. 3 of Act 11 of 2007.]

(3) For the purposes of this section, a nominee company is a company which-

- (a) has as its principal object to act as representative of any person;
- (b) is precluded by its memorandum of association from incurring any liabilities other than those to persons on whose behalf it holds property;
- (c) has entered into an irrevocable agreement with another person in terms of which such other person has undertaken to pay all expenses of and incidental to its formation, activities, management and liquidation; and
- (d) has been approved by the registrar, subject to such conditions as he may impose, including any guarantee for the fulfilment of any obligation in respect of the holding of such property, the generality of the afore-going provisions not being restricted by the provisions of this paragraph.

[Sub-s. (3) added by s. 9 (b) of Act 64 of 1990.]

(4) Notwithstanding the provisions of subsection (2), the registrar may permit money and assets to be kept in the name of a nominee company on behalf of the pension fund.

[Sub-s. (4) added by s. 9 (b) of Act 64 of 1990.]

## **6 Allocation of assets and liabilities between pension fund organization and other associated business**

(1) Within twelve months after the registration under this Act of a pension fund the business whereof is or has been carried on by any undertaking as part of or in conjunction with any other business in which that undertaking is or has been engaged, the person having control of the business of that undertaking shall submit to the registrar proposals as to the apportionment of the assets, rights, liabilities and obligations of that undertaking between the fund and such other business.

(2) If the proposals mentioned in subsection (1) are not received within the period specified in that subsection the registrar shall prepare proposals for the apportionment of the assets, rights, liabilities and obligations of that undertaking between the fund and such other business in such a manner as he may with due regard to all the circumstances consider equitable.

(3) The registrar may for the purpose of preparing any proposals under subsection (2), require any person having control of the undertaking in question, to lodge with him, within such period as he may specify, any information relating to the business or any part of the business which is or has been carried on by that undertaking, including the business of such pension fund, together with such reports by a valuator or (at the discretion of the registrar) by the auditor of that undertaking, as the registrar may direct.

(4) As soon as practicable after having received any proposals under subsection (1) or after having prepared any proposals as provided in subsection (2), the registrar shall transmit a copy thereof to the principal officer of the fund and publish at the expense of the fund in the *Gazette* and in at least one English and one Afrikaans newspaper circulating in the district in which the head office of the undertaking is situate, a notice-

- (a) indicating that such apportionment is contemplated;
- (b) stating the place or places where copies of the proposals in question will be available for inspection by interested persons for a period of thirty days from a date specified in the notice; and
- (c) calling upon interested persons to submit to the registrar whatever representations they may deem necessary within the said period of thirty days.

(5) Upon the expiration of the period mentioned in paragraph (c) of subsection (4), the registrar shall proceed to consider any written representations lodged with him in pursuance of the relevant notice and any oral representations which any person who lodged such written representations or the person having control of the business of the undertaking may desire to submit to him, and shall thereafter approve of the proposals in question as drafted or with such modifications as he may deem necessary.

(6) A decision made by the registrar under subsection (5) shall be binding upon all persons affected thereby.

### **CHAPTER III**

#### **MANNER OF ADMINISTRATION AND POWERS OF REGISTERED FUNDS (ss 7-14B)**

##### **7 Registered office**

(1) Every registered fund shall have a registered office in the Republic.

[Sub-s. (1) amended by s. 30 of Act 104 of 1993.]

(2) Process in any legal proceedings against any such fund may be served by leaving it at the registered office, and in the event of such registered office having ceased to exist, service upon the registrar shall be deemed to be service upon the fund.

##### **7A Board of fund**

(1) Notwithstanding the rules of a fund, every fund shall have a board consisting of at least four board members, at least 50% of whom the members of the fund shall have the right to elect.

(2) Subject to subsection (1), the constitution of a board, the election procedure of the members mentioned in that subsection, the appointment and terms of office of the members, the procedures at meetings, the voting rights of members, the quorum for a meeting, the breaking of deadlocks and the powers of the board shall be set out in the rules of the fund: Provided that if a board consists of four members or less, all the members shall constitute a quorum at a meeting.

[S. 7A inserted by s. 2 of Act 22 of 1996.]

##### **7B Exemptions**

(1) The registrar may on written application of a fund and subject to such conditions as may be determined by the registrar-

- (a) authorise a fund to have a board consisting of less than four board members if such number is impractical or unreasonably expensive: Provided that the members of the fund shall have the right to elect at least 50% of the board members;
- (b) exempt a fund from the requirement that the members of the fund have the right to elect members of the board, if the fund-
  - (i) has been established for the benefit of employees of different employers referred to in the definition of 'pension fund' and 'provident fund' as defined in section 1 of the Income Tax Act, 1962 (Act 58 of 1962);
  - (ii) is a retirement annuity fund;

- (iii) is a beneficiary fund; or
- (iv) is a pension preservation fund or a provident preservation fund as defined in section 1 of the Income Tax Act, 1962.

[Sub-s. (1) substituted by s. 3 of Act 22 of 2008.]

(2) The registrar may withdraw an exemption granted under subsection (1) (a) or (1) (b) if a fund no longer qualifies for such exemption.

[S. 7B inserted by s. 2 of Act 22 of 1996.]

### **7C Object of board**

(1) The object of a board shall be to direct, control and oversee the operations of a fund in accordance with the applicable laws and the rules of the fund.

(2) In pursuing its object the board shall-

- (a) take all reasonable steps to ensure that the interests of members in terms of the rules of the fund and the provisions of this Act are protected at all times, especially in the event of an amalgamation or transfer of any business contemplated in section 14, splitting of a fund, termination or reduction of contributions to a fund by an employer, increase of contributions of members and withdrawal of an employer who participates in a fund;
- (b) act with due care, diligence and good faith;
- (c) avoid conflicts of interest;
- (d) act with impartiality in respect of all members and beneficiaries.

[S. 7C inserted by s. 2 of Act 22 of 1996.]

### **7D Duties of board**

The duties of a board shall be to-

- (a) ensure that proper registers, books and records of the operations of the fund are kept, inclusive of proper minutes of all resolutions passed by the board;
- (b) ensure that proper control systems are employed by or on behalf of the board;
- (c) ensure that adequate and appropriate information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund;
- (d) take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with this Act;
- (e) obtain expert advice on matters where board members may lack sufficient expertise;
- (f) ensure that the rules and the operation and administration of the fund comply with this Act, the Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001), and all other applicable laws.

[Para. (f) substituted by s. 4 of Act 11 of 2007.]

[S. 7D inserted by s. 2 of Act 22 of 1996.]

### **7E Application of certain sections**

(1) Sections 7A, 7B, 7C and 7D shall apply to all funds registered on, or after, a date 12 months after the date of commencement of the Pension Funds Amendment Act, 1996 (Act 22 of 1996).

[Sub-s. (1) substituted by s. 6 of Act 104 of 1996.]

(2) Any fund registered prior to a date 12 months after the date of commencement of the said Act, shall comply with sections 7A, 7B, 7C and 7D by 15 December 1998.

[S. 7E inserted by s. 2 of Act 22 of 1996.]

## 8 Principal officer

(1) Every registered fund shall have a principal executive officer.

(2) The principal officer of a registered fund shall be an individual who is resident in the Republic, and if he is absent from the Republic or unable for any reason to discharge any duty imposed upon him by any provision of this Act, the fund shall, in the manner directed by its rules, appoint another person within thirty days to be its principal officer.

[Sub-s. (2) amended by s. 30 of Act 104 of 1993.]

(3) Every fund must within 30 days after the registration of a fund or within 30 days after the appointment of a principal officer give the registrar written notice of the appointment by furnishing the registrar with the prescribed information in respect of the appointee.

[Sub-s. (3) amended by s. 6 of Act 22 of 1996 and substituted by s. 4 of Act 22 of 2008.]

(4) Despite anything to the contrary in any law or in any agreement, the appointment by a fund of a principal officer is subject to the condition that the appointment may be terminated under subsection (5) (b) and the fund must make any appointment subject to this condition.

[Sub-s. (4) amended by s. 6 of Act 22 of 1996 and substituted by s. 4 of Act 22 of 2008.]

(5) (a) The registrar, subject to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), may, if the registrar reasonably believes that a principal officer is not, or is no longer, a fit and proper person to hold that office, or if it is not in the public interest that the principal officer holds or continues to hold such office, object to the appointment of a principal officer, stating the grounds for the objection, and provide such to the chairperson of the board and to the appointee.

(b) If the registrar objects to an appointment in terms of paragraph (a), the board must terminate the appointment within 30 days of the registrar informing the board of the finalisation of the processes and procedures provided for in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

(c) The registrar may for purposes of assessing if a principal officer is not, or is no longer, a fit and proper person in accordance with paragraph (a), have regard to-

- (i) the competence and soundness of judgment of the person for the fulfilment of the responsibilities of the particular office and type of fund;
- (ii) the diligence with which the person concerned is likely to fulfil those responsibilities;
- (iii) previous conduct and activities of the person in business or financial matters; and
- (iv) any evidence that the person-
  - (aa) after 27 April 1994 has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), an offence under the Prevention of Organised Crime Act, 1998 (Act 121 of 1998), or any offence involving dishonesty;
  - (bb) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine;
  - (cc) has contravened the provisions of any law the object of which is the protection of the public against financial loss;
  - (dd) is a former principal officer of a fund and whose actions contributed to that

- fund's inability to pay its debts or caused financial loss to its members;
- (*ee*) has taken part in any business practices that, in the opinion of the registrar, were deceitful, prejudicial, or otherwise improper (whether unlawful or not) or which otherwise brought discredit to that person's methods of conducting business; or
- (*ff*) has taken part in or been associated with any other business practices, or conduct that casts doubt on his or her competence and soundness of judgement.

(*d*) The registrar may request any person to assist him or her in assessing whether a person is fit and proper to act as a principal officer of a fund.

[Sub-s. (5) added by s. 4 of Act 22 of 2008.]

(6) A principal officer of a fund must-

- (*a*) within 21 days of his or her appointment being terminated, other than in accordance with the condition referred to in subsection (5) (*b*), submit a written report to the registrar detailing the principal officer's perceived reasons for the termination; and
- (*b*) on becoming aware of any matter relating to the affairs of the pension fund which, in the opinion of the principal officer, may prejudice the fund or its members, inform the registrar thereof in writing.

[Sub-s. (6) added by s. 4 of Act 22 of 2008.]

## **9 Appointment of auditor**

(1) Every registered fund shall in the manner set out in its rules appoint an auditor registered under the Auditing Profession Act, 2005 (Act 26 of 2005), who shall not be an officer of the fund, except where the accounts of such a fund in terms of the provisions of any law are to be audited by the Auditor-General.

[Sub-s. (1) substituted by s. 23 of Act 104 of 1993 and by s. 5 of Act 11 of 2007.]

(2) Every registered fund shall within 30 days-

- (*a*) from the date of registration appoint an auditor; and
- (*b*) from the date of the appointment apply to the registrar for approval of such appointment.

[Sub-s. (2) substituted by s. 10 of Act 64 of 1990.]

(3) The provisions of section 8 (5) apply *mutatis mutandis* to the appointment of an auditor under this section.

[Sub-s. (3) substituted by s. 5 of Act 22 of 2008.]

(4) An auditor of a fund must-

- (*a*) within 21 days of his or her appointment being terminated, other than in accordance with section 8 (5), submit a written report to the registrar detailing the auditor's perceived reasons for the termination;
- (*b*) if the auditor, but for the termination referred to in paragraph (*a*), would have had reason to submit a report contemplated in section 45 (3) of the Auditing Profession Act 2005, (Act 26 of 2005), submit such a report to the registrar; and
- (*c*) on becoming aware of any matter relating to the affairs of the pension fund, which, in the opinion of the auditor, may prejudice the fund or its members, inform the registrar thereof in writing.

[Sub-s. (4) substituted by s. 5 of Act 22 of 2008.]

(5) Where the auditor of a pension fund is a partnership, the appointment of such auditor shall not lapse by reason of a change in the composition of the partnership, as long as not less than half of the partners in the reconstituted partnership are persons who were partners as at the date when the appointment of the partnership was last approved by the registrar.

[S. 9 substituted by s. 12 of Act 65 of 1968.]

#### **9A Appointment of valuator**

(1) Every registered fund which in terms of section 16 is required to have its financial condition investigated and reported upon by a valuator, shall appoint a valuator.

(2) The provisions of section 8 (5) apply *mutatis mutandis* to the appointment of a valuator under this section.

[Sub-s. (2) substituted by s. 6 of Act 22 of 2008.]

[S. 9A inserted by s. 13 of Act 65 of 1968.]

#### **10 Business which may be carried on**

No registered fund shall carry on any business other than the business of a pension fund: Provided that the registrar may approve of a fund carrying on such other business on such conditions and for such period as he may determine if the registrar is satisfied that this is necessary in order to safeguard an investment made by the fund.

#### **11 Rules**

(1) The rules of a fund which applies for registration after the date of the coming into operation of section 24 of the Financial Institutions Second Amendment Act, 1993, shall be in the prescribed format and form and shall comply with the prescribed requirements.

(2) A fund which, immediately prior to the date referred to in subsection (1), was a registered fund, shall within the prescribed period ensure that its rules are amended so as to comply with the format, form and requirements contemplated in subsection (1).

(3) (a) If all the amendments referred to in subsection (2) are effected on one occasion within the prescribed period and the registrar is satisfied, on submission to him of a certificate signed by the principal officer of the fund, that the sole reason for the amendments is to comply with the said format, form and requirements, he may register the amendments in accordance with section 12 (4) against payment of the prescribed fee, which shall be calculated as if only a single amendment is being effected.

(b) Any amendment of the rules of a fund effected after the date referred to in subsection (1) shall comply with the prescribed format, form and requirements contemplated in subsection (1).

(4) Subject to the provisions of subsections (2) and (3), the provisions of this section as they existed before the substitution thereof by section 24 of the Financial Institutions Second Amendment Act, 1993, shall continue to apply in respect of the rules of a fund referred to in subsection (2) until the rules of such fund comply with the format, form and requirements contemplated in subsection (1).

[S. 11 substituted by s. 17 of Act 83 of 1992 and by s. 24 of Act 104 of 1993.]

#### **12 Amendment of rules**

(1) A registered fund may, in the manner directed by its rules, alter or rescind any rule or make any additional rule, but no such alteration, rescission or addition shall be valid-

(a) if it purports to effect any right of a creditor of the fund, other than a member or shareholder thereof; or

(b) unless it has been approved by the registrar and registered as provided in



subsection (4).

(2) Within 60 days from the date of the passing of a resolution for the alteration or rescission of any rule or for the adoption of any additional rule, a copy of such resolution shall be transmitted by the principal officer to the registrar, together with the particulars prescribed.

[Sub-s. (2) substituted by s. 18 (a) of Act 83 of 1992 and amended by s. 17 of Act 22 of 2008.]

(3) If any such alteration, rescission or addition may affect the financial condition of the fund, the principal officer shall also transmit to the registrar a certificate by the valuator or, if no valuator has been employed, a statement by the fund, as to its financial soundness, having regard to the rates of contributions by employers and, if the fund is not in a sound financial condition, what arrangements will be made to bring the fund in a sound financial condition.

[Sub-s. (3) substituted by s. 18 (b) of Act 83 of 1992.]

(4) If the registrar finds that any such alteration, rescission or addition is not inconsistent with this Act, and is satisfied that it is financially sound, he shall register the alteration, rescission or addition and return a copy of the resolution to the principal officer with the date of registration endorsed thereon, and such alteration, rescission or addition, as the case may be, shall take effect as from the date determined by the fund concerned or, if no date has been so determined, as from the said date of registration.

(5) A registered fund may at any time consolidate its rules, and in such event the principal officer shall forward to the registrar a copy of such consolidated rules and if the registrar is satisfied that the consolidated rules are not substantially different from the existing rules of the fund, he shall register such consolidated rules and return a copy thereof to the principal officer with the date of registration endorsed thereon, and such consolidated rules shall thereupon take effect from the date of registration thereof.

### **13 Binding force of rules**

Subject to the provisions of this Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming.

#### **13A Payment of contributions and certain benefits to pension funds**

(1) Notwithstanding any provision in the rules of a registered fund to the contrary, the employer of any member of such a fund shall pay the following to the fund in full, namely-

- (a) any contribution which, in terms of the rules of the fund, is to be deducted from the member's remuneration; and
- (b) any contribution for which the employer is liable in terms of those rules.

(2) (a) The minimum information to be furnished to the fund by every employer with regard to payments of contributions made by the employer in terms of subsection (1), shall be as prescribed.

[Para. (a) amended by s. 17 of Act 22 of 2008.]

(b) If that information does not accompany the payment of a contribution, the information shall be transmitted to the fund concerned not later than 15 days after the end of the month in respect of which the payment was made.

(3) (a) Any contribution to a fund in terms of its rules, whether it be a contribution contemplated in subsection (1), a contribution for the payment of which a member of the fund is responsible personally, or a contribution to be paid on a member's behalf-

- (i) shall be transmitted directly into the fund's account with a bank finally registered as such under the Banks Act, 1990 (Act 94 of 1990), not later than seven days

- (ii) after the end of the month for which such a contribution is payable; or shall be forwarded directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month; or
- (iii) in the case of a fund contemplated in section 15 (4) that has been exempted from the provisions of sections 5 (2) and 9 because, in operating as a fund, its assets consist exclusively of one or more policies of insurance with an insurer carrying on long-term insurance business as contemplated in the Insurance Act, 1943, shall be forwarded to the insurer concerned in such manner as to have the insurer receive the contribution not later than seven days after the end of that month.

(b) Any contribution forwarded to and received by a fund in the circumstances contemplated in paragraph (a) (ii), shall be deposited in the fund's bank account on the first business day following the day of receipt.

(4) An amendment of the rules of a fund relating to the reduction of contributions or the suspension or discontinuation of the payment of contributions shall not affect any liability to pay any contribution which became payable at any time before the date of the resolution whereby the amendment was effected, irrespective of the date on which the amendment may take effect.

(5) When a person who, for any reason except a reason contemplated in section 14, 28 or 29, has ceased to be a member of a fund (in this subsection called the first fund), is in terms of the rules of another fund admitted as a member of the other fund and allowed to transfer to that other fund any benefit or any right to any benefit to which such person had become entitled in terms of the rules of the first fund, the first fund shall, within 60 days of the date of such person's written request to it, or, if applicable, within any longer period determined by the registrar on application by the first fund, transfer that benefit or right to the other fund in full. The transfer shall be subject to deductions in terms of section 37D and to the rules of the first fund.

(6) (a) For the purpose of monitoring and ensuring compliance with this section, the principal officer of the fund or any authorized person shall, at the times and in the manner and format prescribed, submit reports to the categories of persons, to be specified in that notice, who have an interest in such compliance.

[Para. (a) substituted by s. 7 and amended by s. 17 of Act 22 of 2008.]

(b) In applying paragraph (a), '**authorized person**' means any person who has been authorized by the relevant board to perform the function contemplated in that paragraph and of whom the registrar has been advised in writing.

(7) Interest at a rate as prescribed shall be payable from the first day following the expiration of the period in respect of which such amounts were payable on-

- (a) the amount of any contribution not transmitted into a fund's bank account before the expiration of the period prescribed therefor by subsection (3) (a) (i);
- (b) the amount of any contribution not received-
  - (i) by a fund before the expiration of the period prescribed therefor by subsection (3) (a) (ii); or
  - (ii) in the circumstances contemplated in subsection (3) (a) (iii), by the insurer concerned before the expiration of the period prescribed therefor by that subsection;
- (c) the value of any benefit, or right to any benefit, not transferred by the first fund to the other fund before the expiration of the period prescribed therefor by subsection (5).



[Sub-s. (7) amended by s. 6 of Act 11 of 2007 and by s. 17 of Act 22 of 2008.]  
[S. 13A inserted by s. 15 of Act 86 of 1984, substituted by s. 19 of Act 83 of 1992, amended by s. 6 of Act 22 of 1996 and substituted by s. 1 of Act 94 of 1997.]

### **13B Restrictions on administration of pension funds**

(1) No person shall administer on behalf of a pension fund the investments of such a pension fund, or the disposition of benefits provided for in the rules of the fund, unless the registrar has in a particular case or in general granted approval thereto and the person complies with such conditions as the registrar may from time to time determine in the particular case or in general.

(2) Approval in terms of subsection (1) may be limited to the performance of specified functions.

(3) Application for approval in terms of subsection (1) shall be made in the manner and be accompanied by the fee prescribed.

[Sub-s. (3) amended by s. 17 of Act 22 of 2008.]

(4) If the registrar deems it desirable in the public interest the registrar may on such conditions, to such extent and in such manner as it is deemed fit, exempt any person or category of persons from the provisions of subsections (1) and (3), and may at any time revoke or amend any such exemption in a similar manner.

[Sub-s. (4) substituted by s. 7 (a) of Act 11 of 2007.]

(5) An administrator contemplated in subsection (1) must-

- (a) endeavour to avoid conflict between the interests of the administrator and the duties owed to the fund, and any conflict of interest or potential conflict of interest must be disclosed by the administrator to the board setting out full particulars of how such conflict will be managed;
- (b) administer the fund in a responsible manner;
- (c) keep proper records;
- (d) employ adequately trained staff and ensure that they are properly supervised;
- (e) have well-defined compliance procedures;
- (f) maintain adequate financial resources to meet its commitments and to manage the risks to which the fund is exposed;
- (g) furnish the registrar with such information as requested by the registrar where such request is reasonable, the purpose for the request is disclosed and reasonable notice is given to the administrator in order to meet the request.

[Sub-s. (5) added by s. 7 (b) of Act 11 of 2007.]

(6) If the registrar, after an inspection or investigation under section 25, considers that the interests of the members of a fund or of the public so require, the registrar may-

- (a) direct the administrator to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs disclosed by the inspection or investigation;
- (b) direct the administrator to withdraw from the administration of the fund, whereupon the board of the fund must in accordance with the registrar's directions, but subject to this Act and the rules of the fund, arrange for the administration of the fund to be taken over by another administrator or person; or
- (c) suspend or withdraw the approval granted to the administrator on such conditions and for such period as the registrar deems fit, provided that where an

administrator's approval is suspended, the registrar may permit the administrator to continue to provide services to the funds under its administration subsequent to the date of the suspension, but it may not enter into an agreement to provide any new or additional services to any fund while the suspension is in force.

[Sub-s. (6) added by s. 7 (b) of Act 11 of 2007.]

(7) .....

[Sub-s. (7) added by s. 7 (b) of Act 11 of 2007 and deleted by s. 8 (a) of Act 22 of 2008.]

(8) Before taking any action under subsection (6), the registrar must inform the administrator and the board of the fund of the proposed action and grounds therefor, and afford them a reasonable opportunity to be heard.

[Sub-s. (8) added by s. 7 (b) of Act 11 of 2007 and substituted by s. 8 (b) of Act 22 of 2008.]

(9) If it is in the public interest, the registrar may through appropriate media make known the suspension or withdrawal of an approval referred to in subsection (6).

[Sub-s. (9) added by s. 7 (b) of Act 11 of 2007 and substituted by s. 8 (c) of Act 22 of 2008.]

[S. 13B inserted by s. 20 of Act 83 of 1992.]

#### **14 Amalgamations and transfers**

(1) Subject to subsection (8), no transaction involving the amalgamation of any business carried on by a registered fund with any business carried on by any other person (irrespective of whether that other person is or is not a registered fund), or the transfer of any business from a registered fund to any other person, or the transfer of any business from any other person to a registered fund, shall be of any force or effect unless-

(a) the scheme for the proposed transaction, including a copy of every actuarial or other statement taken into account for the purposes of the scheme, has been submitted to the registrar within 180 days of the effective date of the transaction;

[Para. (a) substituted by s. 8 (b) of Act 11 of 2007.]

(b) the registrar has been furnished with such additional particulars or such a special report by a valuator, as he may deem necessary for the purposes of this subsection;

(c) the registrar is satisfied that the scheme referred to in paragraph (a) is reasonable and equitable and accords full recognition-

(i) to the rights and reasonable benefit expectations of the members transferring in terms of the rules of a fund where such rights and reasonable benefit expectations relate to service prior to the date of transfer;

(ii) to any additional benefits in respect of service prior to the date of transfer, the payment of which has become established practice; and

(iii) to the payment of minimum benefits referred to in section 14A,

and that the proposed transactions would not render any fund which is a party thereto and which will continue to exist if the proposed transaction is completed, unable to meet the requirements of this Act or to remain in a sound financial condition or, in the case of a fund which is not in a sound financial condition, to attain such a condition within a period of time deemed by the registrar to be satisfactory;

[Para. (c) substituted by s. 3 of Act 54 of 1991, by s. 21 of Act 83 of 1992 and by s. 2 of Act 39 of 2001.]

(d) the registrar has been furnished with such evidence as he may require that the provisions of the said scheme and the provisions, in so far as they are applicable,

of the rules of every registered fund which is a party to the transaction, have been carried out or that adequate arrangements have been made to carry out such provisions at such times as may be required by the said scheme;

- (e) the registrar has forwarded a certificate to the principal officer of every such fund to the effect that all the requirements of this subsection have been satisfied.

[Sub-s. (1) amended by s. 8 (a) of Act 11 of 2007.]

(2) (a) Whenever a scheme for any transaction referred to in subsection (1) has come into force in accordance with the provisions of this section, the relevant assets and liabilities of the bodies so amalgamated shall respectively vest in and become binding upon the resultant body, or as the case may be, the relevant assets and liabilities of the body transferring its assets and liabilities or any portion thereof shall respectively vest in and become binding upon the body to which they are to be transferred.

(b) Any transfer contemplated in paragraph (a) must be effected within 60 days of the date of the certificate issued by the registrar in terms of paragraph (e) of subsection (1).

[Sub-s. (2) substituted by s. 8 (c) of Act 11 of 2007.]

(3) The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset which is transferred in accordance with the provisions of subsection (2), shall, upon production to him by the person concerned of such deed or other document and of the certificate referred to in paragraph (e) of subsection (1), without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his registers that are necessary by reason of the amalgamation or transfer.

[Sub-s. (3) substituted by s. 15 of Act 81 of 1957.]

(4) A transaction effected in terms of this section shall not deprive any creditor of a party thereto (other than in his capacity as a member or a shareholder of such party) of any right or remedy which he had immediately prior to that date against any party to the transaction or against any member or shareholder or officer of such party.

(5) Any application for approval of a scheme lodged with the registrar in terms of subsection (1) (a) shall lapse if the registrar requests further information and no satisfactory response is received from either the transferor or the transferee fund, as the case may be, within a period of 180 days from the date of such request.

[Sub-s. (5) added by s. 8 (d) of Act 11 of 2007.]

(6) The registrar may withdraw or amend a certificate issued in terms of subsection (1) (e), in circumstances where the registrar is satisfied that-

- (a) the scheme or information provided in terms of subsection (1) was so inaccurate that he would not have granted such certificate had he been aware of the actual facts; or  
(b) the certificate contains a *bona fide* error.

[Sub-s. (6) added by s. 8 (d) of Act 11 of 2007.]

(7) (a) Notwithstanding anything to the contrary in the rules of a fund, a retirement annuity fund shall not prohibit the transfer of business that relates to a member's interest or non-member spouse's interest, at the request of such a member or non-member spouse from one retirement annuity fund to another.

(b) No fees or commissions of any nature are payable by any party or by any agent or mandatary of such party-

- (i) in return for the facilitation, intermediation or recommendation of the transfer; or
- (ii) for financial services rendered by a financial services provider or representative after the transfer in respect of the transferred interest of the transferring member or non-member spouse which exceeds the fees or maximum commission that would have been permissible for such services in terms of the Long-term Insurance Act, 1998 or any regulations made thereunder had the transfer not been done other than fees-
  - (aa) payable to the registrar;
  - (bb) negotiated and agreed to in writing by the transferring member or non-member spouse annually, which fees are-
    - (A) payable by the transferring member or non-member spouse personally; or
    - (B) authorised by the transferring member or non-member spouse to be paid by the fund or administrator.

[Para. (b) substituted by s. 9 (a) of Act 22 of 2008.]

[Sub-s. (7) added by s. 8 (d) of Act 11 of 2007.]

(8) With effect from the commencement of the Pension Funds Amendment Act, 2007, subsection (1) does not apply where the affected members were duly informed of a proposed transaction and any objection the members may have, has been resolved to the satisfaction of the board of the fund concerned, and-

- (a) both transferor and transferee funds are valuation exempt;
- (aA) both transferor and transferee funds are beneficiary funds; or
- (b) the transferor or transferee fund is neither registered nor required to register under this Act and the other fund is valuation exempt,

and, furthermore, that-

- (i) such registered funds keep proper records of all such transactions;
- (ii) such registered funds comply with any further requirements as the registrar may prescribe;
- (iii) the assets and liabilities are transferred within 180 days of the effective date of transfer; and
- (iv) any assets transferred must be increased or decreased with fund return from the effective date until the date of final settlement.

[Sub-s. (8) added by s. 8 (d) of Act 11 of 2007 and substituted by s. 9 (b) of Act 22 of 2008.]

#### **14A Minimum benefits**

(1) Every registered fund shall provide the following minimum benefits:

- (a) The benefit paid to a member who ceases to be member of the fund prior to retirement in circumstances other than liquidation of the fund shall not be less than the minimum individual reserve;
- (b) the benefit paid to a member if the fund is liquidated in terms of section 28 or 29 shall not be less than the minimum individual reserve: Provided that, where the fair value of the assets of the fund after recovery of any debt owed by the employer in terms of section 30 (3) is lower than the sum of the minimum individual reserves for all members who are being included in the distribution of the assets after adjustment for any benefits paid previously and the cost of annuity policies which will provide equivalent pensions to all existing pensioners and

deferred pensioners, the minimum individual reserve may be proportionally reduced in the ratio which the fair value of the assets bears to the total of all the minimum individual reserves adjusted for any benefits paid previously plus the cost of such annuity policies;

- (c) if a category of the fund is converted from a defined benefit category to a defined contribution category, the amount to be credited to the member's individual account shall not be less than the minimum individual reserve: Provided that, where the fair value of the assets of the fund after recovery of any debt owed by the employer in terms of section 30 (3) is lower than the sum of the minimum individual reserves for all members after adjustment for any benefits paid previously and the cost of annuity policies which will provide equivalent pensions to all existing pensioners and deferred pensioners, the minimum individual reserve may be proportionally reduced in the ratio which the fair value of the assets bears to the total of all the minimum individual reserves adjusted for any benefits paid previously plus the cost of such annuity policies;
- (d) on, or within six months from, the effective date of the first actuarial valuation following the commencement date, and at least once every three years thereafter, the board shall grant a pension increase to pensioners and deferred pensioners which shall not be less than the minimum pension increase.

[Sub-s. (1) substituted by s. 9 of Act 11 of 2007.]

(2) (a) In respect of a fund which is registered on or after a date three months after the commencement date, subsection (1) shall apply on registration.

(b) In respect of a fund which is registered prior to a date three months after the commencement date-

- (i) subsection (1) (a) shall apply from a date 12 months after the surplus apportionment date; and
- (ii) subsection (1) (b), (c) and (d) shall apply from the commencement date.

(3) If the employer or the board exercises any right that the employer or the board has in terms of the rules to liquidate the fund, or to terminate participation of a particular employer in the fund, prior to the commencement date or to change the basis upon which future benefits accrue prior to the date from which subsection (1) (a) applies to the fund, the members may not seek redress against the employer or the board in respect of any increase in value of the benefits that would occur as a result of the application of minimum individual reserves to the fund.

[S. 14A inserted by s. 3 of Act 39 of 2001.]

#### **14B Determination of member's individual account, minimum individual reserve and minimum pension increase**

(1) The member's individual account in relation to an individual member of a defined contribution category of a fund shall be determined by the board in accordance with the formula-

$$MC+EC-X+IC+OC$$

where-

- (a) MC represents the contributions paid by the member;  
EC represents the contributions paid by the employer in respect of the member;  
X represents such expenses as the board determines should be paid out of the contributions paid by and in respect of the member;  
IC represents the amount credited to the member's individual account upon the

commencement of the member's membership of the fund or upon the conversion of the category of the fund to which the member belongs from a defined benefit category to a defined contribution category of a fund or upon the amalgamation of his or her fund with any other fund, if any, other than amounts taken into account in terms of OC; and

OC represents any other amounts lawfully permitted, credited to or debited from the member's individual account, if any; and

(b) MC, EC, X, IC and OC are increased or decreased with fund return: Provided that the board may elect to smooth the fund return.

(2) In determining the minimum individual reserve of a member of a-

(a) defined benefit category of a fund, the board shall determine the greater of-

(i) the fair value equivalent of the present value of the member's accrued deferred pension: Provided that-

(aa) where there is not a uniform rate of accrual over the full period of membership of the fund, the accrued deferred pension shall be calculated assuming a uniform rate of accrual as if the member had remained in service until normal retirement date as defined in the rules of the fund, but which uniform rate of accrual will not be less than the uniform rate of accrual that is calculated based on the period of service completed up to the date of calculation;

(bb) the fair value equivalent of the present value shall assume rates of increase in the pension before and after retirement, mortality rates and rates of discount as prescribed by the registrar; and

(cc) the term 'accrued deferred pensions' in this section shall include the portion of any lump sum benefit payable at normal retirement date which corresponds to prior service; and

(ii) an amount equal to the value of the member's contributions, less such expenses as the board deems appropriate to deduct from the contributions, augmented as from the date of payment of a contribution by fund return plus any amount payable in terms of the rules of the fund in excess of the member contributions increased or decreased as from the date that the member joined the fund: Provided that the board may elect to smooth the fund return; and

(b) defined contribution category of a fund, the board shall determine the value of the member's individual account as determined in terms of subsection (1) plus a share of the investment reserve account, the member surplus account, and such contingency reserve accounts as the board may determine should be included in terms of section 15G, in the proportion that the member's individual account value as at the effective date of the calculation bears to the total of all members' individual account values as at that date or such other method of apportionment as the board deems reasonable.

(3) (a) The board shall establish and implement a policy with regard to increases to be granted to pensioners and deferred pensioners, which policy must-

(i) aim to award a percentage of the consumer price index, or some other measure of price inflation which is deemed suitable by the board; and

- (ii) set the frequency with which increases will be considered in line with the policy: Provided that increases should be considered each year, with comparison to the minimum pension increase at least once every three years.
- (b) The policy contemplated in paragraph (a) must be communicated to pensioners and deferred pensioners when it is established and whenever it is changed.
- (c) The policy contemplated in paragraph (a) will not be required where-
  - (i) pensioners on or after retirement in terms of the rules of a fund, purchased a policy from a long-term insurer registered in terms of section 7 of the Long-term Insurance Act, 1998 (Act 52 of 1998);
  - (ii) pensioners on whose behalf a fund, on or after retirement in terms of the rules of the fund, purchased a policy of insurance from a long-term insurer registered in terms of section 7 of the Long-term Insurance Act, 1998 (Act 52 of 1998);
  - (iii) pensioners elected to receive a level pension, or a pension with fixed increases, or a pension the amount of which is elected by the pensioner from time to time, paid from the fund in terms of the rules of the fund.
- (4) (a) In determining the minimum pension increase, the board shall increase pensions by a factor, P, where P is equal to the greater of the increase that the board would grant in terms of the pension increase policy established in terms of subsection (3) and-
  - (i) the increase in paragraph (b), if the increase in paragraph (b) is less than the increase in paragraph (c); or
  - (ii) the increase in paragraph (c), if the increase in paragraph (b) is greater than or equal to the increase in paragraph (c):

Provided that if the application of the increase factor, P, causes a fund to become financially unsound, the board may limit P to such amount as will not cause the fund to be in a financially unsound condition.
- (b) The board shall determine the increase that would result from-
  - (i) accumulating with fund return the liabilities for pensioners at their dates of retirement in the fund or date of joining the fund if the pensioner retired from another fund and became a member of the fund as a result of an approval granted in terms of section 14 (1) and deferred pensioners at their dates of termination of service, including any contingent liabilities payable, in terms of the rules of a fund, on termination of those pensions or deferred pensions to persons who are still alive at the effective date of the calculation, adjusted to an equivalent fair value of assets less-
    - (aa) pension payments;
    - (bb) cash amounts paid on retirement; and
    - (cc) those expenses that the board deems reasonable,
 plus the liability in respect of any special increases that have been granted to pensioners and deferred pensioners which were funded otherwise than through fund return: Provided that, if the board is unable to grant the full minimum pension increase as at the surplus apportionment date, the board may reduce the amount determined in terms of this subparagraph at that date such that the amount equals the pensioner liability as at the surplus apportionment date after enhancement in terms of section 15B (5) (b), if applicable, increased to an equivalent fair value of assets, and the board may accumulate thereafter in terms

of this paragraph, using such reduced amount, as if it was the balance determined in terms of this paragraph as at the surplus apportionment date prior to such reduction; and

- (ii) dividing the amount calculated in terms of subparagraph (i) by the present value of current pensions and deferred pensions after making allowance for mortality, expenses and future pension increases at the rate determined by the board, adjusted to an equivalent fair value of assets.

(c) The board shall determine the increase required to each pension to provide the pension payable in the month following retirement, nett of the commutation of any portion of the pension for cash or the deferred pension at the date of termination of service, multiplied by the change in the consumer price index from the date of retirement in the case of a pensioner, or the date of termination of service in the case of a deferred pensioner, to the effective date of the calculation of the increase.

(d) Where the board finds it impractical to derive the increases in paragraphs (a), (b) and (c) for each individual pensioner or deferred pensioner, the board may use an approximate method which will preserve the broad principles behind paragraphs (a), (b) and (c).

(5) For purposes of subsection (4), where the pension has arisen because of the death of a member rather than the member's retirement, any reference in that subsection to 'retirement' shall be construed as a reference to death.

(6) In determining the minimum individual reserve of a pensioner or a deferred pensioner, the board shall determine the fair value equivalent of the present value of the pension, or the deferred pension, payable to that member after implementation of any minimum pension increase in terms of subsections (4) and (5), including the present value of any contingent pension payable to the member's spouse, children and other dependants.

[S. 14B inserted by s. 3 of Act 39 of 2001 and substituted by s. 10 of Act 11 of 2007.]

## **CHAPTER IV**

### **DOCUMENTS TO BE DEPOSITED WITH REGISTRAR (ss 15-23)**

#### **15 Accounts**

(1) Subject to the provisions of subsection (4), every registered fund shall, within six months as from the expiration of every financial year, furnish to the registrar such statements in regard to its revenue, expenditure and financial position as may be prescribed, duly audited and reported on by the auditor of the fund.

[Sub-s. (1) substituted by s. 22 (a) of Act 83 of 1992 and amended by s. 17 of Act 22 of 2008.]

(2) Every registered fund shall, when furnishing to the registrar the documents referred to in subsection (1), also furnish to the registrar-

- (a) a copy of any special report by the auditor relating to any of the activities of the fund during the financial year to which such documents relate;
- (b) a copy of any annual report that the fund may have issued to its members or shareholders in respect of the said financial year; and
- (c) a copy of any other statement that the fund may have presented to its members or shareholders in respect of any of its activities during such financial year.

(3) If the registrar is of the opinion that any document furnished by a registered fund in terms of subsection (1) does not correctly reflect the revenue and expenditure or the financial position (as the case may be) of the fund, he may reject the said document, and in that event-



- (a) he shall notify the fund concerned of the reasons for such rejection; and
- (b) the fund shall be deemed not to have furnished the said document to the registrar: Provided that in such event the registrar may apply the provisions of section *thirty-three*, even though the period concerned may have expired before application is made for extension.

(4) If a fund has been exempted as contemplated in section 2 (5) (a), the registrar may authorise such fund to furnish to him or her, instead of the statements referred to in subsection (1), the information prescribed.

[Sub-s. (4) added by s. 22 (b) of Act 83 of 1992 and substituted by s. 10 of Act 22 of 2008.]

#### **15A Rights to use of actuarial surplus**

(1) All actuarial surplus in the fund belongs to the fund.

(2) Once actuarial surplus is apportioned to either the member surplus account or the employer surplus account in terms of sections 15B and 15C, members and the employer acquire rights to such actuarial surplus as provided for in this section.

(3) After the commencement date, the only portion of the assets of the fund that may be utilised by, or for the benefit of, the employer is any credit balance in the employer surplus account: Provided that the employer may continue a contribution holiday, which the employer was already taking immediately prior to the commencement date, only if the value of any contribution holiday taken by the employer during any period between the commencement date and the surplus apportionment date, augmented by the gross investment return earned by the fund, nett of expenses, over the corresponding period is added to the actuarial surplus to be apportioned at the surplus apportionment date in terms of section 15B (5).

(4) Any credit balance in the member surplus account must be used for the benefit of members as provided for in section 15D.

[S. 15A inserted by s. 4 of Act 39 of 2001.]

#### **15B Apportionment of existing surplus**

(1) (a) Subject to paragraph (b), the board of every fund that commenced prior to 7 March 2002 shall submit to the registrar a scheme for the proposed apportionment of any actuarial surplus (in this section referred to as the scheme) plus the details regarding any surplus utilised improperly by the employer as defined in subsection (6) as at the effective date of the statutory actuarial valuation of the fund coincident with, or next following, the commencement date.

(b) The board shall submit the scheme not later than 18 months after the effective date contemplated in paragraph (a): Provided that-

- (i) if the board elects to apportion actuarial surplus at a date earlier than the effective date of the next statutory actuarial valuation, it may do so if the statutory valuation date is advanced to such earlier date and the registrar is satisfied as to the reasons therefor;
- (ii) if the fund is liquidated in terms of section 28 or 29 at a date prior to the effective date of the next statutory actuarial valuation, the effective date of the liquidation shall be the surplus apportionment date;
- (iii) if a category of members of the fund is converted from defined benefit to defined contribution and the effective date of the conversion is earlier than the next statutory actuarial valuation date, the effective date of the conversion shall be the surplus apportionment date and a statutory actuarial valuation is required as at

- such date; or
  - (iv) if the registration of a fund is cancelled in accordance with section 27 and the effective date of cancellation is earlier than the next statutory actuarial valuation date, the effective date of the cancellation shall be the surplus apportionment date.
- (2) A scheme-
- (a) shall comply with such conditions as may be prescribed; and
  - (b) may involve-
    - (i) the improvement of benefits to existing members;
    - (ii) increases to benefits or transfer values in respect of former members;
    - (iii) the crediting of an amount to the member surplus account;
    - (iv) the crediting of an amount to the employer surplus account; or
    - (v) any two or more of the matters contemplated in subparagraphs (i) to (iv).
- (3) The board shall appoint a person to represent the interests of former members in the development of the scheme and such person shall-
- (a) assist the board in-
    - (i) identifying former members;
    - (ii) communicating proposals to former members and to the funds to which former members transferred;
    - (iii) conveying proposals from former members, and the funds to which they transferred, to the board; and
    - (iv) collating any objections to the scheme from former members and the funds to which they transferred;
  - (b) be required to report, in writing to the board, on-
    - (i) the adequacy of the steps taken by the board to include former members in terms of subsection (4); and
    - (ii) where it was necessary for the board to apply its discretion with regard to the inclusion of former members and the apportionment of actuarial surplus to such former members, whether or not the exercise of such discretion was reasonable taking into account the demands of equity within the bounds of practicality and the circumstances of the particular fund: Provided that such report must accompany the scheme when it is submitted to the registrar in terms of subsection (9).
- (4) The board shall determine who may participate in the apportionment of actuarial surplus, and shall include in such apportionment existing members and any former members who left the fund in the period from 1 January 1980 to the surplus apportionment date: Provided that-
- (a) the board may exclude from participation former members in respect of whom the board satisfies the registrar that insufficient records are available to enable the additional benefits that may be due to such former members to be calculated, after the board has taken reasonable steps-
    - (i) to obtain such records from the administrator;
    - (ii) to construct such records from the records of the-
      - (aa) employer;
      - (bb) any fund to which former members transferred; or
      - (cc) a trade union or staff association active in the workplace during this period; or

- (iii) if the steps in subparagraphs (i) and (ii) do not yield sufficient information, to obtain such records from the potential claimants themselves following an advertisement-
  - (aa) on a national basis and in the area where the former members used to work; or
  - (bb) on a more limited basis as approved by the registrar if representations by the fund satisfy the registrar that limited advertisement will be adequate,
    - inviting the former members to come forward with evidence to substantiate their claim, after which advertisement the board should wait at least six months but no longer than nine months before excluding any former members because of a lack of sufficient information to enable the calculations to be performed;
- (b) rather than excluding former members whose individual benefits cannot be determined, the board may set aside a portion of the actuarial surplus in a contingency reserve account explicitly established to satisfy claims of former members in terms of subsection (5) (e).

(5) The board shall apportion the actuarial surplus between the various classes of stakeholders whom the board has determined shall participate in the apportionment in terms of subsection (4), following which such portion as is due to the employer shall be credited to the employer surplus account: Provided that-

- (a) the actuarial surplus to be apportioned shall be increased by the amount of actuarial surplus utilised improperly by the employer prior to the surplus apportionment date as determined in terms of subsection (6);
- (b) former members shall have the benefits previously paid to them, or the amounts previously transferred on their behalf, increased to the minimum benefit determined in terms of section 14B(2) or 14B(6) as at the date when they left the fund, with such increase adjusted to the surplus apportionment date using the nett investment earnings of the fund over the corresponding period, and pensioners and deferred pensioners shall have their pensions increased to the minimum pension as determined in terms of section 14B (4), as a prior charge on the actuarial surplus to be apportioned: Provided further that, where the actuarial surplus to be apportioned is insufficient to permit such increases after being increased in terms of paragraph (a), the amounts shall be proportioned downwards until the total to be paid to former members, pensioners and deferred pensioners equals the actuarial surplus to be apportioned;
- (c) after deducting the cost of the increases to former members, pensioners and deferred pensioners in terms of paragraph (b) the balance of the actuarial surplus shall be equitably split between existing members, former members and the employer in such proportions as the board shall determine after taking account of the financial history of the fund: Provided further that the registrar may prescribe certain methods which, if used, shall be deemed to be equitable;
- (d) if the amount apportioned to the employer in terms of paragraph (c) is less than the actuarial surplus utilised improperly by the employer as determined in subsection (6), the difference between the amount-

- (i) determined in terms of subsection (6); and
- (ii) apportioned to the employer in terms of paragraph (c), shall represent a debt owed by the employer to the fund and the employer must submit a scheme conforming with the prescribed requirements and repay that debt within a maximum period approved by the registrar;
- (e) the board shall determine how, in the case of existing members and former members, the allocated portion of actuarial surplus shall be applied for their benefit, including the crediting of any portion to the members' surplus accounts or to the members' individual accounts, as the case may be: Provided further that the board may allocate a portion of the actuarial surplus to be used for former members to a contingency reserve account which will be used to satisfy the claims of former members-
  - (i) who have been identified in subsection (4) (a) but who cannot be traced; or
  - (ii) who did not substantiate their claim during the nine-month period following the advertisement in subsection (4) (a) (iii) but who do so after the end of this period; and
- (f) the surplus due to any stakeholder as a result of a surplus apportionment scheme approved by the registrar, shall be increased or decreased with fund return from the date determined in line with section 15B (1) until the date the surplus is awarded, paid or allocated.

(6) (a) For the purposes of this subsection-

**'cost'** means the difference between the accrued liabilities in the fund as determined by the valuator immediately before, and immediately after, the improper utilisation of surplus: Provided that, where more than one use of actuarial surplus occurred simultaneously, the valuator shall determine how the difference between the accrued liabilities before any of the uses, and the accrued liabilities after all the uses at that date, shall be split between those uses;

**'employer'** means the employer or employers participating in the fund at the time of the improper utilisation of surplus, determined in accordance with this section, and whom benefited from the improper use: Provided that where a subsequent employer or employers by contract or law became liable for the employee-related liabilities of the previous employer or employers, the subsequent employer is also liable for the apportionment of surplus used improperly;

**'selected'**, in relation to members, means, in the case of a granting of benefits, a group of members to whom the benefits were granted to the exclusion of other members, and, in the case of a granting of benefits conditional on election by the member, a group of members to which the election was granted to the exclusion of other members.

(b) The board shall investigate any improper utilisation of surplus by the employer prior to the surplus apportionment date which shall consist of any of the following amounts incurred from 1 January 1980 or since the date of the fund's commencement or such earlier date agreed to by the employer to the surplus apportionment date:

- (i) The cost of benefit improvements for executives in excess of the cost that would have applied had the executives enjoyed the benefits provided to other members;
- (ii) the cost of any additional pensions or deferred pensions or lump sum benefits granted to selected members in lieu of the employer's obligation to subsidise medical costs of those members after retirement;
- (iii) the cost to recognise prior pensionable service for selected members or for

- members transferred into the fund in excess of any amount paid into the fund in respect of such prior service; and
- (iv) the value of any contribution holiday enjoyed by the employer after the commencement date.
- (c) The board may exclude the following from surplus utilised improperly:
- (i) Any use of actuarial surplus which the registrar is satisfied was approved by the members, or by trade unions representing members, after a clear and comprehensive communication exercise occurred as part of a negotiated utilisation of surplus by stakeholders;
- (ii) the cost or value of surplus utilised improperly by the employer shall be reduced by any contributions or payments made to the fund by the employer and for such specific purpose;
- (iii) for the purposes of paragraph (b) (i), where, in accordance with the rules of the fund, the use for the executive benefit in question has existed in the fund in its current form since inception of the fund; or
- (iv) such surplus utilised for the purposes of remedying past unfair discrimination if the registrar is satisfied that the surplus utilised improperly was used for such purposes.
- (d) The investigation contemplated in paragraph (b) shall-
- (i) be conducted at the fund's surplus apportionment date; and
- (ii) be carried out by the board irrespective of the fund's financial position at the surplus apportionment date.
- (e) Any surplus utilised improperly shall be increased or decreased by fund return from the effective date of the use until the date of receipt thereof by the fund.
- (7) At least 75 per cent of the members of the board duly constituted in terms of section 7A must approve the scheme.
- (8) Notwithstanding anything to the contrary in the rules, no person other than the relevant board or, in the event of referral to the special ad hoc tribunal referred to in section 15K, the special ad hoc tribunal, and the registrar may approve the scheme.
- (9) An apportionment in terms of this section shall be of no force or effect unless-
- (a) the scheme, the statutory actuarial valuation as at the surplus apportionment date of the fund, as well as a copy of any other actuarial or other statement taken into account for purposes of the scheme and the report by the person appointed in terms of subsection (3), has been submitted to the registrar and the registrar is satisfied that the statutory actuarial valuation has been prepared on actuarially sound and acceptable principles prescribed;
- (b) the registrar has been furnished with a certificate signed by the valuator stating-
- (i) whether the valuator finds that the process of apportionment complied with this Act; and
- (ii) where it was necessary for the board to apply its discretion, whether the exercise of such discretion was not unreasonable taking into account the demands of equity within the bounds of practicality and the circumstances of the particular fund, together with such additional particulars or such special report by the valuator as the registrar may deem necessary for purposes of this subsection;

- (c) the registrar has been furnished with such additional report as he or she may require from an independent actuary appointed by him or her on such matters associated with the apportionment of the actuarial surplus as the registrar shall determine and including such information as may be prescribed: Provided that-
  - (i) the registrar shall require such report where there are complaints in respect of the apportionment of surplus which have not been resolved to the satisfaction of the complainants concerned; and
  - (ii) the costs resulting from the appointment of such independent actuary shall be borne by the fund;
- (d) the fund demonstrates that reasonable measures have been taken to inform employers, members and former members, together with any fund to which former members transferred, of the scheme in a manner which is clear and understandable to the members and former members and which gives details of the allocation of the actuarial surplus for the benefit of the various stakeholders, including the amounts of any actuarial surplus which it is intended to credit to the member surplus account and to the employer surplus account, respectively, and the costs of any benefit improvements for members and former members: Provided that-
  - (i) the manner of communication and the type of information to be included in this communication may be prescribed and such prescription may include a requirement that the person appointed in terms of subsection (3), the independent actuary, if any, and the valuator shall certify that they are satisfied that the communication material is objective and contains sufficient information to enable any stakeholder to judge the reasonableness of the scheme; and
  - (ii) the communication shall be explicit about how and where any complaint should be lodged;
- (e) the employer, members, former members, and any fund to which former members have transferred have had 12 weeks after despatch of the communication in which to complain, in writing, to the board;
- (f) the board has considered any objection contemplated in paragraph (e) before submitting the scheme to the registrar;
- (g) the principal officer of the fund has furnished the registrar with details of all objections lodged with the board and the actions taken to address such objections;
- (h) the registrar is satisfied that the scheme is reasonable and equitable and accords full recognition to the rights and reasonable benefit expectations of existing members and former members in respect of service prior to the surplus apportionment date; and
- (i) the registrar has forwarded a certificate to the principal officer of the fund to the effect that all the requirements of this subsection have been fulfilled.

(10) If the board fails to submit a scheme in terms of subsection (1) or if the registrar is not satisfied that the scheme is reasonable and equitable, or if the registrar considers that unresolved complaints require investigation which may lead to a review of such scheme or the statutory actuarial valuation as at the surplus apportionment date of the fund for the purpose of determining the actuarial surplus in the fund is unacceptable to the registrar, or at the request of

the board or at the request of the person appointed in terms of subsection (3), the registrar shall require the board to refer the scheme to a special *ad hoc* tribunal in terms of section 15K, and such tribunal shall exercise the powers of the board in terms of this section, and any reference in this section to the board shall be construed as a reference to the tribunal.

(11) (a) Where a board is not required in terms of subsection (1) (a) to submit a scheme to the registrar, such board shall submit a nil return, together with such additional particulars or reports by the board or other parties as the registrar may deem necessary.

(b) For purposes of this section '**nil return**' means a written statement by the board, as may be prescribed, including the investigation, existence and details of improper utilisation of surplus contemplated in subsection (6).

(c) The effective date of the nil return is the surplus apportionment date.

(d) The employer, members, former members, and any fund to which former members have transferred may within 12 weeks after the date of submission of a nil return object to such return in writing to the board, and a copy of the objection must be forwarded by the board to the registrar.

(e) (i) The board must consider such objections and to the satisfaction of the registrar demonstrate that the objections have been dealt with.

(ii) If the registrar is not satisfied that the objections have been dealt with satisfactorily, the registrar may direct that the nil return be reviewed or a scheme be submitted by the board where the registrar is of the opinion that a scheme is required in terms of this Act.

(f) The nil return shall be submitted to the registrar within 18 months of the fund's surplus apportionment date: Provided that a fund may apply to the registrar in writing to extend the period for such submission.

(g) The costs of submitting a nil return to the registrar shall be borne by the fund.

(h) The registrar may direct the fund to communicate the nil return to members, former members and current employers and may specify the manner in which the communication must take place.

(i) The registrar may prescribe additional requirements for nil returns.

(12) Where the board satisfies the registrar that employers which participate in the fund, on the understanding that their membership, financial position and contribution rates will be determined separately for each employer and communicated to such employer, the registrar may permit such board to apply this section to the actuarial surplus in respect of the members employed by a particular participating employer as if the corresponding membership, assets and liabilities constituted a separate fund.

[S. 15B inserted by s. 4 of Act 39 of 2001 and substituted by s. 11 of Act 11 of 2007.]

### **15C Apportionment of future surplus**

(1) The rules may determine any apportionment of actuarial surplus arising in the fund after the surplus apportionment date between the member surplus account and the employer surplus account.

(2) If the rules are silent on the apportionment of actuarial surplus arising after the surplus apportionment date, any apportionment shall be determined by the board taking into account the interests of all the stakeholders in the fund: Provided that, notwithstanding anything to the contrary in the rules, neither the employer nor the members may veto such apportionment.

[S. 15C inserted by s. 4 of Act 39 of 2001.]

### **15D Utilisation of surplus for benefit of members**

(1) Notwithstanding anything to the contrary in the rules of a fund but subject to subsection (2), any credit balance in the member surplus account may only be used by the board to-

- (a) improve benefits for existing members;
- (b) improve the benefits previously paid to former members or the amounts previously transferred in respect of former members;
- (c) reduce current contributions due from members; and
- (d) meet, in full or in part, expenses which would otherwise reduce the proportion of the members' contributions that are invested for retirement:

Provided that the employer appointed members of the board shall not have a vote in any deliberation over the use of any credit balance in the member surplus account unless the proposal before the board will increase the contribution rate payable by the employer.

(2) The credit balance contemplated in subsection (1) after the apportionment of actuarial surplus as at the surplus apportionment date must be used as specified in the scheme submitted in terms of section 15B (1) if the scheme makes provision for the use of such credit balance.

[S. 15D inserted by s. 4 of Act 39 of 2001.]

### **15E Utilisation of surplus for benefit of employer**

(1) Notwithstanding anything to the contrary in the rules a participating employer may request the board to use actuarial surplus allocated to the employer surplus account in terms of sections 15B, 15C and 15F for use by that employer for any of the following purposes, namely-

- (a) funding a contribution holiday;
- (b) payment of pensions, or an increase in pensions in course of payment, so as to compensate members for the loss of any subsidy from the employer of their medical costs after retirement;
- (c) meeting, in full or in part, expenses which the employer is obliged to pay in terms of the rules of the fund;
- (d) improving the benefits payable to all members, or a category of members as defined in the rules, as determined by the employer;
- (e) transferring part, or all, of the employer surplus account in terms of subsection (2) to the employer surplus account in another fund where the employer is a participating employer;
- (f) on liquidation of the fund in terms of sections 28 or 29, payment in cash to the employer in terms of section 15I;
- (g) in order to avoid retrenchment of a significant proportion of the workforce, payment in cash to the employer in terms of section 15J; and
- (h) transferring part, or all, of the employer surplus account to the member surplus account in the same fund:

[Para. (h) added by s. 12 (b) of Act 11 of 2007.]

Provided that the members of the board who have been elected by members of the fund shall not have a vote in any deliberation over the use of any credit balance in the employer surplus account.

(2) The registrar may approve the transfer of a portion of the employer surplus account from the fund to the employer surplus account in another fund, if the following conditions are satisfied, namely that-

- (a) the employer who has control of the employer surplus account in terms of the



rules of the fund has similar control of the employer surplus account in the transferee fund;

- (b) employees of the employer are members or former members of the fund to which the transfer is made;
- (c) the employer applies to the registrar for approval of the transfer, giving such details and supporting reports as the registrar may require; and
- (d) the registrar is satisfied that such transfer is necessary in order to achieve an equitable distribution of the surplus between the funds.

[S. 15E inserted by s. 4 of Act 39 of 2001.]

#### **15F Existing employer reserve accounts**

(1) On or after the commencement date, the board may apply to the registrar to transfer all or some of the credit balance in an existing reserve account as defined in the rules to the employer surplus account.

[Sub-s. (1) substituted by s. 13 (a) of Act 11 of 2007.]

(2) The registrar may approve such transfer if he or she is satisfied that the allocation of actuarial surplus to such account was negotiated between the stakeholders in a manner consistent with the principles underlying sections 15B and 15C.

(3) Any remaining portion of the credit balance in an existing reserve account shall be treated as actuarial surplus to be distributed in terms of section 15B.

[Sub-s. (3) substituted by s. 13 (b) of Act 11 of 2007.]

[S. 15F inserted by s. 4 of Act 39 of 2001.]

#### **15G Right to share in surplus accounts on exit**

(1) Notwithstanding anything to the contrary in the rules, members who cease to be members of the fund should receive, as part of their transfer values or benefit payments, a share of any credit balances in the member surplus account, the investment reserve account and such contingency reserve accounts as the board deems appropriate, in the ratio that the liability of the fund in respect of the past service of the members leaving the fund bears to the liability of the fund towards all its members in respect of past service at that date: Provided that the board may use a reasonable alternative if there are sound administrative reasons why such a calculation cannot be performed.

(2) Notwithstanding anything to the contrary in the rules, existing members and former members may not participate in the employer surplus account when they transfer out of a fund or when they become entitled to a benefit, unless the relevant employer so directs.

[S. 15G inserted by s. 4 of Act 39 of 2001.]

#### **15H Use of contents of any surplus accounts to fund deficits**

(1) If a fund has credit balances in the member surplus account or the employer surplus account and the fund is found to have a deficit following an actuarial valuation, including a valuation carried out for the purpose of distributing assets on liquidation of the fund, such credit balances shall be reduced in the same proportion by the amount of the deficit: Provided that no credit balance may be reduced by more than the amount to which the account was in credit.

(2) If the deficit exceeds the credit balances in the member surplus account and the employer surplus account, these credit balances shall be applied in full to reduce the deficit and shall be reduced to zero.

[S. 15H inserted by s. 4 of Act 39 of 2001.]

#### **15I Application of surplus accounts on liquidation of fund**

On liquidation of a fund in terms of section 28 or 29, any credit balances in any reserve accounts, the member surplus account and the employer surplus account shall be applied in the following order of priority:

- (a) All credit balances in such accounts may be drawn upon to secure the rights and reasonable benefit expectations of the members participating in the distribution: Provided that the credit balances in any such accounts shall be reduced by the same proportion.
- (b) Any remaining credit balances in the member surplus account, any contingency reserve accounts and any surplus which has not been allocated to the member and employer surplus accounts, shall be used for the benefit of the members and former members of the fund, in such manner as the liquidator, acting on the advice of the valuator, shall determine.
- (c) Any remaining balance in the employer surplus account shall be paid to the employer unless the employer was liquidated prior to the commencement of the liquidation of the fund, in which case it shall be used in the following order of priority, namely-
  - (i) to meet contributions deducted from members' earnings and not paid to the fund;
  - (ii) to meet contributions due from the employer but not paid to the fund; and
  - (iii) to be distributed amongst the members at the date of liquidation and such former members as are eligible in terms of the rules to participate in the distribution.

[S. 15I inserted by s. 4 of Act 39 of 2001.]

### **15J Use of employer surplus to prevent job losses**

(1) A fund may apply to the registrar for permission to pay any credit balance in an employer surplus account to an employer where negotiations in terms of section 189 of the Labour Relations Act, 1995 (Act 66 of 1995), have confirmed the need to retrench employees if additional capital is not obtained: Provided that an independent auditor may be required by the fund to certify such need.

(2) The application must be made to the registrar in the prescribed manner.

(3) The registrar may only grant an application, and issue a certificate to the applicant to the effect that the requested payment may take place, if the registrar is satisfied that-

- (a) members have had full disclosure of the current financial position of the fund and the proposed distribution to the employer, and the need of the employer for additional capital in order to maintain employment, together with the report of the independent auditor, if any, and any information that members may require to exercise their rights under the Labour Relations Act, 1995 (Act 66 of 1995);
- (b) members have had a reasonable opportunity to consider the proposal;
- (c) at least 75 per cent of the members currently in employment have approved the proposal, in writing; and
- (d) negotiations in terms of section 189 of the Labour Relations Act, 1995 (Act 66 of 1995), have confirmed the need to retrench more than 10 per cent of the membership of the fund at the previous financial year end if the payment is not made.

[S. 15J inserted by s. 4 of Act 39 of 2001.]

### 15K Specialist tribunal

(1) (a) When the board fails to submit a scheme for the apportionment of an actuarial surplus in terms of section 15B within the prescribed period, the registrar shall appoint a special *ad hoc* tribunal to perform the functions of the board set out in section 15B.

(b) The registrar shall require the board to refer the scheme for the apportionment of an actuarial surplus in terms of section 15B to a special *ad hoc* tribunal to perform the functions of the board set out in section 15B, if-

- (i) the registrar is not satisfied that the scheme submitted by the board in terms of section 15B is reasonable and equitable;
- (ii) the registrar considers that unresolved complaints require investigation which may lead to a review of such scheme;
- (iii) the statutory actuarial valuation as at the surplus apportionment date of the fund for the purpose of determining the actuarial surplus in the fund is unacceptable to the registrar;
- (iv) the board requests it; or
- (v) the person appointed in terms of section 15B (3) requests it.

[Sub-s. (1) substituted by s. 14 of Act 11 of 2007.]

(2) The tribunal shall consist of at least three members who must all be independent of any stakeholder in the fund, and of whom-

- (a) at least one shall be a lawyer selected by the board from a panel approved by the registrar;
- (b) at least one shall be an actuary selected by the board from a panel approved by the registrar; and
- (c) at least two must have experience in retirement fund financing:

Provided that the registrar may select the members of the tribunal, if the board fails to make their selection within three months of the request being made by the registrar.

(3) The tribunal shall make the apportionment within such period as may be determined by the registrar.

(4) Three members of the tribunal shall constitute a quorum.

(5) The tribunal shall elect a chairperson from amongst its members and such chairperson shall have a deliberative vote but no casting vote.

(6) At least two-thirds of the members of the tribunal must agree to any decision or step taken in the exercise of the powers contemplated in section 15B (10).

(7) The tribunal may follow any procedure which it considers appropriate in conducting an investigation, including procedures in an inquisitorial manner, and affording any stakeholder the right to a hearing.

(8) Notwithstanding section 22 of the Financial Services Board Act, 1990 (Act 97 of 1990), the tribunal may obtain copies of any document or correspondence contained in the files of the registrar relating to a fund in connection with which the tribunal is conducting an investigation.

(9) (a) For purposes of an investigation, the tribunal may-

- (i) under the hand of the chairperson, summon any person who in the opinion of the tribunal may be able to give material information concerning the subject matter of the investigation or who is believed by the tribunal to have in his or her possession or custody or under his or her control any book, document, record or

thing which has any bearing on the subject matter of the investigation, to appear before it at a time and place specified in the summons, to be questioned or to produce that book, document, record or thing, and may retain for inspection any book, document, record or thing so produced; and

- (ii) through the chairperson administer an oath to, or accept an affirmation from, any person summoned under subparagraph (i) and question that person and require the person to produce any book, document, record or thing in his or her possession or custody or under his or her control.

(b) A summons referred to in paragraph (a) shall be served in the same manner as a summons for the attendance of a witness at a civil trial in a magistrate's court.

(c) In connection with the questioning of any person summoned under this section or the production by such person of any book, document, record or thing, the law relating to privilege as applicable to a witness summoned to give evidence or to produce a book, document, record or thing in a civil trial before a court of law shall apply.

(d) (i) Any person summoned in terms of this section or who has given evidence before a tribunal shall be entitled to the same witness fees as if he or she had been summoned to attend or had given evidence at a civil trial in a magistrate's court held at the place where the investigation is held.

(ii) Any fees which may become payable in terms of subparagraph (i) shall be paid by the fund.

(10) The tribunal shall keep, whether in writing or by mechanical or electronic means, a permanent record of the proceedings relating to the determination of a matter before it, including the apportionment of actuarial surplus and any evidence given: Provided that such record shall be passed to the registrar once the tribunal has completed its determination.

(11) After the tribunal has completed an investigation, it shall send a statement containing its determination and the reasons therefor, signed by the members of the tribunal, to all parties concerned as well as to the registrar.

(12) Any costs arising from the work of the tribunal, including periodical allowances or compensation for personal expenses of the members of the tribunal, shall be recovered from the fund out of the surplus being apportioned if the tribunal satisfies the registrar that such costs were reasonably incurred in the performance of the required functions.

(13) Any member of the public may obtain a copy of the record from the registrar on payment of a fee determined by the registrar.

(14) The determination of the tribunal shall be binding on the stakeholders.

(15) The registrar must accept such determination as satisfying the requirements of section 15B (9) unless the registrar is of the opinion that the tribunal failed to exercise its discretion properly and in good faith

[S. 15K inserted by s. 4 of Act 39 of 2001.]

## **16 Investigations by a valuator**

(1) Save as provided in section 17, a registered fund shall, once at least in every three years, cause its financial condition to be investigated and reported upon by a valuator, and shall deposit a copy of such a report with the registrar, and shall send a copy of such report or a summary thereof, prepared by the valuator in a form prescribed and signed by him, to every employer participating in the fund.

[Sub-s. (1) substituted by s. 16 (a) of Act 86 of 1984 and amended by s. 17 of Act 22 of 2008.]

(2) Such investigation shall be made in respect of the position as at the expiration of a financial year, and such report shall be deposited with the registrar within twelve months from the close of that year.

(3) In the case of a fund which is registered on the date of commencement of section 16 of the Financial Institutions Amendment Act, 1984, and which, before that date, has caused its financial condition to be investigated in terms of subsection (1), the first investigation after the said date shall be made in respect of the position as at the expiration of the fifth financial year which is completed after the financial year-end in respect of which the previous investigation was made or as at the expiration of such earlier financial year as the fund may select.

[Sub-s. (3) substituted by s. 16 (b) of Act 86 of 1984.]

(3A) In the case of a fund which is registered on the date of commencement of section 16 of the Financial Institutions Amendment Act, 1984, but which has not, before that date, caused its financial position to be investigated in terms of subsection (1), the first investigation shall be made in respect of the position as at the expiration of the third financial year which is completed after that date or as at the expiration of the fifth financial year which is completed after the registration of the fund, whichever date is the earlier, or as at the expiration of such previous financial year as the fund may select.

[Sub-s. (3A) inserted by s. 16 (c) of Act 86 of 1984.]

(4) In the case of a fund other than a fund mentioned in subsection (3) or (3A), the first investigation shall be made in respect of the position as at the expiration of the third financial year which is completed after the date of registration or as at the expiration of such previous financial year as the fund may select.

[Sub-s. (4) substituted by s. 16 (d) of Act 86 of 1984.]

(5) Notwithstanding anything contained in the preceding subsections, the registrar may, with the consent of the Minister, and after not less than one month's notice in writing to any registered fund, require that fund to cause such an investigation to be made in respect of the position as at the expiration of any financial year, if the registrar is of the opinion that an investigation would show that the fund is not in a sound financial condition: Provided that in the case of a fund which is carrying out the terms of a scheme approved by the registrar in terms of section *eighteen*, the registrar shall not act in accordance with the preceding provisions, unless he is of the opinion that an investigation would show that such scheme is unlikely to accomplish the objects of that section.

(6) If the rules of a fund provide that the benefits which may become payable to members are subject to the discretion of the management of the fund, the registrar shall, on the request of the fund and subject to the payment by the fund of such expenses as the registrar may incur in the matter, determine what amount or scale of benefits is to be taken into consideration for the purpose of the valuation, and such determination by the registrar shall be binding upon the fund.

(7) A report in terms of any of the preceding subsections shall include the particulars prescribed.

[Sub-s. (7) amended by s. 16 (e) of Act 86 of 1984, substituted by s. 9 of Act 50 of 1986, amended by s. 4 of Act 54 of 1991, substituted by s. 23 of Act 83 of 1992 and amended by s. 17 of Act 22 of 2008.]

(8) Whenever a registered fund deposits with the registrar a copy of a report made by a valuator in terms of this section, it shall also deposit with the registrar a certificate by the board and by the principal officer that to the best of their knowledge and belief the information

furnished to the valuator for the purposes of the report was correct and complete in every material respect and, where applicable, that a copy of the report or a summary thereof referred to in subsection (1) was sent to every employer participating in the fund.

[Sub-s. (8) substituted by s. 16 (f) of Act 86 of 1984 and amended by s. 6 of Act 22 of 1996.]

(9) The provisions of subsection (3) of section 15 in connection with a document relating to the financial position or the revenue or expenditure of a fund referred to therein, shall apply *mutatis mutandis* in respect of a copy of a report deposited with the registrar in terms of subsection (1) of this section and which in the opinion of the registrar does not correctly reflect its financial condition referred to in the said subsection (1).

[Sub-s. (9) added by s. 16 (g) of Act 86 of 1984.]

#### **17 Modifications where investigations by a valuator are unnecessary**

(1) If the registrar is satisfied that the financial methods adopted by a registered fund are such as to render periodical investigations by a valuator unnecessary, he shall, at the request of such fund, authorize the fund to prepare and furnish to the registrar a statement of its liabilities and assets in lieu of causing its financial condition to be investigated and reported upon by a valuator in terms of section *sixteen*.

(2) The provisions of subsections (2), (3), (4), (5) and (6) of section *sixteen* shall *mutatis mutandis* apply to every fund referred to in subsection (1) of this section.

(3) Any statement prepared in terms of subsection (1) shall include the particulars prescribed by regulation.

[Sub-s. (3) substituted by s. 24 of Act 83 of 1992.]

(4) The said statement shall be accompanied by a report thereon by the auditor of the fund, stating the particulars prescribed by regulation.

[Sub-s. (4) substituted by s. 24 of Act 83 of 1992.]

#### **18 Fund not in a sound financial condition**

(1) When any return under this Act indicates, in the opinion of the registrar, that a registered fund is not in a sound financial condition, the registrar shall, save as provided in section *twenty-nine*, direct the fund to submit a scheme setting out the arrangements which have been made or which it is intended to make to bring the fund into a financially sound condition within a reasonable period, and the fund shall deposit such scheme with the registrar within three months from the date of receipt of the said direction, together with a report thereon by a valuator or, in the case of a fund to which the provisions of section *seventeen* apply, by the auditor of the fund.

(1A) When any return under this Act indicates a deficiency in a registered fund, the fund shall, within three months from the date of such return, submit a scheme to the registrar setting out the arrangements which have been made or which it is intended to make to eliminate the deficiency, together with a report thereon by a valuator.

[Sub-s. (1A) inserted by s. 10 (a) of Act 50 of 1986.]

(2) If a registrar finds that a scheme submitted in terms of subsection (1) or (1A) is not inconsistent with the provisions of this Act and is satisfied that the arrangements set out therein should suffice to accomplish the objects of this section, he shall approve the scheme.

[Sub-s. (2) substituted by s. 10 (b) of Act 50 of 1986.]

(3) If the registrar is not satisfied regarding the matters referred to in subsection (2), he shall request the fund to make such amendments to the scheme, or to submit such new scheme, as will enable him to be so satisfied, and the fund shall comply with the request within a period



prescribed by the registrar, not being less than 30 days from the date of the request, and shall at the same time furnish to the registrar a report on such amendments or such new scheme by the valuator or auditor mentioned in subsections (1) and (1A), and the provisions of subsection (2) shall apply to any such amended scheme or new scheme which the fund may submit.

[Sub-s. (3) substituted by s. 10 (c) of Act 50 of 1986.]

(4) The fund shall carry out the terms of any scheme approved by the registrar under this section: Provided that-

- (a) the registrar may, if he is satisfied that none of the objects of this section would be thereby prejudiced, permit the said fund to amend such scheme from time to time;
- (b) if any return deposited with the registrar during the currency of such scheme in terms of this Act shows, in the opinion of the registrar, that the scheme is unlikely to accomplish the objects of this section, he may withdraw his approval of the scheme, and the fund concerned shall, within three months thereafter, prepare a further scheme, to which the provisions of this section shall apply; and
- (c) if any such return shows, in the opinion of the registrar, that the financial condition of the fund is no longer unsound, he shall communicate with the principal officer of the fund to that effect and on receipt of such communication the obligations of the fund in respect of that scheme shall terminate immediately.

(5) (a) The registrar may at any time following an inspection carried out or investigation conducted under section 25, or for any other reason which the registrar may consider necessary in the interests of the members of a fund, direct that an investigation in terms of section 16 or an audit or both an audit and such investigation be conducted into the financial position of a fund generally or with reference to any financial aspect of the fund.

(b) The costs pertaining to the audit or investigation contemplated in paragraph (a) shall constitute a first charge on the assets of the fund unless otherwise determined by the registrar.

(c) Following the audit or investigation contemplated in paragraph (a) a report must, within the time and in the format stipulated by the registrar, be furnished to the registrar and the board.

[Sub-s. (5) added by s. 15 of Act 11 of 2007.]

## 19 Investments

(1) .....

[Sub-s. (1) amended by s. 13 of Act 80 of 1959, by s. 9 (a) of Act 58 of 1966 and by s. 2 of Act 23 of 1970, substituted by s. 7 (a) of Act 91 of 1972 and by s. 23 (a) of Act 101 of 1976, amended by s. 14 (a) and (b) of Act 103 of 1979, by s. 39 (a) of Act 99 of 1980, by s. 14 of Act 82 of 1982, by s. 20 of Act 46 of 1984, by s. 17 (a) and (b) of Act 86 of 1984 and by s. 5 (a) of Act 51 of 1988 and deleted by s. 8 (a) of Act 53 of 1989.]

**[NB:** Sub-s. (1) was amended, with effect from a date after its deletion by Act 53 of 1989, by the addition of a paragraph by s. 36 (7) of the Legal Succession to the South African Transport Services Act 9 of 1989. See Schedule 2, Part 7, of the latter Act.]

(1A) .....

[Sub-s. (1A) inserted by s. 11 of Act 94 of 1977 and deleted by s. 14 (c) of Act 103 of 1979.]

(2) .....

[Sub-s. (2) substituted by s. 5 (b) of Act 51 of 1988 and deleted by s. 8 (a) of Act 53 of 1989.]

(3) .....

[Sub-s. (3) deleted by s. 8 (a) of Act 53 of 1989.]

(4) Except as provided for in subsection (4A), no assets of a registered fund in excess of five per cent of their fair value, shall be invested in or lent to the business of an employer participating in the scheme or arrangement whereby the fund has been established. Where the employer is a company (in this subsection called the employer company), the business of every other company which-

- (a) is a subsidiary-
  - (i) of the employer company; or
  - (ii) of any subsidiary of the employer company; or
  - (iii) of any successive subsidiary within the same hierarchy; or

- (b) is the holding company-
  - (i) of the employer company; or
  - (ii) of the holding company of the employer company; or
  - (iii) of any successive holding company within the same hierarchy,

shall be deemed, for the purposes of this subsection, to be part of the business of the employer company. In applying paragraphs (a) and (b), 'subsidiary' and 'holding company' respectively mean-

(aa) a 'subsidiary company' or 'subsidiary' as defined in section 1 (1) of the Companies Act, 1973 (Act 61 of 1973);

(bb) a 'holding company' as defined in that section.

[Sub-s. (4) amended by s. 14 (d) of Act 103 of 1979 and substituted by s. 2 (a) of Act 94 of 1997.]

(4A) The registrar, on application by the Board, may allow a greater percentage of the fund's assets, but not exceeding 10 per cent of the fair value of the fund's assets, to be invested in or lent to that employer's business for the period and on any conditions determined by the registrar if, in that application, the Board has certified-

- (a) that it has consulted with the members about the proposed investment in or loan to the employer's business; and
- (b) that the members support the making of that investment or loan.

[Sub-s. (4A) inserted by s. 2 (a) of Act 94 of 1997.]

(4B) Notwithstanding the provisions of subsections (4) and (4A), no assets of a fund may be invested in or lent to such a participating employer's business unless it is in the best interest of the fund to do so.

[Sub-s. (4B) inserted by s. 2 (a) of Act 94 of 1997.]

(5) (a) A registered fund may, if its rules so permit and subject to the regulations, grant a loan to a member by way of investment of its funds or furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person to a member to enable the member-

- (i) to redeem a loan granted to the member against security of, either a pledge by the member concerned to the fund of the benefit contemplated in paragraph (c) (ii), or immovable property which either belongs to the member or his or her spouse or the member and his or her spouse and on which a residence has been or will be erected which is occupied or, as the case may be, will be occupied by the member or a dependant of the member;
- (ii) to acquire immovable property on which a residence has been or will be erected, or to erect a residence on immovable property in respect of which, either the



- member or his or her spouse, or the member and his or her spouse, has or have obtained ownership or the right to ownership through a right of occupation, for occupation by the member or a dependant of the member; or
- (iii) to make additions or alterations to or to maintain or repair a residence of which ownership or the right to ownership was obtained through a right of occupation by either the member or his or her spouse or the member and his or her spouse and which is occupied or will be occupied by the member or a dependant of the member,

if the right of occupation of the immovable property or residence is secured by virtue of the operation of any custom or law, other than an agreement of lease or similar temporary measure, entitling such member, or his or her dependants, to the right of occupation of such immovable property or residence or any specified portion thereof.

(b) A loan or guarantee by a fund, contemplated in paragraph (a), shall not be granted or furnished, respectively, after the commencement of the Pension Funds Amendment Act, 2001-

- (i) unless secured by-
- (aa) a first mortgage on the immovable property in respect of which the loan is granted; or
- (bb) a pledge by the member concerned to the fund of the benefits to which the member is entitled in terms of the rules of the fund; or
- (cc) both such mortgage and such pledge;
- (ii) in respect of immovable property if the member concerned is liable to the fund in respect of a loan or guarantee granted or furnished in respect of the member in respect of other immovable property;
- (iii) unless, in the case of a loan granted by the fund, the rate of interest on the loan is equal to or exceeds the rate of interest which may from time to time be prescribed;
- [Sub-para. (iii) amended by s. 17 of Act 22 of 2008.]
- (iv) in the case of a loan granted to the member by some other person in respect of which a guarantee has been furnished by the fund, or in respect of a loan by the fund to the member, unless the capital sum in respect of any such loan together with interest thereon, is redeemable over a period not exceeding 30 years in equal weekly or monthly instalments: Provided that if such period in a particular case extends beyond the normal retirement date of the member concerned, the outstanding balance of the loan on that date must be able to be repaid out of no more than one third of the total value of the benefit due to the member at that date.

(c) A loan or guarantee contemplated in paragraph (a) shall not exceed, at the time it is granted or furnished, where it is secured in accordance with-

- (i) paragraph (b) (i) (aa), 90 per cent of the fair value of the hypothecated immovable property concerned;
- (ii) paragraph (b) (i) (bb), the lesser of the amount of-
- (aa) the lowest benefit in terms of the rules which the member would receive on termination of his or her membership of the fund, nett of income tax as envisaged in section 37D (a); or
- (bb) the fair value of the immovable property concerned; or

- (iii) paragraph (b) (i) (cc), the lesser amount of-
- (aa) the amount equal to the aggregate of 90 per cent of the fair value of the hypothecated immovable property concerned and the amount of the lowest benefit in terms of the rules which the member would receive on termination of his or her membership of the fund, nett of income tax as envisaged in section 37D (a); or
- (bb) the fair value of the hypothecated immovable property concerned.

(d) The percentages referred to in subparagraphs (i) and (iii) of paragraph (c) may be increased to 100 per cent, subject to the furnishing to the fund by the employer of the member of an irrevocable guarantee in respect of so much of the loan or the amount of the guarantee as may exceed 90 per cent.

(e) For the purposes of this section 'immovable property' includes a land tenure right as defined in section 1 of the Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991).

[Sub-s. (5) substituted by s. 23 (b) of Act 101 of 1976 and by s. 11 (a) of Act 80 of 1978, amended by s. 14 (e) of Act 103 of 1979, by s. 39 (b) of Act 99 of 1980 and by s. 11 (a), (b) and (c) of Act 50 of 1986 and substituted by s. 2 (a) of Act 65 of 2001.]

(5A) (a) Where a transaction for the purchase of an immovable property is pending and a purchase price has already been agreed upon, or where such an immovable property was acquired by purchase not more than six months before the date on which the estimate is made, the fair value of the property shall not be fixed at an amount higher than the true purchase price of the property, as declared or to be declared by the parties concerned for transfer duty purposes; and

(b) Where a transaction for the erection of, or additions or alterations to, or to maintain or repair a residence is contemplated, the estimate of the fair value of the immovable property shall not be fixed at an amount higher than the fair value contemplated in paragraph (a) plus an amount equal to the cost of such erection, additions, alterations, maintenance or repairs, as the case may be.

[Sub-s. (5A) inserted by s. 23 (c) of Act 101 of 1976 and substituted by s. 2 (b) of Act 65 of 2001.]

(5B) Notwithstanding anything to the contrary contained in the rules of a registered fund, such a fund shall not, directly or indirectly after the commencement of the Pension Funds Amendment Act, 2001-

(a) grant a loan to, or furnish a guarantee in respect of, a member or make any of its funds available, whether by way of an investment or otherwise, to be utilised in any manner by the fund or someone else for a loan to a member or a guarantee on behalf of a member, other than-

- (i) a loan contemplated in subsection (5) and which complies with the provisions of that subsection; and
- (ii) a guarantee contemplated in subsection (5) and which complies with the provisions of that subsection; or

[Para. (a) substituted by s. 2 (c) of Act 65 of 2001.]

(b) grant a loan to, or invest in the shares of-

- (i) a company controlled by an officer or a member of the fund or a director of a company which is an employer participating in the scheme or arrangement whereby the fund has been established; or

- (ii) a subsidiary company or a controlled company (as defined in the Companies Act, 1973 (Act 61 of 1973)), of such a first-mentioned company.

[Sub-s. (5B) inserted by s. 23 (c) of Act 101 of 1976, substituted by s. 11 (d) of Act 50 of 1986 and amended by s. 2 (c) of Act 65 of 2001.]

(5C) A registered fund may, if its rules so permit, contribute to any other pension fund registered under this Act, or any fund of any kind whatsoever, which is conducted for the benefit of the employees of the said registered fund.

[Sub-s. (5C) inserted by s. 11 (b) of Act 80 of 1978.]

(6) (a) The registrar may, under exceptional circumstances, and on such conditions and for such periods as he may determine, temporarily exempt any fund from compliance with any provision of subsection (5) or (5B) (a).

[Para. (a) substituted by s. 7 (b) of Act 91 of 1972, by s. 14 (f) of Act 103 of 1979, by s. 17 (c) of Act 86 of 1984 and by s. 8 (b) of Act 53 of 1989 and amended by s. 2 (b) of Act 94 of 1997.]

(b) .....

[Para. (b) added by s. 1 of Act 80 of 1969, substituted by s. 23 (d) of Act 101 of 1976 and deleted by s. 17 (d) of Act 86 of 1984.]

(c) .....

[Para. (c) added by s. 7 (c) of Act 91 of 1972 and deleted by s. 11 (a) of Act 64 of 1990.]

[Sub-s. (6) substituted by s. 9 (b) of Act 58 of 1966.]

(7) The Minister may in writing delegate to the registrar or any other officer in the public service any power conferred on the Minister by this section.

[Sub-s. (7) added by s. 9 (c) of Act 58 of 1966, substituted by s. 7 (d) of Act 91 of 1972, amended by s. 23 (e) of Act 101 of 1976, deleted by s. 17 (e) of Act 86 of 1984 and inserted by s. 11 (b) of Act 64 of 1990.]

(8) .....

[Sub-s. (8) added by s. 23 (f) of Act 101 of 1976, substituted by s. 17 (f) of Act 86 of 1984 and deleted by s. 8 (c) of Act 53 of 1989.]

## **20 Requirements in regard to documents to be deposited with registrar**

(1) A registered fund shall be deemed not to have complied with any provision of this Act, which imposes upon such fund the obligation to furnish to the registrar a document prepared by the fund, unless such document is signed by the principal officer and one other person authorized in accordance with the rules of the fund to sign documents.

(2) If any person (other than an auditor or a valuator) who is not a natural person, is required by any provision of this Act to sign any document which is to be furnished to the registrar, such document shall be signed on behalf of such person as follows, that is to say-

- (a) if such person is a committee of individuals, by the person for the time being at the head of the committee and by one other member thereof;
- (b) if such person is an association of persons, by the individual who is for the time being at the head of the board of directors or other committee controlling such association, and by one other member of such board or committee;
- (c) in any other case, by individuals designated by the registrar, who exercise any control over the business of the said person.

(3) Any person who is required in terms of any provision of this Act to furnish to the registrar-

- (a) any original document, shall also furnish such additional copies thereof, not exceeding three in number, as may be prescribed by regulation or as the registrar may require;
- (b) a copy of any document, shall furnish one copy thereof certified as correct-
  - (i) in the case of a registered fund, by its principal officer; and
  - (ii) in any other case, by the person by whom such copy is required to be furnished,together with so many additional copies, not exceeding three, as may be prescribed by regulation or as the registrar may require.

## **21 Registrar may require additional particulars in case of certain applications and returns**

(1) If the registrar is of opinion that-

- (a) any application for registration of a fund or of an alteration or rescission of rules or of an additional rule; or
- (b) any return or scheme relating to the financial condition of a fund,

does not disclose sufficient information to enable him to make the necessary decision, the person concerned shall furnish such additional particulars as the registrar may deem necessary.

(2) If the registrar is of opinion that a certificate or special report by a valuator or by the auditor of a fund is necessary in regard to any matter set out in subsection (1), the person concerned shall furnish such certificate or report as the registrar may require.

## **22 Inspection of documents**

(1) Upon payment of the fees prescribed any person may inspect at the office of the registrar any document referred to in section *thirty-five* and make a copy thereof or take extracts therefrom, or obtain from the registrar a copy thereof or extract therefrom.

[Sub-s. (1) amended by s. 17 of Act 22 of 2008.]

(2) The registrar may exempt any person from the obligation to pay fees under this section if he is satisfied that the inspection, copy or extract in question is desired for the purpose of furthering some public interest.

(3) The registrar shall without charge furnish any applicant therefor with particulars of the address of the registered office and the name of the principal officer of any registered fund.

## **23 Effect of registrar's certificate on documents**

Every document which purports to have been certified by the registrar to be a document deposited at his office under the provisions of this Act, or to be a copy of such a document, shall *prima facie* be deemed to be such a document, or a copy thereof, and every such copy shall be admissible in evidence as if it were the original document.

## **CHAPTER V**

### **ENQUIRIES BY REGISTRAR, APPLICATIONS TO COURT, CANCELLATION OR SUSPENSION OF REGISTRATION AND DISSOLUTION OF FUNDS (ss 24-30)**

#### **24 Enquiries**

The registrar may address enquiries to any registered fund in relation to any matter connected with its business or transactions, and it shall be the duty of the fund to reply in writing thereto within a period of thirty days as from the date upon which the registrar addressed the enquiry to it or within such further period as the registrar may allow.

#### **25 Inspections and investigations**

(1) In addition to the powers and duties conferred or imposed upon him or her by this Act, the registrar shall have all the powers and duties conferred or imposed upon him or her by the Inspection of Financial Institutions Act, 1998 (Act 80 of 1998).

(2) Notwithstanding subsection (1), the registrar may instruct any person to conduct a compliance visit of the business and affairs of a fund or of an administrator approved in terms of section 13B, in order to determine whether this Act, the rules of the fund or the conditions of the administrator's approval are being complied with.

(3) A person conducting a compliance visit in terms of subsection (2)-

- (a) has a right of access at any reasonable time to all such documents or records as may reasonably be required for the purposes of the compliance visit; and
- (b) may require an administrator or any person holding, or who is accountable for, any such document or record or involved in the management of the business or affairs of the fund, to provide such information and explanation as may be necessary for purposes of the compliance visit.

(4) Any reference in this Act to an inspection carried out or an investigation conducted under this section must be construed as a reference to an inspection carried out under subsection (1), or a compliance visit conducted under subsection (2), as the case may be.

[S. 25 substituted by s. 11 (1) of Act 68 of 1962 and by s. 16 of Act 11 of 2007.]

## **26 Registrar may intervene in management of fund**

(1) The registrar may, after considering the interests of the members of a fund (or of the several categories of members if there is more than one such category), direct that the rules of the fund, including rules relating to the appointment, powers, remuneration (if any) and removal of the board, be amended if the results of an inspection or investigation under section 25 necessitates amendment of the rules of the fund or if the registrar is of the opinion that the fund-

- (a) is not in a sound financial condition or does not comply with the provisions of this Act or the regulations affecting the financial soundness of the fund;
- (b) has failed to act in accordance with the provisions of section 18; or
- (c) is not managed in accordance with this Act or the rules of the fund.

(2) Where a fund has no properly constituted board contemplated in section 7A and has failed to constitute a board after 90 days written notice by the registrar, the registrar may, notwithstanding the rules of the fund, at the cost of the fund-

- (a) appoint so many persons as may be necessary to the board of the fund or appoint so many persons as may be necessary to make up the full complement or quorum of the board; and
- (b) assign to such board such specific duties as the registrar deems expedient.

(3) A board constituted in terms of subsection (2) holds office until the registrar is satisfied that the fund has constituted a valid board in terms of section 7A and the registrar has relieved the former board in writing of its duties.

(4) If the registrar has reason to believe that a board member is not fit and proper to hold office, the registrar may, after giving the board member a reasonable opportunity to be heard, direct the board member to vacate office.

(5) In the circumstances described in subsection (4), the fund shall cause the vacancy to be filled in accordance with the provisions of section 7A and the rules of the fund, failing which the registrar may adopt the course set out in subsection (2).

[S. 26 amended by s. 6 of Act 22 of 1996 and substituted by s. 17 of Act 11 of 2007.]

## 27 Cancellation or suspension of registration

(1) The registrar shall cancel the registration of a fund-

- (a) on proof to his satisfaction that the fund has ceased to exist; or
- (b) if the registrar and the fund are agreed that the fund was registered by mistake in circumstances not amounting to fraud:

Provided that in the circumstances stated in paragraph (b), the registrar may suspend the registration in lieu of cancelling it, if he is satisfied that by so doing the fund will be furnished with an opportunity of rectifying the said mistake in a manner consistent with the provisions of this Act, and if the fund does rectify such mistake to the satisfaction of the registrar, the latter shall thereupon reinstate the said registration, as from the date of suspension but if the mistake is not rectified within a period specified by the registrar he shall cancel the registration of the fund.

(2) The registrar may apply to the court for the cancellation or suspension of the registration of a fund if-

- (a) the fund has wilfully and after notice from the registrar violated any provision of this Act; or
- (b) the registrar is of opinion, as a result of an investigation under section *twenty-five*, that the registration should be cancelled or suspended.

(3) The court may cancel the registration of the fund or suspend such registration for such period as it thinks fit, and may attach to such cancellation or suspension such conditions as it thinks desirable, or may make any other order which in the circumstances it thinks desirable.

(4) Unless the court otherwise orders, the costs of the registrar in or in connection with the application shall be paid by the fund and shall be a first charge upon the assets of such fund.

## 28 Voluntary dissolution of fund

(1) Subject to the provisions of this section, a registered fund may be terminated or dissolved, whether wholly or in part, in the circumstances (if any) specified for that purpose in its rules, and in the manner provided by those rules. In such an event, the assets of the fund, or, in the case of the partial termination of the fund, those assets of the fund attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination (as the case may be), shall, subject to the provisions of this section, be distributed in the manner provided by those rules.

[Sub-s. (1) substituted by s. 25 (a) of Act 83 of 1992 and by s. 3 (a) of Act 94 of 1997.]

(2) A liquidator shall be appointed in the manner directed by the rules, or, if the rules do not contain directions as to such appointment, by the board, but such appointment shall be subject to the approval of the registrar, and the period of liquidation shall be deemed to commence as from the date of such approval.

[Sub-s. (2) amended by s. 6 of Act 22 of 1996.]

(3) During such liquidation the provisions of this Act shall continue to apply to such fund as if the liquidator were the board.

[Sub-s. (3) amended by s. 6 of Act 22 of 1996.]

(4) (a) The liquidator shall as soon as may be possible, deposit with the registrar the preliminary accounts prescribed, signed and certified as correct by the liquidator and showing the assets and liabilities of the fund as at the commencement of the liquidation as well as the manner in which it is proposed to realize the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members, or, in the case of the partial termination of the fund, the assets and liabilities of the fund attributable to the members

connected to the participating employer whose withdrawal from the fund has caused its partial termination.

[Para. (a) substituted by s. 3 (b) of Act 94 of 1997 and amended by s. 17 of Act 22 of 2008.]

(b) In discharging the liabilities and contingent liabilities to or in respect of members referred to in paragraph (a) full recognition shall be accorded to-

- (i) the rights and reasonable benefit expectations of the persons concerned;
- (ii) additional benefits the payment of which by the fund has become an established practice.

[Sub-s. (4) substituted by s. 25 (b) of Act 83 of 1992.]

(5) If deemed fit, the registrar may direct the liquidator to furnish a report, drawn up by an independent valuator or other competent person nominated by the registrar on the preliminary accounts.

[Sub-s. (5) substituted by s. 3 (c) of Act 94 of 1997.]

(6) The preliminary accounts and report (if any) referred to in subsection (5) shall lie open for inspection by interested persons for a period of 30 days at the office of the registrar and at the registered office of the fund, and where the registered office of the fund is not in the district in which the office of the registrar is situate, at the office of the magistrate of the district in which the registered office of the fund is situate.

[Sub-s. (6) substituted by s. 3 (d) of Act 94 of 1997.]

(7) The registrar shall direct the liquidator to publish a notice, at the cost of such a fund, in the *Gazette* and in one newspaper in the English language and one in the Afrikaans language, or, if deemed necessary in the circumstances, in any other official language, circulating in the district in which the registered office of the fund is situate and in which is stated the period during which and the places at which the preliminary accounts and report (if any) shall lie open for inspection by interested persons. The notice shall call upon any interested persons who have any objection to the preliminary accounts and report (if any) to lodge their objections in writing with the registrar within the period stated in the notice, which period shall not be shorter than fourteen days, calculated as from the last day on which those documents lie open for inspection.

[Sub-s. (7) substituted by s. 3 (e) of Act 94 of 1997.]

(7A) If, in the case of a particular fund or a particular participating employer whose withdrawal from the fund has caused its partial termination, the registrar is satisfied on reasonable grounds that there exist special circumstances which justify exemption from the provisions of subsections (6) and (7), the registrar, having due regard to the rights of interested persons, may exempt the fund from all or any of the provisions of those subsections if deemed expedient in the circumstances. Such an exemption shall be subject to the conditions determined from time to time by the registrar by notice in the *Gazette*.

[Sub-s. (7A) inserted by s. 3 (f) of Act 94 of 1997.]

(8) If no objections are lodged with the registrar in terms of subsection (7), he shall direct the liquidator to complete the liquidation.

(9) If objections are lodged with the registrar in terms of subsection (7), the registrar may, after considering the said objections, direct the liquidator to amend the preliminary accounts or give such other directions relating to the liquidation as he thinks fit, provided such directions are not inconsistent with the rules of the fund or this section, and any such direction shall be binding upon the liquidator.

[Sub-s. (9) substituted by s. 25 (c) of Act 83 of 1992.]

(10) The liquidator shall, within fourteen days of the receipt by him of any direction of the registrar in terms of subsection (9), post a copy thereof to every member, shareholder and creditor of the fund, and the liquidator or any person aggrieved by any such direction of the registrar may apply by motion to the court within twenty-eight days after such direction has been communicated to the liquidator, for an order to set aside the registrar's decision, and the court may confirm the said decision or make such order as it thinks fit.

(11) If the registrar is satisfied that his directions, in so far as they have not been varied or set aside by the court, have been given effect to, he shall direct the liquidator to complete the liquidation.

(12) Within 30 days after completion of the liquidation, the liquidator shall lodge with the registrar the final accounts prescribed, signed and certified as correct by the liquidator and showing-

- (a) the assets and liabilities of the fund, as at the commencement of the liquidation, or, in the case of the partial termination of the fund, those assets and liabilities of the fund which, at the commencement of the liquidation, are attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination; and
- (b) the manner in which the assets have been realized and the liabilities (including any liabilities and contingent liabilities to or in respect of members) have been discharged.

[Sub-s. (12) substituted by s. 3 (g) of Act 94 of 1997 and amended by s. 17 of Act 22 of 2008.]

(12A) Notwithstanding any provision to the contrary in this section, the registrar, on good cause shown, may authorise the liquidator to make payment of any amounts to the members and beneficiaries of a fund before submission of the final accounts and report (if any), subject to the conditions that prescribed from time to time.

[Sub-s. (12A) inserted by s. 3 (h) of Act 94 of 1997 and substituted by s. 18 (a) of Act 11 of 2007.]

(13) The provisions of the Companies Act, 1973 (Act 61 of 1973), shall apply *mutatis mutandis* to the dissolution of a fund in terms of this section, in so far as the said provisions relate to a voluntary winding-up in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provisions of this Act.

[Sub-s. (13) substituted by s. 15 of Act 103 of 1979.]

(14) All claims against the fund shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the court, and the liquidator may require any claim to be made on affidavit.

(15) The registrar, if satisfied that the liquidator's accounts in respect of the fund are correct and that the liquidation has been completed, shall-

- (a) cancel the registration of the fund, in the case where the fund is wholly terminated, whereupon the fund shall be dissolved; or
- (b) in the case of the partial dissolution of the fund, only confirm the completion of the partial liquidation of the fund.

[Sub-s. (15) substituted by s. 3 (i) of Act 94 of 1997.]

(16) For the purposes of this section, '**participating employer**' means any employer who participates in the scheme or arrangement whereby a fund has been established.

[Sub-s. (16) added by s. 3 (j) of Act 94 of 1997.]



(17) The registrar may prescribe the circumstances under which a fund may be exempted from the provisions of this section and must prescribe the requirements to be complied with for such exemption to be granted.

[Sub-s. (17) added by s. 18 (b) of Act 11 of 2007.]

(18) (a) The provisions of this section do not apply to a beneficiary fund.

(b) The registrar may prescribe matters that must be provided for in the rules of a beneficiary fund regarding voluntary dissolution and the transfer of remaining assets on voluntary dissolution.

[Sub-s. (18) added by s. 11 of Act 22 of 2008.]

## **28A Remuneration of liquidator**

(1) The registrar by notice in the *Gazette* shall determine the services for which remuneration shall be payable to the liquidator of a fund which is terminated or dissolved voluntarily, whether wholly or in part, and prescribe the tariff of remuneration in respect of those services.

(2) Notwithstanding subsection (1), the registrar may reduce or increase the liquidator's remuneration if satisfied on reasonable grounds that there is good reason for doing so, and the registrar may disallow the liquidator's remuneration because of any failure or delay to carry out the liquidator's duties or to carry them out properly and effectively.

[S. 28A inserted by s. 4 of Act 94 of 1997.]

## **29 Winding-up by the court**

(1) If the registrar is of the opinion that a fund is in such an unsound financial condition that any scheme as contemplated by section *eighteen* would be ineffective, impracticable or unsatisfactory, he may apply to the court for an order that the whole or any part of the business of the fund be wound up.

(2) Any creditor of a registered fund who is unable to obtain payment of his claim after recourse to the ordinary process of law may apply to the court for an order that the whole or any part of the business of the fund be wound up: Provided that a creditor shall not make application except by leave of the court, and the court shall not grant such leave unless the creditor has given security to an amount specified by the court for the payment of the costs of the application and of any opposition thereto, and has established *prima facie* the desirability of the order for which he wishes to apply.

(3) The court may make an order as prayed in terms of subsection (1) or subsection (2), subject to the provisions contained in the following subsections.

(4) The provisions of the Companies Act, 1973 (Act 61 of 1973), shall apply *mutatis mutandis* to a winding-up under this section, in so far as the said provisions refer to a winding-up by the court in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provision of this Act or with any directions issued by the court under this section.

[Sub-s. (4) substituted by s. 16 (a) of Act 103 of 1979.]

(5) The court may direct that the aforementioned provisions of the Companies Act, 1973, may, for the purposes of the winding-up be suitably modified in any particular case if the court is satisfied that having regard to the circumstances of the fund concerned it would be impracticable or unnecessarily onerous to comply with the said provisions in every particular and that in spite of such modification the interests of the creditors of the fund will be sufficiently safeguarded.

[Sub-s. (5) amended by s. 16 (b) of Act 103 of 1979.]

(6) In the winding-up of the whole or any part of the business of a fund, the value of the interests of the members or of the various groups of members of the fund, and the value of any benefits due by the fund to persons other than members, shall be ascertained in such manner as the court may direct.

(6A) In giving any order or direction under this section the court shall have regard to any recommendation which may have been made by the fund's valuator, if any, and accord full recognition to the rights and reasonable benefit expectations of the persons concerned and to additional benefits the payment of which by the fund has become an established practice.

[Sub-s. (6A) inserted by s. 26 of Act 83 of 1992.]

(7) Without prejudice to the powers of the Master who has jurisdiction in respect of any winding-up, the liquidator appointed in terms of subsection (4) shall give the registrar such information as the latter may require from time to time and shall, whenever he intends to apply to the court for instructions, report accordingly to the registrar who shall be entitled to be heard personally or by a representative at any such application, and may himself make an application to the court with reference to the winding-up.

(8) If, where the court has ordered that the whole business of the fund be wound up, the registrar is satisfied that the winding-up of such a fund has been completed, he shall cancel the registration of the fund and thereupon the fund shall be deemed to be dissolved.

### **30 Special provisions relating to liquidation of funds**

(1) In applying the provisions of the Companies Act, 1973 (Act 61 of 1973) in terms of section *twenty-eight* or *twenty-nine*-

(a) the members of a fund shall be treated as deferred creditors, and their claims against the fund in their capacity as members shall not be settled until the debts of ordinary creditors have been paid;

(b) .....

[Para. (b) deleted by s. 25 of Act 104 of 1993.]

[Sub-s. (1) amended by s. 17 of Act 103 of 1979.]

(2) If a fund has a share capital, the liability of a shareholder in the case of liquidation under the aforementioned sections shall either be limited to the amount (if any) unpaid on any share held by him, or shall be unlimited, according as is provided by the rules of the fund.

(3) If a registered fund which has not been exempted from actuarial valuation in terms of section 2 (3) (a) is liquidated in terms of section 28 or 29 after the date from which minimum individual reserves are payable on cessation of membership, and the fair value of the assets of the fund, less any current liabilities, is less than the sum of the minimum individual reserves payable in respect of the existing members and former members who may participate in the distribution of the assets (with appropriate adjustment for benefits previously paid in the case of former members) and the cost of annuity policies which will provide equivalent pensions for the existing pensioners and deferred pensioners, the shortfall shall represent a debt payable by the employer to the fund: Provided that, where more than one employer participates in the fund, the shortfall shall be distributed amongst such employers in a manner deemed reasonable by the liquidator.

[Sub-s. (3) added by s. 5 of Act 39 of 2001.]

## **CHAPTER VA CONSIDERATION AND ADJUDICATION OF COMPLAINTS**

**(ss 30A-30Y)**

[Chapter VA inserted by s. 3 of Act 22 of 1996.]

**30A Submission and consideration of complaints**

(1) Notwithstanding the rules of any fund, a complainant may lodge a written complaint with a fund for consideration by the board of the fund.

[Sub-s. (1) substituted by s. 19 (a) of Act 11 of 2007.]

(2) A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof.

(3) If the complainant is not satisfied with the reply contemplated in subsection (2), or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the Adjudicator.

(4) Subject to section 30I, the Adjudicator may on good cause shown by any affected party-

- (a) extend a period specified in subsection (2) or (3) before or after expiry of that period; or
- (b) condone non-compliance with any time limit specified in subsection (2) or (3).

[Sub-s. (4) added by s. 19 (b) of Act 11 of 2007.]

[S. 30A inserted by s. 3 of Act 22 of 1996.]

**30B Establishment of Office of Pension Funds Adjudicator**

(1) There is hereby established an office which shall be known as the Office of the Pension Funds Adjudicator.

(2) The functions of the Office shall be performed by the Pension Funds Adjudicator.

[S. 30B inserted by s. 3 of Act 22 of 1996.]

**30C Appointment of Adjudicator**

(1) The Minister shall, after consultation with the Financial Services Board, appoint-

- (a) a person to the office of Adjudicator;
- (b) one or more persons to the office of Deputy Adjudicator; and
- (c) when deemed necessary, an Acting Adjudicator.

(2) No person shall be appointed as Adjudicator, Deputy Adjudicator or Acting Adjudicator unless he or she is qualified to be admitted to practise as an advocate under the Admission of Advocates Act, 1964 (Act 74 of 1964), or as an attorney under the Attorneys Act 1979 (Act 53 of 1979), and-

- (a) for an uninterrupted period of at least 10 years practised as an advocate or an attorney; or
- (b) for an uninterrupted period of at least 10 years was involved in the tuition of law and also practised as an advocate or attorney for such period as renders him or her suitable for appointment as Adjudicator, Deputy Adjudicator or Acting Adjudicator; or
- (c) possesses such other experience as renders him or her suitable for appointment as Adjudicator, Deputy Adjudicator or Acting Adjudicator.

(3) The Adjudicator and Deputy Adjudicator shall be appointed by the Minister for a period of no more than three years and may be reappointed on expiry of his or her term of office.

(4) The Adjudicator and Deputy Adjudicator may at any time resign as Adjudicator or Deputy Adjudicator by tendering his or her resignation in writing to the Minister: Provided that the resignation shall be addressed to the Minister at least three calendar months prior to the date

on which the Adjudicator or Deputy Adjudicator wishes to vacate his or her office, unless the Minister allows a shorter period.

(5) The Minister may remove the Adjudicator or Deputy Adjudicator from office on the grounds of misbehaviour, incapacity or incompetence, after consultation with the Financial Services Board.

(6) (a) In the event of the resignation, removal or expiry of the term of office of the Adjudicator and subject to subsection (1), the Minister may appoint an Acting Adjudicator to act as Adjudicator until a competent person is appointed in terms of subsection (1).

(b) An Acting Adjudicator has all the powers and must perform all the duties of the Adjudicator.

[S. 30C inserted by s. 3 of Act 22 of 1996 and substituted by s. 20 of Act 11 of 2007.]

### **30D Main object of Adjudicator**

The main object of the Adjudicator shall be to dispose of complaints lodged in terms of section 30A (3) of this Act in a procedurally fair, economical and expeditious manner.

[S. 30D inserted by s. 3 of Act 22 of 1996.]

### **30E Disposal of complaints**

(1) In order to achieve his or her main object, the Adjudicator-

(a) shall, subject to paragraph (b), investigate any complaint and may make the order which any court of law may make;

(b) may, if it is expedient and prior to investigating a complaint, require any complainant first to approach an organization established for the purpose of resolving disputes in the pension funds industry or part thereof, and approved by the registrar.

(2) Any complaint dealt with in terms of subsection (1) (b) shall be recorded by the Adjudicator and shall, for purposes of section 30H (3), be deemed to be a receipt of a complaint.

(3) If the complaint, dealt with in terms of subsection (1) (b), is not resolved, the complainant may again lodge the complaint with the Adjudicator, who shall deal with it in terms of subsection (1) (a).

[S. 30E inserted by s. 3 of Act 22 of 1996.]

### **30F Opportunity to comment**

When the Adjudicator intends to conduct an investigation into a complaint he or she shall afford the fund or person against whom the allegations contained in the complaint are made, the opportunity to comment on the allegations.

[S. 30F inserted by s. 3 of Act 22 of 1996.]

### **30G Parties to complaint**

The parties to a complaint shall be-

(a) the complainant;

(b) the fund or person against whom the complaint is directed;

(c) any person who has applied to the Adjudicator to be made a party and who has a sufficient interest in the matter to be made a party to the complaint;

(d) any other person whom the Adjudicator believes has a sufficient interest in the matter to be made a party to the complaint.

[S. 30G inserted by s. 3 of Act 22 of 1996.]

### **30H Jurisdiction and prescription**

(1) The Adjudicator shall, subject to section 30I, investigate a complaint notwithstanding

that the complaint relates to a matter which arose prior to the commencement of the Pension Funds Amendment Act, 1995.

(2) The Adjudicator shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in any civil court in respect of a matter which would constitute the subject matter of the investigation.

(3) Receipt of a complaint by the Adjudicator shall interrupt any running of prescription in terms of the Prescription Act, 1969 (Act 68 of 1969), or the rules of the fund in question.

(4) The Adjudicator shall not have jurisdiction over complaints in connection with a scheme for the apportionment of surplus in terms of section 15B which relate to the decisions taken by the board or any stakeholder in the fund or any specialist tribunal convened in terms of section 15K.

[Sub-s. (4) added by s. 6 of Act 39 of 2001.]

[S. 30H inserted by s. 3 of Act 22 of 1996.]

### **30I Time limit for lodging of complaints**

(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.

(2) The provisions of the Prescription Act, 1969 (Act 68 of 1969), relating to a debt apply in respect of the calculation of the three year period referred to in subsection (1).

[Sub-s. (2) substituted by s. 21 (a) of Act 11 of 2007.]

(3) .....

[Sub-s. (3) deleted by s. 21 (b) of Act 11 of 2007.]

[S. 30I inserted by s. 3 of Act 22 of 1996.]

### **30J Procedure for conducting investigation**

(1) The Adjudicator may follow any procedure which he or she considers appropriate in conducting an investigation, including procedures in an inquisitorial manner.

(2) Notwithstanding section 22 of the Financial Services Board Act, 1990 (Act 97 of 1990), the Adjudicator may obtain copies of any document or correspondence contained in the files of the registrar.

(3) Sections 1, 2, 3, 4 and 6 of the Commissions Act, 1947 (Act 8 of 1947), shall apply *mutatis mutandis* to the Adjudicator.

[S. 30J inserted by s. 3 of Act 22 of 1996.]

### **30K Legal representation**

No party shall be entitled to legal representation at proceedings before the Adjudicator.

[S. 30K inserted by s. 3 of Act 22 of 1996.]

### **30L Record of proceedings**

(1) The Adjudicator shall keep or cause to be kept, whether in writing or by mechanical or electronic means, a permanent record of the proceedings relating to the adjudication of a complaint and the evidence given.

(2) Any member of the public may obtain a readable copy of the record on payment of a fee determined by the Adjudicator.

(3) The registrar may, for purposes of the performance of his or her functions in terms of this or any other Act, rely on a copy of the record without the need of any further proof.

[S. 30L inserted by s. 3 of Act 22 of 1996.]

### **30M Statement by Adjudicator regarding determination**

After the Adjudicator has completed an investigation, he or she shall send a statement containing his or her determination and the reasons therefor, signed by him or her, to all parties concerned as well as to the clerk or registrar of the court which would have had jurisdiction had the matter been heard by a court.

[S. 30M inserted by s. 3 of Act 22 of 1996.]

### **30N Interest on amount awarded**

Where a determination consists of an obligation to pay an amount of money, the debt shall bear interest as from the date and at the rate determined by the Adjudicator.

[S. 30N inserted by s. 3 of Act 22 of 1996.]

### **30O Enforceability of determination**

(1) Any determination of the Adjudicator shall be deemed to be a civil judgment of any court of law had the matter in question been heard by such court, and shall be so noted by the clerk or the registrar of the court, as the case may be.

(2) A writ or warrant of execution may be issued by the clerk or the registrar of the court in question and executed by the sheriff of such court after expiration of a period of six weeks after the date of the determination, on condition that no application contemplated in section 30P has been lodged.

[S. 30O inserted by s. 3 of Act 22 of 1996.]

### **30P Access to court**

(1) Any party who feels aggrieved by a determination of the Adjudicator may, within six weeks after the date of the determination, apply to the division of the High Court which has jurisdiction, for relief, and shall at the same time give written notice of his or her intention so to apply to the other parties to the complaint.

(2) The division of the High Court contemplated in subsection (1) may consider the merits of the complaint made to the Adjudicator under section 30A (3) and on which the Adjudicator's determination was based, and may make any order it deems fit.

(3) Subsection (2) shall not affect the court's power to decide that sufficient evidence has been adduced on which a decision can be arrived at, and to order that no further evidence shall be adduced.

[S. 30P inserted by s. 3 of Act 22 of 1996 and substituted by s. 22 of Act 11 of 2007.]

### **30Q Powers of Adjudicator**

The Adjudicator may with the concurrence of the Financial Services Board-

- (a) hire, purchase or otherwise acquire such movable property as may be necessary for the performance of his or her functions and may let, sell or otherwise dispose of property so purchased or acquired;
- (b) in order to perform his or her functions, enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services;
- (c) insure his or her Office against any loss, damage, risk or liability which it may suffer or incur;
- (d) employ persons to assist in the performance of his or her functions;
- (e) obtain such professional advice in the performance of his or her functions as may be reasonably required;
- (f) subject to such conditions as he or she may determine, delegate any of his or her functions, except the functions contemplated in section 30E, to an employee of his



or her Office;

- (g) in general do anything which is necessary or expedient for the achievement of his or her objects and the performance of his or her functions.

[S. 30Q inserted by s. 3 of Act 22 of 1996.]

### **30R Funds of Adjudicator**

(1) The funds of the Adjudicator shall consist of-

- (a) funds provided by the Financial Services Board on the grounds of a budget submitted to and approved of by the Financial Services Board;
- (b) money accruing to the Adjudicator from any other source.

(2) The Adjudicator shall utilise the funds for the defrayal of expenses incurred in connection with the performance of his or her functions under this Act.

(3) The Adjudicator shall deposit all the money received by him or her in an account which he or she shall open with a banking institution registered in terms of the Banks Act, 1990 (Act 94 of 1990).

(4) The Adjudicator may invest money deposited in terms of subsection (3) which is not required for immediate use.

(5) Any money standing to the credit of the Adjudicator in the account referred to in subsection (3) at the close of the financial year as well as money which has been invested in terms of subsection (4), shall be carried forward to the next financial year.

(6) The financial year of the Adjudicator shall end on 31 March in each year.

[S. 30R inserted by s. 3 of Act 22 of 1996.]

### **30S Remuneration and terms and conditions of employment of Adjudicator and employee**

(1) The remuneration and other terms and conditions of employment of-

- (a) the Adjudicator shall be determined by the Financial Services Board;
- (b) any employee of the Adjudicator shall be determined by the Adjudicator with the concurrence of the Financial Services Board.

(2) Any remuneration of the Adjudicator and his or her employees shall be paid out of the funds of the Adjudicator.

[S. 30S inserted by s. 3 of Act 22 of 1996.]

### **30T Accountability**

(1) The Adjudicator or one of his or her employees designated by him or her, shall be charged with the accountability in respect of all moneys received and payments made by the Adjudicator.

(2) The accounting officer contemplated in subsection (1) shall-

- (a) keep full and correct record of all money received or expended by, and of all assets, liabilities and financial transactions of, the Adjudicator; and
- (b) as soon as is practicable, but not later than three months, after the end of each financial year, prepare annual financial statements reflecting, with suitable particulars, money received and expenses incurred by the Adjudicator during, and his or her assets and liabilities at the end of, the financial year in question.

(3) The records and financial statements referred to in subsection (2) shall be audited by the Auditor-General.

[S. 30T inserted by s. 3 of Act 22 of 1996.]

### **30U Report of Adjudicator**

The Adjudicator shall each year within six months after the end of his or her financial

year, submit a report to the Minister on his or her affairs and functions during the financial year in question, including the audited financial statements.

[S. 30U inserted by s. 3 of Act 22 of 1996.]

### **30V Offences and penalties**

Any person who-

- (a) insults the Adjudicator;
- (b) anticipates a determination of the Adjudicator in any manner calculated to influence the determination;
- (c) wilfully interrupts any proceedings conducted by the Adjudicator or misbehaves himself or herself in any manner in the place where the proceedings are being held;
- (d) in connection with a complaint does anything which, if done before a court of law, would have constituted contempt of court,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

[S. 30V inserted by s. 3 of Act 22 of 1996.]

### **30W .....**

[S. 30W inserted by s. 3 of Act 22 of 1996 and repealed by s. 12 of Act 22 of 2008.]

### **30X Liquidation**

(1) The Office of the Adjudicator shall not be placed in liquidation except by Act of Parliament.

(2) In the event of the liquidation of the Office, the surplus assets of the Office (if any) shall accrue to the State.

[S. 30X inserted by s. 3 of Act 22 of 1996.]

### **30Y Adjudicator proceedings**

The processes and procedures to be applied by the Adjudicator in performing his or her functions under this Chapter, may be prescribed by regulation.

[S. 30Y inserted by s. 23 of Act 11 of 2007.]

## **CHAPTER VI**

### **GENERAL AND MISCELLANEOUS (ss 31-41)**

#### **31 Carrying on business of unregistered pension fund organization and use of designation 'pension fund'**

(1) No person shall-

- (a) carry on the business of a pension fund which is in existence at the commencement of this Act, for a period of more than six months after such commencement unless application has been duly made under section *four* for the registration of that fund; or
- (b) carry on the business of a pension fund established after such commencement, unless that fund has been duly registered under section *four*; or
- (c) carry on the business of a pension fund for a period of more than twelve months after the date on which the person who applied for registration of the fund is advised by the registrar that the application for registration has been refused; or
- (d) after the expiration of a period of twelve months from the commencement of this Act, apply to his business a name which includes the words 'pension fund' or any



other name which is calculated to indicate that he carries on the business of a pension fund, unless such business is registered as a pension fund under this Act, except with the consent of the registrar.

(2) If at the commencement of this Act any person applied to his business any such name as is referred to in paragraph (d) of subsection (1) and he, after the commencement of this subsection, changes such name and produces any deed or document bearing such name and registered in any deeds registry, to the officer in charge of that registry, and satisfies the said officer that such name was changed by virtue of the provisions of the said paragraph (d), the said officer shall, without any charge, substitute the new name for the previous name on such deed or document and in all the relevant registers in the said registry.

[Sub-s. (2) added by s. 14 of Act 80 of 1959.]

### **32 Registrar may require unregistered funds to furnish information**

(1) The registrar may by notice in writing require any person whom he has reason to suspect is carrying on the business of a pension fund which is not registered under this Act, to transmit to him, within a period stated in such notice, a copy of the rules, if any, under which such person is operating, together with a copy of the last annual accounts recorded by such person, and such further information as the registrar may require.

(2) If such person fails to comply with the requirements of the registrar to his satisfaction, the registrar may, with the consent of the Minister, investigate the affairs or any part of the affairs of the said person, or appoint an inspector to hold such an investigation and to report the result of his investigation to the registrar, and the provisions of section *twenty-five* shall *mutatis mutandis* apply to every such investigation, and the registrar shall be entitled to recover from the person concerned all expenses necessarily incurred in connection with the investigation, unless such investigation shows that such person is not carrying on the business of a pension fund.

[Sub-s. (2) amended by s. 11 (2) of Act 68 of 1962.]

(3) If it appears from enquiries made by the registrar in terms of subsection (1) or of any investigation made in terms of subsection (2), that the person concerned is carrying on the business of a pension fund, the registrar shall register the fund provisionally whereafter the provisions of this Act shall apply to the said fund.

### **32A Certain practices or methods of conducting business prohibited**

(1) With the consent of the Minister the registrar may by notice in the *Gazette* declare a specific practice or method of conducting business to be an irregular or undesirable practice or an undesirable method of conducting business for any specified category of pension fund or for all pension funds: Provided that the Minister shall not consent to such declaration unless the registrar has given at least 30 days notice in the *Gazette* of his intention to make such declaration and has invited in the notice all interested persons to make written representations to him regarding the intended declaration, within 21 days of such notice.

(2) Any pension fund in question shall not, after the expiry of 21 days from the date of the said notice in the *Gazette*, employ any practice or method of conducting business which by virtue of such notice has been declared to be irregular or undesirable.

(3) The registrar may in writing direct any fund which, before or after the date of such notice, employed any practice or method of conducting business which by virtue of the said notice is irregular or undesirable, to rectify as required by the registrar, anything specified by the registrar which in the opinion of the registrar was caused by or arose out of such practice or method: Provided that the registrar may not make an order contemplated in section 6D (2) (b) of

the Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001).

[Sub-s. (3) substituted by s. 13 of Act 22 of 2008.]

(4) Any pension fund which has been so directed to rectify anything, shall do so within 60 days after being so directed or within such longer period as the registrar may approve.

[S. 32A inserted by s. 12 of Act 50 of 1986.]

### **33 Registrar may extend certain periods**

(1) Where any person is obliged in terms of any provision of this Act to perform any act within a specified period, the registrar may, at the request of such person, in any particular case extend that period from time to time.

(2) The registrar may in special circumstances extend any such specified period after it has expired.

### **33A Directives**

(1) The registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to a pension fund, an administrator or any other person in which practices or actions that are required or prohibited are set out.

(2) A directive issued in terms of in subsection (1) may-

(a) apply to pension funds generally; or

(b) be limited in its application to a particular pension fund or kind of pension fund, which may among other things be defined either in relation to a type or budgetary size of a pension fund.

(3) A directive issued in terms of subsection (1) takes effect on the date determined by the registrar in the directive.

(4) In the event of a departure from section 3 (1) or 4 (1), (2) or (3) of the Promotion of Administrative Justice Act, (Act 3 of 2000), the directive must include a statement to that effect and the reasons for such departure.

(5) The registrar may cancel, amend or revoke any previously issued directives.

(6) The registrar may, where a directive is issued to ensure the protection of the members and the public in general, publish the directive in the *Gazette* and any other media that the registrar deems appropriate.

[S. 33A inserted by s. 24 of Act 11 of 2007.]

### **34 Annual report by registrar**

The registrar shall annually submit to the Minister a report on his activities under this Act.

[S. 34 substituted by s. 26 of Act 104 of 1993.]

### **35 Right to obtain copies of or to inspect certain documents**

(1) Every registered fund shall deliver to any member on demand by such member, and on payment of such sum as may be determined by the rules of the fund, a copy of any of the following documents, that is to say-

(a) the rules of the fund;

(b) the last revenue account and the last balance sheet prepared in terms of subsection (1) of section *fifteen*.

(2) Any member shall be entitled to inspect without charge at the registered office of a registered fund, a copy of any of the following documents and make extracts therefrom, that is to say-

(a) the documents referred to in subsection (1);

- (b) the last report (if any) by a valuator prepared in terms of section *sixteen*;
- (c) the last statement (if any) and report thereon prepared in terms of section *seventeen*;
- (d) any scheme which is being carried out by the fund in accordance with the provisions of section *eighteen*.

### 36 Regulations

(1) The Minister may make regulations, not inconsistent with the provisions of this Act-

- (a) in regard to all matters which by this Act are required or permitted to be prescribed by regulation;
- (b) .....

[Para. (b) deleted by s. 25 of Act 11 of 2007.]

- (bA) prescribing matters in addition to those contemplated in any other provision of this Act in respect of which fees shall be payable, the fee payable in respect of each such matter, and, in relation to such fees as well as fees payable under any such other provision of this Act, the persons by whom the fees shall be payable, the manner of payment thereof and, where it is deemed necessary, the payment of interest in respect of overdue fees;

[Para. (bA) inserted by s. 18 of Act 86 of 1984 and substituted by s. 2 (a) of Act 7 of 1993.]

- (bB) limiting the amount which and the extent to which a fund may invest in particular assets or in particular kinds or categories of assets, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies;

[Para. (bB) inserted by s. 9 of Act 53 of 1989.]

- (bC) authorizing the registrar to grant unconditional or conditional exemption, whether unlimited or limited in duration, from provisions of the regulations contemplated in paragraph (bB);

[Para. (bC) inserted by s. 9 of Act 53 of 1989.]

- (bD) prescribing additional conditions under which a fund may grant a loan to a member or furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person for the purposes contemplated in section 19 (5);

[Para. (bD) inserted by s. 3 of Act 65 of 2001.]

- (c) generally, as to all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) Different regulations may in terms of subsection (1) be made in respect of different funds.

[Sub-s. (2) added by s. 27 of Act 83 of 1992.]

(3) Fees which are in terms of or by virtue of a provision of this Act payable, and interest so payable in respect of overdue fees, shall be a debt due to the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act 97 of 1990), and may be recovered by the registrar by action in any competent court.

[Sub-s. (3) added by s. 2 (b) of Act 7 of 1993.]

[S. 36 amended by s. 18 (1) of Act 103 of 1979.]

### 37 Power of registrar to impose administrative penalty

- (1) .....

[Sub-s. (1) deleted by s. 14 (a) of Act 22 of 2008.]

(2) The registrar may impose an administrative penalty in the case of any failure by a pension fund, administrator or third party to submit to the registrar or any other person within a period specified in terms of this Act or in a directive or condition imposed by the registrar in terms of the Act, any scheme, statement, report, return or other document or information required in terms of this Act to be submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues.

[Sub-s. (2) substituted by s. 14 (b) of Act 22 of 2008.]

(3) Before imposing a penalty the registrar must in writing-

- (a) inform the administrator, pension fund or third party of his or her intention to impose a penalty;
- (b) specify the particulars of the alleged non-compliance;
- (c) provide reasons for the penalty intended to be imposed;
- (d) specify the amount of the penalty intended to be imposed; and
- (e) invite interested persons to make representations within a period specified by the registrar.

[Para. (e) substituted by s. 14 (c) of Act 22 of 2008.]

(f) .....

[Para. (f) deleted by s. 14 (d) of Act 22 of 2008.]

(4) If the registrar after consideration of representations made decides to impose an administrative penalty, he or she must by written notice inform the administrator, pension fund or third party that it may, within 30 days after the date of the notice, pay the penalty or lodge an appeal in accordance with section 26 of the Financial Services Board Act, 1990 (Act 97 of 1990).

(5) If an administrator, pension fund or third party fails to pay an administrative penalty the registrar may by way of civil action in a competent court recover such administrative penalty.

[S. 37 amended by s. 14 of Act 65 of 1968, by s. 19 of Act 86 of 1984, by s. 13 of Act 50 of 1986, by s. 28 of Act 83 of 1992, by s. 3 of Act 7 of 1993 and by s. 9 of Act 88 of 1996 and substituted by s. 26 of Act 11 of 2007.]

### **37A Pension benefits not reducible, transferable or executable**

(1) Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act 58 of 1962), and the Maintenance Act, 1998, no benefit provided for in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor's financial position in terms of section 65 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold or suspend payment thereof: Provided that the fund may pay any such benefit or any benefit in pursuance of such contributions, or part thereof, to any one or more of the dependants of the member or beneficiary or to a guardian or trustee for the benefit of such dependant or dependants during such period as it may determine.

[Sub-s. (1) amended by s. 40 of Act 99 of 1980 and by s. 45 (1) of Act 99 of 1998.]

(2) (a) If in terms of the rules of a fund the residue of a full benefit, after deduction of any debt due by the person entitled to the benefit, represents the benefit due to that person, such reduction shall for the purposes of subsection (1) be construed as a reduction of the benefit.

(b) The set-off of any debt against a benefit shall for the purposes of subsection (1) be construed as a reduction of the benefit.

(3) The provisions of subsection (1) shall not apply with reference to anything done towards reducing or obtaining settlement of a debt-

(a) which, in the case of a fund to which the Financial Institutions Amendment Act, 1976 (Act 101 of 1976), applies, arose before the commencement of that Act;

(b) which, in the case of a fund to which the Financial Institutions Amendment Act, 1976, does not apply, arose before the commencement of the Financial Institutions Amendment Act, 1977;

(c) which a fund may reduce or settle under section 37D, to the extent to which a fund may reduce or settle such debt; or

(d) which is owed to a fund by a member in respect of arrear contributions, but excluding amounts which are in arrear due to the failure of the employer concerned to pay the member's contributions to the fund after deduction thereof from the member's remuneration.

[Para. (d) added by s. 27 (b) of Act 104 of 1993 and substituted by s. 4 of Act 22 of 1996.]

[S. 37A inserted by s. 24 of Act 101 of 1976 and substituted by s. 12 of Act 94 of 1977.]

### **37B Disposition of pension benefits upon insolvency**

If the estate of any person entitled to a benefit payable in terms of the rules of a registered fund (including an annuity purchased by the said fund from an insurer for that person) is sequestrated or surrendered, such benefit or any part thereof which became payable after the commencement of the Financial Institutions Amendment Act, 1976 (Act 101 of 1976), shall, subject to a pledge in accordance with section 19 (5) (b) (i) and subject to the provisions of sections 37A (3) and 37D, not be deemed to form part of the assets in the insolvent estate of that person and may not in any way be attached or appropriated by the trustee in his insolvent estate or by his creditors, notwithstanding anything to the contrary in any law relating to insolvency.

[S. 37B inserted by s. 24 of Act 101 of 1976 and substituted by s. 13 of Act 94 of 1977 and by s. 12 of Act 80 of 1978.]

### **37C Disposition of pension benefits upon death of member**

(1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19 (5) (b) (i) and subject to the provisions of sections 37A (3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:

(a) If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the board, to one of such dependants or in proportions to some of or all such dependants.

[Para. (a) substituted by s. 5 (a) of Act 22 of 1996.]

(b) If the fund does not become aware of or cannot trace any dependant of the

member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependant of the member, to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the benefit or such portion of the benefit shall be paid to such nominee: Provided that where the aggregate amount of the debts in the estate of the member exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the member in writing to the fund shall be paid to the nominee.

[Para. (b) substituted by s. 21 of Act 54 of 1989.]

- (bA) If a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the board may deem equitable: Provided that this paragraph shall only apply to the designation of a nominee made on or after 30 June 1989: Provided further that, in respect of a designation made on or after the said date, this paragraph shall not prohibit a fund from paying the benefit, either to a dependant or nominee contemplated in this paragraph or, if there is more than one such dependant or nominee, in proportions to any or all of those dependants and nominees.

[Para. (bA) inserted by s. 6 (a) of Act 51 of 1988 and substituted by s. 21 of Act 54 of 1989 and by s. 5 (b) of Act 22 of 1996.]

- (c) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court in terms of section 9 of the Estates Act, 1965 (Act 66 of 1965), into the Guardian's Fund.

[Para. (c) substituted by s. 21 of Act 54 of 1989.]

[Sub-s. (1) amended by s. 28 of Act 104 of 1993 and by s. 27 (a) of Act 11 of 2007.]

(2) (a) For the purposes of this section, a payment by a registered fund for the benefit of a dependant or nominee contemplated in this section shall be deemed to be a payment to such dependant or nominee, if payment is made to-

- (i) a trustee contemplated in the Trust Property Control Act, 1988, nominated by-
  - (aa) the member;
  - (bb) a major dependant or nominee, subject to subparagraph (cc); or
  - (cc) a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a minor dependant or nominee, or a major dependant or nominee not able to manage his or her affairs or meet his or her daily care needs;
- (ii) a person recognised in law or appointed by a Court as the person responsible for



managing the affairs or meeting the daily care needs of a dependant or nominee;  
or

(iii) a beneficiary fund.

(b) No payments may be made in terms of this section on or after 1 January 2009 to a beneficiary fund which is not registered under this Act.

[Sub-s. (2) added by s. 6 (b) of Act 51 of 1988 and substituted by s. 29 of Act 83 of 1992 and by s. 15 (a) of Act 22 of 2008.]

(3) Any benefit dealt with in terms of this section, payable to a minor dependant or minor nominee, may be paid in more than one payment in such amounts as the board may from time to time consider appropriate and in the best interests of such dependant or nominee:

Provided that interest at a reasonable rate, having regard to the fund return earned by the fund, shall be added to the outstanding balance at such times as the board may determine:

Provided further that any balance owing to such a dependant or nominee at the date on which he or she attains majority or dies, whichever occurs first, shall be paid in full.

[Sub-s. (3) added by s. 5 (c) of Act 22 of 1996 and substituted by s. 27 (b) of Act 11 of 2007.]

(4) (a) Any benefit dealt with in terms of this section, payable to a major dependant or major nominee, may be paid in more than one payment if the dependant or nominee has consented thereto in writing: Provided that-

- (i) the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a written agreement; and
- (ii) the agreement may be cancelled by either party on written notice not exceeding 90 days.

(b) If the agreement contemplated in paragraph (a) is cancelled the balance of the benefit shall be paid to the dependant or nominee in full.

[Sub-s. (4) added by s. 5 (c) of Act 22 of 1996.]

(5) The provisions of subsections (3) and (4) do not apply to a beneficiary fund, and any remaining assets held for the benefit of a deceased beneficiary in a beneficiary fund must be paid into the estate of such beneficiary or, if no inventory in respect of the beneficiary has been received by the Master of the High Court in terms of section 9 of the Administration of Estates Act, 1965 (Act 66 of 1965), into the Guardian's Fund.

[Sub-s. (5) added by s. 15 (b) of Act 22 of 2008.]

[S. 37C inserted by s. 24 of Act 101 of 1976 and substituted by s. 13 of Act 80 of 1978 and by s. 41 of Act 99 of 1980.]

### **37D Fund may make certain deductions from pension benefits**

(1) A registered fund may-

- (a) deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act, 1962 (Act 58 of 1962), and any amount due to the fund in respect of-
  - (i) a loan granted to a member in terms of section 19 (5); or
  - (ii) any amount for which the fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to the member in terms of section 19 (5), from-
    - (aa) the amount of the benefit to which the member or a beneficiary becomes entitled in terms of the rules of the fund; or
    - (bb) in the case of a transfer of the member to another fund, the amount of

the benefit which the fund is so entitled to transfer, if the board of the transferor fund is satisfied that it is not otherwise reasonably possible to negotiate the repayment or to transfer the loan or the guarantee; or  
(cc) in the case of default on the repayment of any such loan by the member concerned in circumstances where his or her membership of the fund is not terminated, the amount of the benefit which the member would have received on termination of membership on the date of default, if such a deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required repayment can be made;

[Para. (a) substituted by s. 4 (a) of Act 65 of 2001.]

- (b) deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of-
- (i) (aa) a loan granted by the employer to the member for any purpose referred to in section 19 (5) (a); or  
(bb) any amount for which the employer is liable under a guarantee furnished in respect of a loan by some other person to the member for any purpose referred to in section 19 (5) (a),  
to an amount not exceeding the amount which in terms of the Income Tax Act, 1962, may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act; or
  - (ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which-
    - (aa) the member has in writing admitted liability to the employer; or
    - (bb) judgment has been obtained against the member in any court, including a magistrate's court,from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay such amount to the employer concerned;
- (c) deduct any amount which the fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of-
- (i) such member's or beneficiary's subscription to a medical scheme, registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act 131 of 1998);  
[Sub-para. (i) substituted by s. 28 (a) of Act 11 of 2007.]
  - (ii) any insurance premium payable by such member or beneficiary to a long-term insurer registered in terms of the Long-term Insurance Act, 1998 (Act 52 of 1998);  
[Sub-para. (ii) substituted by s. 28 (a) of Act 11 of 2007.]
  - (iii) any purpose approved by the registrar, on the conditions determined by him, upon a request in writing from the fund,  
from the benefit to which the member or beneficiary is entitled in terms of the rules of the fund, and pay such amount, if due, to such medical scheme, insurer or



person concerned, as the case may be;

[Para. (c) substituted by s. 14 of Act 80 of 1978.]

- (d) deduct from a member's benefit or minimum individual reserve, as the case may be-
- (i) any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a decree granted under section 7 (8) (a) of the Divorce Act, 1979 (Act 70 of 1979);
  - (iA) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act 99 of 1998); and
  - (ii) employees' tax required to be deducted or withheld in terms of the Fourth Schedule to the Income Tax Act, 1962 (Act 58 of 1962), as a result of the deduction referred to in subparagraph (i) or (iA);

[Para. (d) added by s. 28 (b) of Act 11 of 2007 and substituted by s. 4 (1) (a) of Act 35 of 2007, by s. 16 (a) of Act 22 of 2008 and by s. 3 (1) (a) of Act 60 of 2008.]

(e) .....

[Para. (e) added by s. 28 (b) of Act 11 of 2007, amended by s. 4 (1) (b) of Act 35 of 2007 and deleted by s. 16 (b) of Act 22 of 2008.]

(2) For the purposes of paragraph (a) (ii) (bb) and (cc) of subsection (1), the amounts so deducted shall be deemed to be a benefit to which the member becomes entitled on termination of his or her membership of the fund for reasons other than as a result of retirement or death arising at the date of the transfer or the default.

[Sub-s. (2) added by s. 4 (b) of Act 65 of 2001.]

(3) (a) Any amount that may be deducted in terms of subsection (1) (d) may only be deducted after the amount of pension interest available has been reduced by any loan amount or guarantee amount referred to in subsection (1) (a), where such a loan or guarantee was granted prior to the granting of the court orders, irrespective of the fact that that amount is due and payable or not: Provided that the aggregate of all amounts deducted in terms of this subsection may not exceed the member's pension interest available at any given time.

(b) In the event that more than one of the court orders referred to in subsection (1) (d) provides for the deduction of amounts from a member's benefit or minimum individual reserve, as the case may be, at the same time, the court orders must be dealt with in accordance with the following hierarchy-

- (i) any maintenance order referred to in subsection (1) (d) (iA);  
[Sub-para. (i) substituted by s. 3 (1) (b) of Act 60 of 2008.]
- (ii) any decrees of divorce or for the dissolution of a customary marriage.  
[Sub-s. (3) added by s. 16 (c) of Act 22 of 2008.]

(4) (a) For purposes of section 7 (8) (a) of the Divorce Act, 1979 (Act 70 of 1979), the portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a customary marriage is deemed to accrue to the member on the date on which the decree of divorce or decree for the dissolution of a customary marriage is granted, and, on the written submission of the court order by the non-member spouse-

- (i) must be deducted by-
  - (aa) the pension fund or pension funds named in or identifiable from the decree;
  - (bb) the pension fund or pension funds to which the pension fund referred to in item (aa) transferred the pension interest referred to in the decree;

- (ii) must be deducted on the date on which an election is made or, if no election is made within the period referred to in paragraph (b) (i), the date on which that period expires; and
- (iii) must reduce the member's accrued benefits or minimum individual reserve at the date of the decree.

(b) (i) The pension fund must, within 45 days of the submission of the court order by the non-member spouse, request the non-member spouse to elect if the amount to be deducted must be paid directly to him or her, or if it must be transferred to a pension fund on his or her behalf.

(ii) The non-member spouse must within 120 days of being requested to make an election-

- (aa) inform the pension fund of how the amount referred to in subparagraph (i) must be dealt with; and
- (bb) if he or she elects that the amount must be paid to him or her directly, provide the pension fund with the details of how that payment must be effected; or
- (cc) if he or she elects that the amount must be transferred to a pension fund on his or her behalf, provide the pension fund with the details of that pension fund.

(iii) The pension fund must pay or transfer the amount within 60 days of being informed of how the amount must be dealt with in accordance with the non-member spouse's election.

(iv) In the event that the non-member spouse fails to make an election or identify the pension fund to which the amount should be transferred within the period referred to in subparagraph (ii), the pension fund must pay the amount directly to the non-member spouse within 30 days of the expiry of that period.

(v) Despite subparagraph (iv), in the event that the pension fund cannot reasonably ascertain how the payment to the non-member spouse must be effected, the pension fund must retain the amount and any fund return referred to in paragraph (c) (ii) in the pension fund until such time as details of how that payment must be effected is made available to the pension fund by the member, the non-member spouse or any other person.

(c) A non-member spouse-

- (i) is not a member or beneficiary in relation to the pension fund; and
- (ii) is entitled to the accrual of fund return on the amount referred to in paragraph (a) at fund return from the expiry of the period referred to in paragraph (b) (ii) until payment or transfer thereof, but not to any other interest or growth.

(d) Any portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a customary marriage granted prior to 13 September 2007 are for purposes of any law other than the Income Tax Act, 1962, including, but not limited to, section 7 (8) (a) of the Divorce Act, 1979, deemed to have accrued to the member on 13 September 2007 and must be paid or transferred in accordance with paragraphs (a) and (b).

[Sub-s. (4) added by s. 16 (c) of Act 22 of 2008.]

(5) Despite paragraph (b) of the definition of 'pension interest' in section 1 (1) of the Divorce Act, 1979, the total amount of annual simple interest payable in terms of the definition may not exceed the fund return on the pension interest assigned to the non-member spouse in terms of a decree granted in terms of section 7 (8) (a) of the Divorce Act, 1979.

[Sub-s. (5) added by s. 16 (c) of Act 22 of 2008.]

(6) Despite paragraph (b) of the definition of 'pension interest' in section 1 (1) of the Divorce Act, 1979, the portion of the pension interest of a member of a pension preservation

fund or provident preservation fund (as defined in the Income Tax Act, 1962), that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated on the date on which the decree was granted.

[Sub-s. (6) added by s. 16 (c) of Act 22 of 2008.]

[S. 37D inserted by s. 14 of Act 94 of 1977.]

### **38 Exemption from Act 57 of 1988**

The Trust Property Control Act, 1988 (Act 57 of 1988), shall not apply to a fund registered under this Act.

[S. 38 substituted by s. 29 of Act 104 of 1993.]

### **39 .....**

[S. 39 repealed by s. 73 of Act 52 of 1998.]

### **40 Act in certain respects, and certain rules, binding on State**

From the date of the registration of a pension fund referred to in section 4A the provisions of this Act, excluding the provisions of section 37, in so far as they relate to such pension fund, and the rules of such pension fund, shall be binding on the State.

[S. 40 substituted by s. 3 of Act 119 of 1991.]

### **40A Delegation and assignment**

(1) The Minister may, in writing, delegate a power or assign a duty to any official in the National Treasury.

(2) The Minister must regularly review and, if necessary, amend or withdraw a delegation made under subsection (1).

(3) A delegation or assignment to an official contemplated in subsection (1)-

(a) is subject to such limitations and conditions as the Minister may impose; and

(b) does not divest the Minister of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(4) The Minister may confirm, vary or revoke any decision taken by an official as a result of a delegation in terms of this section subject to any rights that may have vested as a consequence of the decision.

[S. 40A inserted by s. 29 of Act 11 of 2007.]

### **40B Retrospectivity**

The definitions in section 1 (1) of 'actuarial surplus', 'contingency reserve account', 'contribution holiday', 'defined benefit category of a fund', 'employer surplus account', 'fund return', 'member surplus account', 'minimum individual reserve' and 'surplus apportionment date', and sections 14A, 14B, 15B, 15C, 15E, 15F and 15K, are deemed to have come into operation on 7 December 2001, for funds whose surplus apportionment schemes have not been approved or whose nil returns referred to in section 15B (11) (b) have not been received by the registrar: Provided that-

(a) in the case of funds whose surplus apportionment schemes have been submitted but not yet approved on the effective date of this amendment;

(b) in the case of a nil return referred to in section 15B (11) (b) that has been received by or on the effective date of this amendment but in respect of which the registrar is not satisfied that the requirements of section 15B (11) have been met,

the registrar must inform such funds of the instances where their schemes or nil returns do not comply with requirements of the Act and grant the funds a reasonable period of time to review

and resubmit their schemes or returns for approval or noting.

[S. 40B inserted by s. 29 of Act 11 of 2007.]

#### **40C Scrutiny of Regulations**

Before regulations in terms of this Act are promulgated, the Minister must publish the draft regulations in the *Government Gazette* for public comment and submit the regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation.

[S. 40C inserted by s. 29 of Act 11 of 2007.]

#### **41 Short title and date of commencement**

This Act shall be called the Pension Funds Act, 1956, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.