

**PROVINCIAL NOTICE 25 OF 2019****KWAZULU-NATAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS****REGULATION NOTICE****KWAZULU-NATAL JOINT MUNICIPAL PROVIDENT FUND REGULATIONS, 2019**

I, Nomusa Dube-Ncube, in my capacity as Member of the KwaZulu-Natal Executive Council responsible for local government, and in terms of the powers vested in me by section 7(1)(b), (c) and (d) of the KwaZulu-Natal Joint Municipal Provident Fund Act, 2017 (Act No. 8 of 2017), hereby make the Regulations in the Schedule hereto.

Given under my hand at Durban on this 7<sup>th</sup> day of February, Two Thousand and Nineteen

**MS N DUBE-NCUBE, MPL**

Member of the Executive Council of the Province of KwaZulu-Natal  
responsible for local government

**SCHEDULE****THE KWAZULU-NATAL JOINT MUNICIPAL PROVIDENT FUND REGULATIONS, 2019****PREAMBLE**

**WHEREAS** the Natal Joint Municipal Pension Fund (Provident) was established in 1995 by section 2 of the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995);

**WHEREAS** the Rules for the Management and Administration of the Natal Joint Municipal Pension Fund (Superannuation), Natal Joint Municipal Pension Fund (Retirement) and the KwaZulu-Natal Joint Municipal Provident Fund were issued, and amended from time to time, in terms of the Regulations made under the Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974), the Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973), and the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995);

**WHEREAS** the assigned pre-1994 Ordinances have become provincial legislation as determined by section 239 of the Constitution of the Republic of South Africa, 1996, and the Provincial Legislature is consequently competent to repeal, amend and substitute such legislation in accordance with section 104(1)(b) of the 1996 Constitution;

**AND WHEREAS** it is necessary to replace the current Natal Joint Municipal Provident Fund principal and subordinate statutory framework with a framework that is solely regulated by, aligned to, and compliant with the Constitution of the Republic of South Africa, 1996, the nationally applicable Pension Funds Act, 1956 (Act No. 24 of 1956), and the principles of good governance;

**AND WHEREAS** the trustees of the Fund resolved at a meeting held on 25 August 2017 and at a meeting on 19 October 2018 in Durban that the Regulations and Rules of the Fund be replaced by the following with effect from the date of promulgation of these Regulations.

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**CHAPTER 1**  
**DEFINITIONS AND APPLICATION**  
*(Regulations 1 - 4)*

**Definitions**

1. For purposes of these Regulations the definitions as contained in the Pension Funds Act, 1956 (Act No. 24 of 1956) apply with the necessary changes, and in these Regulations, unless the context indicates otherwise –

“**Act**” means the KwaZulu-Natal Joint Municipal Provident Fund Act, 2017 (Act No. 8 of 2017);

“**Actuary**” means a person who is –

(a) a fellow of an institute, faculty, society or chapter of actuaries registered as such in accordance with the applicable legislation; and

(b) appointed by the –

(i) Registrar; and

(ii) Board of Trustees,

in accordance with regulation 14 as a valuator as contemplated in section 9A of the Pension Funds Act, 1956 (Act No. 24 of 1956);

“**adjudicator**” means the Pension Funds Adjudicator, Deputy Pension Funds Adjudicator or any acting Pension Funds Adjudicator appointed in accordance with section 30C(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

“**Annual Information Meeting**” means a meeting that may be convened in accordance with these Regulations and where the business of such meeting is the –

(a) consideration and noting of the annual reports and financial statements as presented by the Board of Trustees; and

(b) conducting of any other business relating to the management and operation of the Fund;

“**annuity**” means, as applicable, either –

(a) the living annuity payable in terms of these Regulations to an in-fund annuitant; or

(b) the annuity or, subject to the requirements of the South African Revenue Service, the annuities purchased from a registered insurer in terms of the provisions of these Regulations;

“**annuity strategy**” means the annuity strategy maintained by the Fund in terms of item 1 of Schedule 5;

“**approved pension fund**” means a pension fund approved as such by the South African Revenue Service for the purposes of these Regulations;

“**approved provident fund**” means a provident fund approved as such by the South African Revenue Service for the purposes of these Regulations;

“**approved retirement annuity fund**” means a retirement annuity fund approved as such by the South African Revenue Service for the purposes of these Regulations;

“**approved risk benefit**” means the lump sum death benefit contemplated in item 6 of Schedule 3;

“**Auditor**” means a public accountant and auditor who is –

(a) registered as such in accordance with the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991); and

(b) appointed by the Board of Trustees in accordance with regulation 12;

“**Auditor-General**” means the Auditor-General as contemplated in section 1 of the Public Audit Act, 2004 (Act No. 25 of 2004);

**“ballot”** means a written or digital ballot as approved by the Board of Trustees, and includes an online, electronic or postal ballot or a ballot made available at the Fund’s office;

**“bank account”** means the Fund’s account with a bank registered as such in accordance with the Banks Act; 1990 (Act No. 94 of 1990);

**“Banks Act”** means the Banks Act, 1990 (Act No. 94 of 1990);

**“beneficiary”** means anyone entitled to payment of a benefit in terms of these Regulations;

**“benefit”** means any amount due in accordance with these Regulations to a member, dependant or other person;

**“Board of Trustees”** means the Fund’s Board of Trustees contemplated in section 7A of the Pension Funds Act, and regulation 21;

**“bonus”** means an amount determined from time to time by the Board of Trustees on advice of the Actuary, having regard to the smoothing of the fund return as contemplated in regulation 10(4);

**“calendar month”** means a period extending from the first to the last day, both days inclusive, of any one of the 12 named months of the year;

**“calendar year”** means a year commencing on 1 January and terminating on 31 December;

**“Collective Investment Schemes Control Act”** means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

**“committee of management”** means the committee of management as defined in the Act;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“continuous service”** means the last unbroken period of service of a member with any municipality: Provided that –

(a) the following does not constitute a break in service for the purpose of determining the last unbroken period of service:

(i) authorised leave of absence;

(ii) a break in service regarded as leave without pay or otherwise condoned by the Board of Trustees on the recommendation of the municipality concerned;

(iii) a period of suspension followed by reinstatement in the same or another office or post; or

(iv) a break in service whilst transferring from one municipality to another municipality if condoned by the Board of Trustees;

(b) any period in respect of which a member has not paid contributions is not taken into account in calculating the period of his or her continuous service; and

(c) the period of continuous service is calculated by the year and month and a fraction of a month is disregarded;

**“contributions”** means the amounts paid by members and employers to the Fund as contemplated in Schedule 2;

**“Councillor”** means a member of a municipal council of an associated municipality;

**“court”** means a court as contemplated in section 166 of the Constitution;

**“data reserve account”** means the account contemplated in regulation 10(3);

**“date of association”** means the date from which the municipality becomes associated with the Fund;

**“date of commencement”** means the operative date of these Regulations, as determined by the responsible Member of the Executive Committee by notice in the Provincial Gazette;

**“date of establishment”** means 1 July 1996;

**“day”** means any day other than a Saturday, Sunday, or public holiday;

**“deferred retiree”** means a member who has retired from service in terms of item 1, item 2, item 3, item 4 or item 5 of Schedule 3 and elected that his or her retirement benefit must be retained in the Fund until the election date;

**“deferred retiree account”** means the account contemplated in regulation 10(9);

**“delegating authority”** means, in relation to –

- (a) the delegation of a function, a structure established in accordance with these Regulations competent to delegate, and effecting the delegation of, a power, function or duty; and
- (b) a sub-delegation of a power, function or duty by a delegated body, that delegated body;

**“delegation”** in relation to a power, function or duty, includes an instruction or request to exercise or to assist in exercising a power, or to perform or to assist in performing a function or duty, and **“delegate”** has a corresponding meaning;

**“dependant”** means, in relation to a member, a dependant as defined in section 1 of the Pension Funds Act;

**“election date”** means the date on which a member retiring in terms of item 1, item 2, item 3, item 4 or item 5 of Schedule 3 elects to receive payment of his or her benefit in terms of paragraph 4 of the second Schedule to the Income Tax Act, 1962 or, if later, the date on which the Fund receives notification of such election;

**“employee”** means an employee as contemplated in sections 8(2) and (3) of the Act;

**“employer”** means a legal entity that controls and directs an employee under a contract of employment and pays him or her a salary in compensation;

**“employer surplus account”** means the account contemplated in regulation 10(5);

**“Financial Advisory and Intermediary Services Act”** means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

**“Financial Institutions (Protection of Funds) Act”** means the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);

**“Financial Sector Conduct Authority”** means the authority established in terms of section 56 of the Financial Sector Regulation Act;

**“Financial Sector Regulation Act”** means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

**“Fund”** means the KwaZulu-Natal Joint Municipal Provident Fund as contemplated in section 4 of the Act, being the continuation of the KwaZulu-Natal Joint Municipal Provident Fund established in accordance with section 2 of the Act;

**“fund return”** means any –

- (a) income, whether received or accrued; and
- (b) capital gains and losses, whether realised or unrealised,

of the Fund, less an allowance for any tax and such expenses, whether paid or accrued, associated with the acquisition, holding or disposal of the assets of the Fund as may be determined by the Board of Trustees: Provided that:



- (i) such return may be positive or negative; and
- (ii) in allocating the fund return, the Board of Trustees may use a reasonable approximation in the event that there are sound administrative reasons why the allocation cannot be exact and may also decide to apply a smoothing approach as referred to in the Pension Funds Act;

**“in-fund annuitant”** means either –

- (a) a retired member who is in receipt of a living annuity paid from the Fund; or
- (b) a beneficiary in receipt of a living annuity paid from the Fund due to an election in terms of item 4(b)(iii) of Schedule 5;

**“Inspection of Financial Institutions Act”** means the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998);

**“investment reserve account”** means the account contemplated in regulation 10(4);

**“King Code of Governance Principles”** means the King Code and Report on Governance for South Africa, and any amendment thereto, or revision thereof;

**“KwaZulu-Natal Joint Municipal Pension Fund (Retirement)”** means the Natal Joint Municipal Pension Fund (Retirement), established by section 2 of the Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974), which with effect from the date of commencement of the KwaZulu-Natal Joint Municipal Pension Fund (Retirement) Act, 2017 (Act No. 6 of 2017), is called the KwaZulu-Natal Joint Municipal Pension Fund (Retirement), as contemplated in section 4 of such Act;

**“KwaZulu-Natal Joint Municipal Pension Fund (Superannuation)”** means the Natal Joint Municipal Pension Fund (Superannuation) established by section 2 of the Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973), which, with effect from the date of commencement of the KwaZulu-Natal Joint Municipal Pension Fund (Superannuation) Act, 2017 (Act No. 7 of 2017), is called the KwaZulu-Natal Joint Municipal Pension Fund (Superannuation), as contemplated in section 4 of such Act;

**“KwaZulu-Natal Provincial Legislature”** means the Legislature of the Province of KwaZulu-Natal as contemplated in section 104 of the Constitution;

**“late payment interest”** means late payment interest as contemplated in section 13A of the Pension Funds Act;

**“living annuity”** means the annuity payable from the living annuity account in terms of these Regulations to an in-fund annuitant;

**“living annuity account”** means the account contemplated in regulation 10(8);

**“living annuity policy”** means the policy maintained by the Board of Trustees which sets out the terms and conditions governing the payment of living annuities by the Fund;

**“Local Government: Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“Local Government: Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“medical practitioner”** means a person registered as such in accordance with the Health Professions Act, 1974 (Act No. 56 of 1974);

“**member**” unless the context determines otherwise, means a natural person who –  
(a)(i) at any stage prior to the commencement date of these Regulations contributed to the Fund; and  
(ii) from the commencement date of these Regulations continues to contribute to the Fund;  
or  
(b) on any date subsequent to the commencement date of these Regulations starts to contribute to the Fund;

“**member of the Board of Trustees**” means a member of the Board of Trustees contemplated in Part 2 of Schedule 1;

“**member share account**” means the account contemplated in regulation 10(7);

“**member surplus account**” means the account contemplated in regulation 10(6);

“**member’s share**” means an amount determined in accordance with regulation 10(7);

“**minimum benefit**” means the benefits determined in accordance with section 14A of the Pension Funds Act;

“**minimum individual reserve**” means, in relation to each member, the amount determined in accordance with section 14B of the Pension Funds Act;

“**month**” means a period extending from a day in one calendar month to the day preceding the day corresponding numerically to that day in the following calendar month, both days inclusive: Provided that “day”, for purposes of defining “month” includes Saturdays, Sundays and public holidays;

“**municipal council**” means, where appropriate according to the context in which the expression occurs, a municipal council as defined in section 1 of the Local Government: Municipal Structures Act, and any reference in the Regulations to a municipality is deemed to be a reference to the appropriate meaning of “municipal council”;

“**municipal manager**” means a municipal manager or acting municipal manager appointed in accordance with the Local Government: Municipal Structures Act;

“**municipal year**” means the period commencing on 1 July in any year and terminating on 30 June in the following year as contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“**municipality**” –

- (a) includes a metropolitan municipality, a district municipality or a local municipality as contemplated in section 155(6) of the Constitution;
- (b) means a municipality established in terms of the Local Government: Municipal Structures Act and includes the successor-in-law to *uMsekeli*;
- (c) when contemplated as an entity or a corporate body, means a municipality as described in section 2 of the Local Government: Municipal Systems Act; and
- (d) when contemplated as a geographic area, means a municipal area determined as contemplated in the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“**notice**” means a notice issued in accordance with these Regulations;

“**officials**” means the Principal Officer and other employees of the Fund appointed in accordance with these Regulations;

“**part-time capacity**” means employment for an agreed proportion of not less than one-half but less than four-fifths of the normal working hours, or such other proportion as may be decided from time to time by the Board of Trustees;

“**pension age**” means the age of 65 years;

“**Pension Funds Act**” means the Pension Funds Act, 1956 (Act No. 24 of 1956);

“**Pension Preservation Fund**” means a Pension Preservation Fund recognised or approved as such by the South African Revenue Service for the purposes of these Regulations;

“**pensionable emoluments**” means the emoluments calculated in accordance with item 1 of Schedule 2;

“**preserved member**” means a member whose benefit on leaving service in terms of item 3, 4 or 5 of Schedule 3 has been preserved in the Fund in accordance with the provisions of Schedule 6 and whose benefit has not yet become payable in terms of these Regulations;

“**preserved member account**” means the account contemplated in regulation 10(10);

“**Principal Officer**” means the Principal Officer appointed by the Board of Trustees in accordance with regulation 26(1)(a) as a Principal Executive Officer as contemplated in section 8 of the Pension Funds Act;

“**promulgation**” means promulgation in the Provincial Gazette;

“**Provident Fund Regulations**” means the Regulations made by the responsible Member of the Executive Council in accordance with section 4 of the Act;

“**Provident Preservation Fund**” means a Provident Preservation Fund recognised or approved as such by the South African Revenue Service for the purposes of these Regulations;

“**Province**” means the Province of KwaZulu-Natal;

“**Provincial Gazette**” means the Provincial Gazette of the Province of KwaZulu-Natal;

“**qualifying criteria**” means the criteria set out in the living annuity policy which a member must meet in order to qualify for payment of a living annuity from the Fund;

“**registered insurer**” means an insurer registered in terms of the Long Term Insurance Act, 1998 (Act No. 52 of 1998);

“**Registrar**” means the Registrar of Pension Funds as defined in the Pension Funds Act and who is the Executive Officer of the Financial Sector Conduct Authority as defined in section 1 of the Financial Sector Regulation Act, or a person to whom all or some of the Registrar’s powers, functions or duties have been delegated or assigned, as the case may be, in accordance with the said Acts;

“**Regulation**” means a Regulation made under this Act, and includes any Schedule to such Regulations;

“**responsible Member of the Executive Council**” means the Member of the Executive Council for the Province of KwaZulu-Natal responsible for local government;

“**retirement benefits counselling**” means retirement benefits counselling as defined in the Pension Funds Act;

“**Retirement Fund**” means the KwaZulu-Natal Joint Municipal Pension Fund (Retirement);

“**Retirement Fund Regulations**” means the Regulations made by the responsible Member of the Executive Council in accordance with the provision of section 7 of the KwaZulu-Natal Joint Municipal Pension Fund (Retirement) Act, 2017;

“**risk reserve account**” means the account contemplated in regulation 10(2);

“**Rules**” for purposes of the Pension Funds Act and these Regulations, means –

(a) the Rules for the Management and Administration of the Natal Joint Municipal Pension Fund (Superannuation), the Natal Joint Municipal Pension Fund (Retirement), and the KwaZulu-Natal Joint Municipal Provident Fund, issued in accordance with the Regulations made under the –

(i) Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973);

(ii) Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974); and

(iii) KwaZulu-Natal Joint Municipal Provident Fund Act; and

(b) any further Schedules made in accordance with section 7 of the Act and these Regulations, after the date of commencement of these Regulations;

“**salary**” means the annual, monthly, weekly, daily or hourly pay, including the remuneration for piece-work, exclusive of all allowances, and does not include payment for overtime or any bonus;

“**section 57 contract employee**” means an employee appointed by the municipal council of an associated municipality in accordance with section 57 of the Local Government: Municipal Systems Act;

“**smoothing**” means smoothing of fund returns as referred to in the Pension Funds Act, and “**smoothed**” has a corresponding meaning;

“**South African Revenue Service**” means the South African Revenue Service established in accordance with section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

“**Superannuation Fund**” means the KwaZulu-Natal Joint Municipal Pension Fund (Superannuation);

“**Superannuation Fund Regulations**” means the Regulations made by the responsible Member of the Executive Council in accordance with section 7 of the KwaZulu-Natal Joint Municipal Pension Fund (Superannuation) Act, 2017;

“**uMsekeli**” means the entity established by section 2 of the *uMsekeli* Municipal Support Services Ordinance, 1941 (Ordinance No. 20 of 1941);

“**unapproved risk benefits**” means risk benefits which are provided under a separate arrangement in terms of policies issued by an insurance company to the municipality, as approved by the Board of Trustees;

“**unclaimed benefit**” means an unclaimed benefit as defined in section 1 of the Pension Funds Act;

“**unclaimed benefit account**” means the account contemplated in item 13 of Schedule 3; and

“**wages**” means salary.

#### **Application of national legislation, regulations, rules, practice notes and similar instruments**

2.(1) The Pension Funds Act, the Financial Sector Regulation Act and any regulations, rules, practice notes and similar instruments issued in terms thereof, prevail in cases of irreconcilable conflict with these Regulations.

(2)(a) No term in any contract between an associated municipality and an employee, including a section 57 contract employee, may be in contradiction with these Regulations.

(b) In the event that a term in any contract contemplated in paragraph (a) is in contradiction with these Regulations, such term is deemed to be *ab initio ultra vires*.

**Relationship with KwaZulu-Natal Joint Municipal Provident Fund Act, 2017**

3.(1) These Regulations must be interpreted within the context of the Act.

(2) In the event of an irreconcilable conflict between the Act and these Regulations, the Act prevails.

**Exclusion from operation of Regulations**

4. The provisions of these Regulations do not apply to that portion of the eThekweni Metropolitan Municipality formerly constituted as the North Central and South Central Local Councils in accordance with the Local Government Transition Act, 1993 (Act No. 209 of 1993) whose employees are members of the Durban Pension Fund, unless the municipal council of that municipality applies for the application thereof as contemplated in regulation 7.

**CHAPTER 2**  
**CONTINUATION, OPERATION AND DISSOLUTION OF FUND**  
*(Regulations 5 - 19)*

**Continuation of Fund**

5. The Fund as contemplated in section 4(1) of the Act –

- (a) continues to exist with all its associated rights, powers, duties, responsibilities, assets and liabilities as it was immediately prior to the commencement of these Regulations; and
- (b) operates in accordance with the provisions of the Act and these Regulations, as amended from time to time.

**Association with Fund**

6.(1) Every municipality that, immediately prior to the commencement of these Regulations, is associated with the Fund –

- (a) remains associated; and
- (b) may not disassociate.

(2) Every municipality that is not associated with the Fund may decide to associate with the Fund, in accordance with regulation 7: Provided that in such event, the municipality concerned is deemed to have decided to also associate with the –

- (a) Retirement Fund in accordance with the Regulations made in accordance with section 7 of the KwaZulu-Natal Joint Municipal Pension Fund (Retirement) Act, 2017 (Act No. 6 of 2017); and
- (b) Superannuation Fund in accordance with the Regulations made in accordance with section 7 of the KwaZulu-Natal Joint Municipal Pension Fund (Superannuation) Act, 2017 (Act No. 7 of 2017)).

(3) A municipality contemplated in sub-regulation (2) must comply with the provisions of regulation 8 within a period of six months after the decision to associate with the Fund.

(4) A municipality contemplated in this Regulation may –

- (a) only be associated with one or more of the –
  - (i) Fund;
  - (ii) Retirement Fund; or
  - (iii) Superannuation Fund,as the case may be; and
- (b) not be associated with any other pension or provident fund than the Funds contemplated in paragraph (a).

**Municipality with separate fund becomes associated with Fund**

7. Any municipality within the Province with one or more separate –

- (a) pension; or
- (b) provident,

funds for any or all of its employees, established in accordance with the provisions of the Pension Funds Act, which, at the date of commencement of these Regulations, is not an associated municipality, may apply to the Board of Trustees to be considered for admission as an associated municipality, subject to approval of the application as contemplated in regulation 8(5).

**Preparation, adoption and approval of scheme**

8.(1) Subject to the provisions of regulation 6, a municipality contemplated in Regulations 6(2) and 7 must prepare a draft scheme that provides for –

- (a) the protection of the rights of current employees;
- (b) the compulsory membership of the Fund of all current and future employees, subject to the provisions of regulation 31(4);
- (c) the transfer of investments, other moneys and assets of its own provident fund or pension fund to the Fund, the Retirement Fund or Superannuation Fund, as the case may be;
- (d) the manner of further payments –
  - (i) by, or refunds to, the municipality; or
  - (ii) to, or refunds by, its current employees;
- (e) the proposed date of association on which date the scheme will commence; and
- (f) any other information that may be required by the Board of Trustees.

(2) The draft scheme contemplated in sub-regulation (1) must –

- (a) be approved by the municipality concerned at a statutory meeting;
- (b) thereafter be submitted to the Actuary for his or her consideration and recommendation; and
- (c) thereafter be submitted, together with the approval and recommendation as contemplated in this sub-regulation, to the Board of Trustees for its consideration and approval.

(3) The Board of Trustees must publish a notice indicating the approval of the draft scheme by the Board of Trustees on the advice of the Actuary and the availability for inspection by entities and persons contemplated in sub-regulation (4) of both the application and the approved draft scheme in a newspaper of general circulation in KwaZulu-Natal.

(4) The Board of Trustees must take all reasonable steps to ensure that information in respect of the application and approved draft scheme contemplated in this Regulation is made available to all associated municipalities.

(5) A municipality whose scheme has been approved by the Actuary in accordance with sub-regulation (2) and after compliance with the provisions of sub-regulations (3) and (4), becomes an associated municipality upon approval in writing of its application and the scheme by –

- (a) the municipality;
- (b) a majority of the members who, immediately prior to the approval by the Actuary of the scheme contemplated in sub-regulation (1), contributed to the pension fund or provident fund of the municipality concerned, obtained in writing in such manner as the Board of Trustees thereof may determine;
- (c) the Board of Trustees; and
- (d) after approval has been granted as contemplated in paragraphs (a) to (c), the responsible Member of the Executive Council, who must publish such approval by notice in the Provincial Gazette.

**Sources of Fund**

9. The sources of the Fund consist of –

- (a) contributions and interest paid into the Fund in accordance with the relevant provisions of these Regulations;
- (b) income derived from the investment of any monies of the Fund; and
- (c) any other sums or assets to which the Fund may become entitled.

**Financial structure of Fund and Fund investments**

10.(1)(a) The Board of Trustees must establish the following accounts:

- (i) a risk reserve account;
- (ii) a data reserve account;
- (iii) an investment reserve account;
- (iv) an employer surplus account;
- (v) a member surplus account;

- (vi) a member share account;
- (vii) a living annuity account;
- (viii) a deferred retiree account;
- (ix) a preserved member account.

(b) All transfers –

- (i) between;
- (ii) into; and
- (iii) from,

the accounts contemplated in paragraph (a) must take place in accordance with these Regulations.

(2)(a) The risk reserve account –

(i) provides for protection against fluctuations in mortality and morbidity experience and enables the Fund to continue to provide the risk benefits provided for in these Regulations;

(ii) must be credited with –

(aa) that part of the contributions received by the Fund in terms of item 4 of Schedule 2 that is required in terms of item 4(1)(b)(i)(bb), 4(1)(b)(ii)(bb) or 4(1)(b)(iii)(bb) of Schedule 2 to be credited to the risk reserve account; and

(bb) transfers from any of the other accounts in accordance with regulation 15(4);

(iii) must be debited with –

(aa) such amounts as may be required from time to time to enable the Fund to pay all or part of the death benefit referred to in item 6(2)(b) of Schedule 3 to beneficiaries on the death of a member;

(bb) the cost of administration and management of the Fund; and

(cc) transfers to any of the other accounts referred to in sub-regulation (1) in accordance with the provisions of regulation 15(4); and

(iv) must be increased or decreased, as the case may be, by the fund return on the assets within this account.

(b) The balance maintained in the risk reserve account must be calculated from time to time, but at least at each valuation of the Fund in accordance with regulation 15.

(c) In the event that the risk reserve account is dissolved, any positive balance must be dealt with in accordance with section 15C of the Pension Funds Act.

(3)(a) The data reserve account –

(i) aims at minimising the risk of the financial soundness of the Fund being jeopardised as a result of errors arising from insufficient data or administrative errors;

(ii) must be credited with –

(aa) an opening balance of such amount as decided by the Board of Trustees on the advice of the Actuary, having regard to the provisions of sub-paragraph (i);

(bb) any amount which may from time to time arise as a result of a data or administrative error; and

(cc) the transfer of amounts from any of the other reserve accounts contemplated in sub-regulation (1), in accordance with the provisions of regulation 15(4);

(iii) must be debited with –

(aa) such amounts as may be determined by the Actuary and approved by the Board of Trustees, to be transferred to another reserve account contemplated in sub-regulation (1), to be applied to improve benefits of current members, or to be paid to former members in order to correct losses which arise as a result of data or data-related administrative errors; and

(bb) transfers to any of the other accounts referred to in sub-regulation (1), in accordance with the provisions of regulation 15(4); and

(iv) must be increased or decreased, as the case may be, by the fund return on the assets within this account.

(b) The balance maintained in the data reserve account must be –

(i) calculated from time to time, but at least at each valuation of the Fund in accordance with regulation 15; and

(ii) limited to what is affordable, having regard to the financial position of the Fund.

(c) In the event that the data reserve account is dissolved, any positive balance must be dealt with in accordance with section 15C of the Pension Funds Act.

(4)(a) The investment reserve account –

(i) is an account in which the balance is determined as follows: the excess of the value of the assets underlying the member share account and for any smoothing of the fund return to be credited to such account, with an allowance for expenses, over the value of the balances in the members' shares;

(ii) must be credited with –

(aa) transfers from any of the other accounts referred to in sub-regulation (1) in accordance with the provisions of regulation 15(4); and

(bb) amounts credited to the account on receipt of a transfer value from a member transferring into the Fund from the Superannuation Fund or Retirement Fund or any other fund: Provided that such amounts must be determined by the Board of Trustees on advice of the Actuary; and

(iii) must be debited with –

(aa) transfers to any of the other accounts referred to in sub-regulation (1) in accordance with the provisions of regulation 15(4); and

(bb) bonuses allocated to the member share account in accordance with sub-regulation (7):

Provided that a proportionate share of the account must be added to the member's member share on exit on a smoothed approach.

(b) The balance maintained in the investment reserve account must be calculated from time to time, but at least at each valuation of the Fund in accordance with regulation 15.

(c) In the event that the investment reserve account is dissolved, any positive balance must be dealt with in accordance with section 15C(1) of the Pension Funds Act.

(5) The employer surplus account must be –

(a) credited with –

(i) any amounts allocated in accordance with section 15B or 15C(1) of the Pension Funds Act; and

(ii) transfers from any of the other accounts contemplated in sub-regulation (1) in accordance with the provisions of regulation 15(4);

(b) debited with –

(i) amounts used for any of the purposes set out in section 15E of the Pension Funds Act; and

(ii) transfers to any of the other accounts of the Fund contemplated in sub-regulation (1) in accordance with the provisions of regulation 15(4); and

(c) increased or decreased, as the case may be, by the fund return on the assets within this account.

(6) The member surplus account must be –

(a) credited with –

(i) any amounts allocated in accordance with section 15B or 15C(1) of the Pension Funds Act; and

(ii) transfers from any of the other accounts contemplated in sub-regulation (1) in accordance with the provisions of regulation 15(4);

(b) debited with –

(i) amounts used for any of the purposes set out in section 15D of the Pension Funds Act; and

(ii) transfers to any of the other accounts contemplated in sub-regulation (1) in accordance with the provisions of regulation 15(4); and

(c) increased or decreased, as the case may be, by the fund return on the assets within this account.

(7) The member share account must be –

(a) credited with –

(i) an opening balance, in relation to each member who was a member of the Fund on the date of commencement of these Regulations, equal to his or her member share at that date;



- (ii) contributions in accordance with item 2(1) of Schedule 2;
  - (iii) that part of the contributions by the municipality in accordance with item 4 of Schedule 2 that is required in terms of item 4(1)(b)(i)(aa), 4(1)(b)(ii)(aa) or 4(1)(b)(iii)(aa) of Schedule 2 to be applied towards retirement funding under the member share account;
  - (iv) any additional voluntary contributions in accordance with item 3 of Schedule 2, if applicable;
  - (v) transfer values received from the Retirement Fund, Superannuation Fund or any other fund after deducting the portion attributable to the investment reserve account as determined by the Board of Trustees on advice of the Actuary; and
  - (vi) bonuses allocated from time to time by the Board of Trustees, on the advice of the Actuary, taking into account the fund return on the assets of the member share account using a smoothing approach;
  - (vii) amounts transferred into the Fund in terms of regulation 35(4); and
- (b) debited with –
- (i) payment or transfer of the member's share in accordance with the provisions of Schedule 5 or Schedule 6;
  - (ii) deductions from the member share in accordance with these Regulations; and
  - (iii) such reasonable expenses as the Board of Trustees may determine.
- (8) The living annuity account must be –
- (a) credited with –
- (i) amounts required to be transferred to this account in terms of the provisions of item 3 (a) of Schedule 5;
  - (ii) transfers from the deferred retiree account and the preserved member account in terms of regulation 10(9)(b) (ii) and regulation 10(10)(b)(ii);
  - (iii) transfers from any of the other accounts contemplated in sub-regulation (1) in accordance with the provisions of regulation 15(4); and
  - (iv) bonuses allocated from time to time by the Board of Trustees on the advice of the Actuary, taking into account the fund return on the assets in the living annuity account using a smoothing approach;
- (b) debited with –
- (i) payment of instalments of a living annuity in accordance with the provisions of the living annuity policy as contemplated in item 3 (b) of Schedule 5;
  - (ii) if applicable, any lump sum payments in terms of item 3(b)(ii), item 4(b)(ii) or item 4(d)(iii) of Schedule 5;
  - (iii) any amounts transferred to a registered insurer in terms of item 3(b)(iv) or item 4(b)(i) of Schedule 5;
  - (iv) deductions from the living annuity account in accordance with the provisions of these Regulations; and
  - (v) such reasonable expenses as the Board of Trustees may determine.
- (9) The deferred retiree account must be –
- (a) credited with –
- (i) amounts required to be transferred to this account in terms of the provisions of item 5(a) of Schedule 5;
  - (ii) transfers from the preserved member account in terms of regulation 10(10)(b)(ii);
  - (iii) transfers from any of the other accounts contemplated in sub-regulation (1) in accordance with the provisions of regulation 15(4); and
  - (iv) bonuses allocated from time to time by the Board of Trustees on the advice of the Actuary, taking into account the fund return on the assets in the deferred retiree account using a smoothing approach; and
- (b) debited with –
- (i) amounts payable on the retirement or death of a deferred retiree in terms of item 5(d) of Schedule 5;
  - (ii) if applicable, transfers to the living annuity account on the election date;
  - (iii) if applicable, transfers to a registered insurer on the election date in terms of item 2 of Schedule 5;
  - (iv) deductions from the deferred retiree account in accordance with the provisions of these Regulations; and
  - (v) such reasonable expenses as the trustees may determine.

- (10) The preserved member account must be –
- (a) credited with –
    - (i) amounts required to be transferred to this account in terms of the provisions of item 2(b) of Schedule 6;
    - (ii) transfer values from any other approved provident fund or approved pension fund received after the member became a preserved member;
    - (iii) transfers from any of the other accounts contemplated in sub-regulation (1) in accordance with the provisions of regulation 15(4); and
    - (iv) bonuses allocated from time to time by the Board of Trustees on the advice of the Actuary, taking into account the fund return on the assets in the preserved member account using a smoothing approach; and
  - (b) debited with –
    - (i) amounts payable on the retirement or death of a preserved member in terms of item 3(a) or (b) of Schedule 6;
    - (ii) if applicable, transfers to the living annuity account on the election date and to the deferred retiree account on the preserved member reaching pension age;
    - (iii) deductions from the preserved member account in accordance with the provisions of these Regulations;
    - (iv) amounts paid as a lump sum or transferred to another approved provident fund or approved pension fund in terms of item 3(c) of Schedule 6; and
    - (v) such reasonable expenses as the trustees may determine.

#### **Expenses of management of Fund**

**11.(1)** The Fund is responsible for all expenses in connection with, or incidental to, its management and administration.

- (2) Expenses for purposes of this Regulation include, but are not limited to, expenses relating to audits and actuarial investigations as contemplated in –
- (i) the Pension Funds Act;
  - (ii) the Inspection of Financial Institutions Act;
  - (iii) the Act; and
  - (iv) these Regulations.

#### **Auditor**

**12.(1)** The Board of Trustees must appoint an Auditor in accordance with section 9 of the Pension Funds Act.

(2) The powers, functions and duties of the Auditor are as prescribed in the Pension Funds Act, other national legislation and these Regulations.

#### **Annual audit**

- 13.(1)** The Board of Trustees must cause –
- (a) the books and accounts of the Fund to be balanced as at 31 March of each year; and
  - (b) financial statements for the Fund to be prepared for audit by no later than 31 July of each year.
- (2) The audit of the financial statements contemplated in sub-regulation (1)(b) must be performed by –
- (a) the Auditor appointed in accordance with regulation 12; and
  - (b) any other person, subject to the provisions of the Auditing Profession Act, 2005 (Act No. 26 of 2005), whom the responsible Member of the Executive Council may, in accordance with section 7(1)(a)(ii) of the Act, from time to time, appoint to perform an audit under the control of the Auditor-General, in addition to the audit performed by the Auditor contemplated in paragraph (a).
- (3) The Auditor must –
- (a) by 30 September of each year, and at any other date when instructed by the Board of Trustees, audit the financial statements contemplated in sub-regulation (1)(b) and certify that –

- (i) the financial statements of the Fund are in order;
  - (ii) the financial statements present a true and correct view of the financial position of the Fund and of its transactions;
  - (iii) all items of revenue and expenditure, as well as all known liabilities and assets have been taken into account; and
  - (iv) all his or her requirements and recommendations, as Auditor, have been complied with and carried out;
- (b) by 30 September of each year, submit the audited financial statements in accordance with section 15 of the Pension Funds Act to the Registrar and the Actuary; and
- (c) within 30 days of certification by the Auditor, simultaneously submit –
- (i) a copy of the financial statements and his or her audit report to the Board of Trustees and the responsible Member of the Executive Council; and
  - (ii) the following to the Auditor-General:
    - (aa) the original financial statements and his or her audit report;
    - (bb) such copies of the documents contemplated in item (aa) as may be required; and
    - (cc) any further information and comments as may be required.
- (4) The Board of Trustees must –
- (a) consider the financial statements and audit report of the Fund contemplated in sub-regulation (3)(c)(ii) within 30 days after receipt thereof; and
  - (b) take remedial steps as may be necessary and submit a signed report in this regard to the responsible Member of the Executive Council and the Auditor-General by no later than 30 November of each year, for their comment and any action they may deem necessary, on –
    - (i) its view of the financial statements and audit report contemplated in paragraph (a); and
    - (ii) the remedial steps.
- (5) The Auditor-General must annually prepare and submit a signed report to the KwaZulu-Natal Provincial Legislature on his or her views on the –
- (a) financial statements;
  - (b) audit report;
  - (c) report on the views of the Board of Trustees; and
  - (d) report on the remedial steps taken by the Board of Trustees,
- as contemplated in this Regulation.

### **Actuary**

**14.(1)** The Board of Trustees must appoint an Actuary in accordance with section 9A of the Pension Funds Act.

(2) The powers, functions and duties of the Actuary are as prescribed in the Pension Funds Act, other national legislation and these Regulations.

### **Actuarial valuation of Fund**

**15.(1)** The Actuary, in addition to the three yearly valuation report as required by section 16 of the Pension Funds Act, must annually –

- (a) value the Fund to determine whether the Fund is capable of meeting the benefits and other commitments provided for in these Regulations as at the expiration of the financial year concerned; and
- (b) submit a signed interim report on the valuation within 12 months from the end of that financial year to the –
  - (i) Board of Trustees; and
  - (ii) responsible Member of the Executive Council:

Provided that an actuarial valuation may be performed by any other person, subject to the provisions of section 9A of the Pension Funds Act, whom the responsible Member of the Executive Council may, in accordance with section 7(1)(a) of the Act, from time to time, appoint to perform an actuarial valuation.

(2)(a) In the event that the Actuary certifies that a deficit exists in the risk reserve account, the Actuary must prepare a deficit scheme in accordance with the provisions of the Pension Funds Act, and submit the scheme, for approval, to the –

- (i) Board of Trustees; and
- (ii) Registrar.

(b) Every associated municipality must comply with the provisions of the deficit scheme contemplated in paragraph (a) and make such contributions as are necessary to ensure that the Fund is capable of meeting the benefits and other commitments provided for in these Regulations.

(3) In the event that the Actuary certifies that an actuarial surplus exists, any actuarial surplus must be applied by the Board of Trustees as it may determine in accordance with section 15C(2) of the Pension Funds Act.

(4) The Board of Trustees, at its discretion and on the advice of the Actuary, may, from time to time, make transfers between the accounts of the Fund maintained in accordance with regulation 10, having regard to the –

- (a) purpose of each account as set out in regulation 10; and
- (b) amount standing to the credit of each account at any particular time.

(5) The Actuary must, in addition to the actuarial valuation contemplated in this Regulation, also perform investigations into, and submit reports to the Registrar in respect of, the financial condition of the Fund in compliance with section 16 of the Pension Funds Act.

#### **Voluntary dissolution of Fund**

**16.**(1) Notwithstanding anything contained in these Regulations and subject to the provisions of section 28(1) of the Pension Funds Act, the Board of Trustees may resolve to dissolve the Fund if –

- (a) at least 75% of the members of the Board of Trustees present and voting at a special meeting of the Board of Trustees called for this purpose, vote in favour of such dissolution; and
- (b) written approval of the responsible Member of the Executive Committee has been obtained, in which case the provisions of regulation 40 apply with the necessary changes.

(2) The appointment of a Liquidator is subject to the approval of the Registrar.

(3) The Liquidator contemplated in sub-regulation (2) has all the rights, powers and duties conferred or imposed upon him or her by sections 28 and 28A of the Pension Funds Act.

(4) The Registrar has all the powers and duties in respect of voluntary dissolution conferred or imposed upon him or her by sections 28 and 28A of the Pension Funds Act.

#### **Winding-up by court**

**17.** The Registrar and the court to which an application for an order for the winding-up of the whole or any part of the business of the Fund is submitted, have all the powers and duties conferred or imposed upon them by section 29 of the Pension Funds Act.

#### **Special conditions relating to liquidation of Fund**

**18.** The provisions of section 30 of the Pension Funds Act apply in the event that the Fund is liquidated on account of the –

- (a) voluntary dissolution as contemplated in regulation 16; or
- (b) winding-up as contemplated in regulation 17.

#### **Registrar's powers of inspection, investigation, intervention in management of Fund and cancellation or suspension of registration**

**19.** The Registrar has all the powers and duties of –

- (a) inspection and investigation into the Fund conferred or imposed upon him or her by –
  - (i) section 25 of the Pension Funds Act; and
  - (ii) the Inspection of Financial Institutions Act;

- (b) intervention in the management of the Fund conferred or imposed upon him or her by section 26 of the Pension Funds Act; and
- (c) cancellation or suspension of registration of the Fund conferred or imposed upon him or her by section 27 of the Pension Funds Act.

### **CHAPTER 3 GOVERNANCE AND MANAGEMENT STRUCTURES**

*(Regulations 20 - 29)*

#### **Establishment of Board of Trustees**

**20.** A Board of Trustees, in which the management and direction of the Fund is vested, must be elected in accordance Part 2 of Schedule 1.

#### **Composition of Board of Trustees**

**21.** The Board of Trustees must –

- (a) be composed in compliance with the provisions of Part 2 of Schedule 1; and
- (b) execute all the powers, perform all the functions and carry out all the duties provided for in –
  - (i) the relevant provisions of the Pension Funds Act; and
  - (ii) these Regulations.

#### **Continuation of Board of Trustees**

**22.** For purposes of these Regulations, and in accordance with section 8(1) of the Act, the Board of Trustees –

- (a) established as the committee of management in accordance with the laws repealed in the Schedule of the Act as they existed immediately prior to the commencement of these Regulations, continues as the Board of Trustees; and
- (b) execute all the powers, perform all the functions and carry out all the duties as contemplated in –
  - (i) these Regulations; and
  - (ii) sections 7C and 7D of the Pension Funds Act.

#### **Powers, functions and duties of Board of Trustees**

**23.(1)** Subject to the provisions of these Regulations, the Board of Trustees has the power to –

- (a) decide whether any person is qualified to be a member of the Fund;
- (b) determine the method whereby the annual pensionable emoluments of hourly paid, daily paid and other workers are calculated and to give such directions in connection therewith as it may deem fit;
- (c) settle all questions in respect of contributions not otherwise dealt with in these Regulations;
- (d) decide upon the periods of service in respect of which contributions may be made, or which may be included for benefit purposes;
- (e) adjust and decide upon all claims made against the Fund;
- (f) authorise the payment of claims made against the Fund;
- (g) authorise the payment of all benefits;
- (h) open a bank account in the name of the Fund and manage such account in the appropriate manner;
- (i) obtain bank overdraft facilities;
- (j) institute and defend legal proceedings of any kind in any court of law;
- (k) perform any act relating to any registration in any deeds office;
- (l) acquire any property mortgaged to the Fund and to lease, maintain, control, sell, dispose of or otherwise turn to account the said property;
- (m) prescribe the terms and conditions of service of employees of the Fund;
- (n) appoint the Principal Officer and other officials of the Fund;
- (o) engage professional or other assistance for the Fund;
- (p) acquire and maintain premises for its own use and to let any part of such premises not in use;
- (q) accept any property on behalf of the Fund by way of a donation or bequest;
- (r) incur in its discretion reasonable entertainment expenses in respect of the Fund;

- (s) join any association of municipal or other funds whose objects are the improvement and promotion of matters of common or mutual interest to such funds and their members;
  - (t) furnish guarantees or grant loans pursuant to such guarantees, in accordance with the provisions of section 19(5), read with section 37D, of the Pension Funds Act, to any bank or financial institution registered as such in accordance with the Banks Act or the Mutual Banks Act, 1993 (Act No. 124 of 1993) upon such terms and conditions as the Board of Trustees may deem fit, including the renunciation of the benefits of excussion and division; and
  - (u) do all such things as are, in the opinion of the Board of Trustees, incidental or conducive to the proper management, administration and promotion of the Fund and to the attainment of the objects of these Regulations.
- (2) The Board of Trustees may propose amendments to these Regulations and the Schedules thereto to the responsible Member of the Executive Council in respect of the following matters:
- (a) the management, administration and transaction of any business of the Fund;
  - (b) the –
    - (i) objects and establishment;
    - (ii) number of members;
    - (iii) manner of appointment of a Chairperson and Vice-Chairperson;
    - (iv) mode and time of appointing and electing members;
    - (v) quorum necessary for the transaction of business at a meeting; and
    - (vi) manner of appointment of a sub-committee,of the Board of Trustees or any of its sub-committees, as the case may be; and
  - (c) any other matter which it considers necessary or expedient in order that the purposes of these Regulations may be achieved.
- (3) The proposed amendments contemplated in sub-regulation (2) must be –
- (a) drafted in a manner that complies with the minimum requirements for certification applicable to the Province of KwaZulu-Natal; and
  - (b) consistent with the provisions of these Regulations and are subject to –
    - (i) the provisions of the Pension Funds Act;
    - (ii) any regulations, rules, practice notes and similar instruments issued in terms of the Pension Funds Act;
    - (iii) a report from the Actuary on any proposed amendment that may affect the financial position of the Fund;
    - (iv) the approval by the responsible Member of the Executive Council; and
    - (v) after compliance with the requirements set out in sub-paragraphs (i) to (iv) of this sub-regulation, the publication in the Provincial Gazette of the amendments by the responsible Member of the Executive Council.

#### **Disputes regarding Board of Trustees**

**24.** Any dispute which may arise in respect of a claim or an interpretation under these Regulations, must be decided by the Board of Trustees: Provided that if any party to such dispute is dissatisfied with the decision, the Board of Trustees must, at the request of such party, refer the dispute to the adjudicator as contemplated in section 30C of the Pension Funds Act for decision, who may make a decision with retrospective effect.

#### **Powers of investment of Board of Trustees**

**25.(1)** The provisions of section 19 of the Pension Funds Act and any Regulation made in terms of section 36 of the Pension Funds Act apply to this Regulation, and in the event of an irreconcilable conflict between the application of section 19 and the provisions of this Regulation, section 19 and any Regulation made in terms of section 36 of the Pension Funds Act prevail.

(2) Subject to the provisions of section 19 of the Pension Funds Act, the Board of Trustees may, in its discretion, invest any moneys not required to meet the current charges upon the Fund in any of the following ways –

- (a) as a deposit in a –
  - (i) savings account;
  - (ii) fixed deposit account; or
  - (iii) call account,

- at the Post Bank or any other bank or similar institution registered and governed in accordance with South African law;
- (b) in Treasury Bills, National Savings Certificates or Savings Bank Certificates issued by or on behalf of the Government of the Republic of South Africa;
- (c) in stocks, securities or funds issued or guaranteed by the Government of the Republic of South Africa;
- (d) in stocks, bonds, debentures or shares in a public entity contemplated in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (e) on first mortgage upon immovable property in the Republic of South Africa, in which event the amount of the mortgage concerned may not exceed 75% of the value of such immovable property as assessed to the satisfaction of the Board of Trustees at the date of the advance;
- (f) in participation mortgage bonds under any registered participation mortgage bond scheme as provided for in the repealed Participation Bonds Act, 1981 (Act No. 55 of 1981) and collective investment schemes as provided for in the Collective Investment Schemes Control Act;
- (g) in the purchase of immovable property, including the purchase of land and the erection of buildings thereon for the purpose of regulation 23(1)(p);
- (h) in debentures, preference shares, unsecured notes, ordinary shares or similar forms of investment;
- (i) in units of any company registered in accordance with the Collective Investment Schemes Control Act; or
- (j) in such other security or securities as provided for in the Pension Funds Act.
- (3) The Board of Trustees may delegate one or more of its powers to make investments to a –
- (a) financial institution as defined in the Financial Institutions (Protection of Funds) Act; or
- (b) person registered as a financial services provider in accordance with section 8 of the Financial Advisory and Intermediary Services Act,
- and may defray any expenses incurred as a result of such delegation from the Fund.
- (4) The Principal Officer must, every six months at the end of June and the end of December of every year, submit a detailed –
- (a) financial report; and
- (b) report on all investments made by the Board of Trustees or its delegatee in accordance with sub-regulation (2) and (3),
- in respect of the preceding six months to the responsible Member of the Executive Council.

### **Officials of Fund**

- 26.(1) The Board of Trustees must appoint –
- (a) a Principal Officer in accordance with section 8 of the Pension Funds Act;
- (b) an Auditor in accordance with section 9 of the Pension Funds Act;
- (c) an Actuary who, for purposes of these Regulations, has all the rights, powers, functions and duties vested in and allocated to a valuator contemplated in section 9A of the Pension Funds Act; and
- (d) any other officials as may be required for the effective administration of the Fund.
- (2) The Board of Trustees must determine remuneration and other conditions of service of the officials contemplated in sub-regulation (1).
- (3) The Fund must provide the necessary financial resources for the –
- (a) remuneration and other conditions of service contemplated in sub-regulation (2); and
- (b) provision of infrastructure and other forms of support required for the effective performance of their functions and the carrying out of their duties to all officials of the Fund appointed in accordance with sub-regulation (1).

### **Compliance with financial management and corporate governance framework**

27. The Board of Trustees and the officials of the Fund must comply with –
- (a) the financial management and corporate governance provisions of the Pension Funds Act;
- (b) all other relevant national financial management and reporting legislation;
- (c) all generally accepted auditing, bookkeeping and financial reporting practices; and

(d) the principles and practices of corporate governance as contained in the King Code of Governance Principles, relevant to the governance, management and day to day operations of the Fund.

#### **Indemnity**

**28.** The Board of Trustees and all officials of the Fund must be indemnified by the Fund against all proceedings, costs and expenses incurred by reason of any legal process instituted against or by the Fund: Provided that such legal process does not arise from their negligence, dishonesty, financial mismanagement or fraud.

#### **Arrangements regarding Board of Trustees and administrative matters**

**29.** Every structure established as contemplated in these Regulations must comply with the framework for arrangements relating to the Board of Trustees and administrative matters as contemplated in Schedule 1 to these Regulations.

### **CHAPTER 4 MEMBERSHIP OF, AND CONTRIBUTIONS TO, FUND (Regulations 30 – 32)**

#### **Membership of Fund**

**30.(1)** Subject to the provisions of these Regulations, a person who was a member of the Fund immediately prior to the date of commencement, continues to be a member of the Fund.

(2) Every employee of a municipality which becomes associated with the Fund after the date of commencement of these Regulations, becomes a member of the Fund with effect from the date of association of such municipality as contemplated in sub-regulation (3).

(3)(a) A municipality which, after the date of commencement of these Regulations, becomes associated with the Fund in accordance with regulation 7, must provide in the scheme prepared in accordance with the provisions of regulation 8 that the member shares of its individual employees is, for purposes of these Regulations, not less than it would have been if the membership had been deemed to have commenced on –

- (i) the date of association; or
- (ii) a date prior to association as may be agreed upon by the Board of Trustees and the municipality concerned: Provided that such date may not be earlier than the date upon which the individual employee became an employee of the municipality.

(b) In the event that a municipality becomes associated with the Fund as contemplated in paragraph (a)(ii), the –

- (i) Actuary appointed by the Board of Trustees in accordance with regulation 14 must calculate the financial cost of crediting each employee with a member share equal to the amount contemplated in paragraph (a) at the date of association;
- (ii) municipality may require an employee to contribute an amount not exceeding 50% of such cost towards his or her financial cost contemplated in sub-paragraph (i), in which event such employee may elect to pay his or her contribution to the Fund –
  - (aa) in one lump sum; or
  - (bb) to make additional voluntary contributions in accordance with item 3 of Schedule 2 as may be agreed with the Board of Trustees to enhance his or her member share from the date of association; and
- (iii) municipality must pay its share of the financial cost contemplated in paragraph (b)(i) to the Fund in one lump sum at the date of association.

(4) An employee of a municipality, which becomes associated with the Fund on or after the date of commencement of these Regulations, must, within one month after such date, elect, in writing, to become a member with effect from the date of association of the –

- (a) Fund;
- (b) Retirement Fund; or
- (c) Superannuation Fund:



Provided that such an employee may elect, in writing, within a period of six months of the date of association, to substitute such original election retrospectively to the date of association.

(5) A person who becomes an employee of an associated municipality on or after the date of commencement of these Regulations must, within one month after such date, subject to his or her conditions of employment, elect in writing to become a member of the –

- (a) Fund;
- (b) Retirement Fund; or
- (c) Superannuation Fund:

Provided that such an employee may –

- (i) not, notwithstanding anything to the contrary contained in his or her conditions of service, elect not to become a member of one of the Funds contemplated in paragraphs (a) to (c); and
- (ii) elect, in writing, within a period of six months of the date of becoming an employee, to substitute such original election retrospectively to the date of becoming a member, in which event such later election is regarded as the employee's first election.

(6) An employee referred to in sub-regulation (4) or (5) must produce to the Board of Trustees at the date of commencement of his or her contributions to the Fund –

- (a) evidence of age satisfactory to the Board of Trustees: Provided that failing such production, the age of the member is deemed to be as determined by the Board of Trustees; and
- (b) at the equal cost of the Fund and of the associated municipality within three months of becoming a member such evidence of health as the Board of Trustees may require, and upon its being satisfied that he or she is –

- (i) in a good state of health, he or she is eligible for the benefits granted under these Regulations; or
- (ii) not in a good state of health, it must notify him or her in writing that his or her membership is subject to the restrictions, which may be withdrawn at a later date, that if he or she –

(aa) dies in the service of an associated municipality before 10 years' continuous service has been completed from an illness which, in the opinion of the Board of Trustees, is or is the result of the illness or condition that caused it to find that he or she was not in a good state of health, no benefit is payable in accordance with item 6(2)(b) of Schedule 3; and

(bb) leaves the service of an associated municipality before 10 years' continuous service has been completed while the restriction referred to in sub-paragraph (aa) is still in force, he or she is not entitled to transfer his or her rights in respect of the Fund to any other fund, unless with the consent of that fund, and if this transfer is not effected, he or she is entitled to a benefit in accordance with item 4 of Schedule 3.

(7) An employee who fails to produce such evidence of health as is required in accordance with sub-regulation (6) is deemed to be not in a good state of health for the purpose of that sub-regulation unless the Board of Trustees decides otherwise.

(8) Subject to the provisions of regulation 31(1)(a), a member may not withdraw from membership of the Fund –

- (a) while he or she remains an employee of an associated municipality; or
- (b) in the event that he or she leaves the employ of one associated municipality and joins another associated municipality.

(9) A person who is a member of the Retirement Fund or the Superannuation Fund may elect, in writing, to become a member of the Fund in accordance with the Regulations of the –

- (a) Fund; and
- (b) Retirement Fund or the Superannuation Fund, as the case may be.

(10) If a person becomes a member on transfer from the Retirement Fund or the Superannuation Fund in accordance with sub-regulation (9), the following conditions apply:

- (a) for all purposes, except those referred to in paragraphs (d) and (e), a period in respect of his or her membership of the Retirement Fund or the Superannuation Fund, as determined by the

Board of Trustees, acting on advice of the Actuary, must be included in continuous service in the Fund;

(b) his or her contributions to the Retirement Fund or the Superannuation Fund, as the case may be, must be included in his or her contributions to the Fund;

(c) for the purpose of calculating his or her final average emoluments, his or her pensionable emoluments and continuous service in the Retirement Fund or the Superannuation Fund, as the case may be, must be included in his or her pensionable emoluments and continuous service in the Fund;

(d) any restriction on his or her membership of the Retirement Fund or the Superannuation Fund, as the case may be, in accordance with the Regulations for the Provident Fund, corresponding to sub-regulations (6) and (7) apply, with the necessary changes, to his or her membership of the Fund;

(e) for the purpose of the qualifying period of continuous service in sub-regulation (6)(b)(ii), items 1(2), 1(3) and 4(4) of Schedule 3, his or her continuous service in the Retirement Fund or the Superannuation Fund, as the case may be, must be included in his or her continuous service in the Fund;

(f) for the purpose of item 4(4) of Schedule 3, his or her continuous service in the Retirement Fund or the Superannuation Fund, as the case may be, must be included in his or her continuous service in the Fund; and

(g) his or her transfer value from the Retirement Fund or Superannuation Fund will be allocated between his or her member share account and the investment reserve account in such proportions as determined by the Board of Trustees on advice of the Actuary from time to time.

(11) Subject to the provisions of these Regulations, membership of the Fund terminates with immediate effect when –

(a) a member ceases to be an employee of an associated municipality; and

(b) his or her benefit due in accordance with these Regulations has been paid in full.

(12) Notwithstanding anything contained in these Regulations, a member may, in addition to his or her compulsory membership of the Funds contemplated in sub-regulations (5)(a) to (c), also be a member of another provident or pension fund: Provided that any such additional membership of any other provident or pension fund does not have any impact on the rights, duties and obligations of such a member in respect of the Fund as contemplated in these Regulations.

### **Transfer of membership**

**31.(1)(a)** A member of the Fund may elect to –

(i) terminate his or her membership of the Fund; and

(ii) become a member of the Retirement Fund or the Superannuation Fund.

(b) An election contemplated in paragraph (a) is referred to as a transfer election.

(2) A member who –

(a) is a member contemplated in regulation 30(1); and

(b) exercises his or her first transfer election,

must give written notice to the Fund: Provided that the operative date of such transfer is the commencement of the municipal year in the following calendar year.

(3) For any transfer election other than an election contemplated in sub-regulation (2), the member must give 12 months' written notice to the Fund: Provided that the operative date of such transfer is at least five years after the date of his or her last becoming a member of the Fund.

(4) If a member elects to become a member of the Retirement Fund or the Superannuation Fund in accordance with sub-regulation (1), an amount equal to his or her member share in the Fund plus a proportionate share of the investment reserve account at the date of transfer of membership, as determined by the Board of Trustees acting on advice of the Actuary, must be transferred to the Retirement Fund or the Superannuation Fund, as the case may be.

**Arrangements regarding membership, contributions and evidence**

**32.** Every structure established as contemplated in these Regulations must comply with the framework for arrangements relating to membership, contributions and evidence contemplated in Schedule 2 of these Regulations.

**CHAPTER 5  
BENEFITS**  
*(Regulations 33 - 34)***Calculation and payment of benefits**

**33.(1)** The Fund must, in accordance with the provisions of section 14B of the Pension Funds Act and the provisions of this Chapter –

- (a) on an annual basis calculate the value of all benefits within the period determined by the Registrar; and
- (b) provide information in respect of the value as contemplated in paragraph (a) in writing in the form of a benefit statement to every member within 30 days after the date contemplated in paragraph (a).

(2) The Fund must pay to every member his or her due and payable benefits in accordance with this Chapter.

**Arrangement of benefits and related matters**

**34.** Every structure established as contemplated in these Regulations must comply with the framework for arrangement of benefits and related matters contemplated in Schedule 3 of these Regulations.

**CHAPTER 6  
TRANSFERS**  
*(Regulations 35 - 41)***Transfer from another fund to Fund**

**35.(1)** When a person who for any reason except a reason contemplated in section 14, 28 or 29 of the Pension Funds Act has ceased to be a member of another pension or provident fund, is –

- (a) in accordance with these Regulations admitted as a member of the Fund; and
- (b) allowed to transfer to the Fund any benefit or any right to any benefit to which such person had become entitled in accordance with the regulations or rules, as the case may be, of such other pension or provident fund,

the other pension or provident fund must, within 60 days of the date of such person's written request, or such longer period as may be determined by the Registrar on written application, transfer that benefit or right to the Fund in full.

(2) The transfer is subject to –

- (a) deductions in accordance with section 37D of the Pension Funds Act; and
- (b) the rules of the other pension or provident fund contemplated in sub-regulation (1).

(3) The transfer value so received must be applied to the member's member share and the investment reserve account in such proportions as may be determined by the Board of Trustees on the advice of the Actuary.

(4) If a member whose benefit has been preserved in terms of the rules of another approved provident fund or an approved pension fund chooses to transfer such benefit to the fund, the amount so transferred must be credited to the member's share or the preserved member account and the investment reserve account in such proportions as determined by the Board of Trustees in consultation with the Actuary.

**Temporary transfer between associated municipalities**

**36.(1)(a)** An employee who is temporarily transferred between associated municipalities for a period not exceeding one year, continues to make contributions to the Fund.

(b) The associated municipality from which the employee contemplated in paragraph (a) is temporarily transferred continues to make contributions to the Fund.

(2) The contributions contemplated in sub-regulation (1) are calculated upon the pensionable emoluments drawn by the employee immediately prior to the date of his or her temporary transfer.

**Secondment from one to another associated municipality**

**37.(1)** In the event of a secondment of an employee for a period not exceeding two years to the service of another associated municipality, the –

(a) employee concerned continues, while so seconded, to make contributions to the Fund; and

(b) contributions payable by the associated municipality from which he or she is seconded is paid by the associated municipality to which he or she is seconded to the Fund.

(2) The contributions contemplated in sub-regulation (1) are calculated upon the pensionable emoluments drawn by the employee immediately prior to the date of his or her secondment.

**Transfer of service provided by person, body or other entity to associated municipality**

**38.** In the event that a service or part thereof provided by a person, body or entity is transferred to an associated municipality, each member employed in that service, if –

(a) he or she was, immediately prior to such transfer, a member of a –

(i) pension fund established for the benefit of the employees of that person, body or entity; or

(ii) provident fund established for the benefit of the employees of that person, body or entity,

must, in accordance with regulation 30(4), elect to become a member of the Fund, the Retirement Fund or the Superannuation Fund on transfer: Provided that if the member elects to become a member of the –

(aa) Retirement Fund, the Retirement Fund Regulations apply; or

(bb) Superannuation Fund, the Superannuation Fund Regulations apply;

(b) an amount is transferred from a pension or provident fund as contemplated in sub-regulation (a) to the Fund, the transfer value so received must be credited to the member's share and the investment reserve account on such proportions as may be determined by the Board of Trustees on advice of the Actuary; or

(c) he or she was a member of a pension fund or a provident fund other than that contemplated in sub-regulation (a), or was not a member of any other pension fund or provident fund, must elect to become a member of the Fund, the Retirement Fund or the Superannuation Fund in accordance with these Regulations: Provided that if the member elects to become a member of the –

(i) Retirement Fund, the Retirement Fund Regulations apply; or

(ii) Superannuation Fund, the Superannuation Fund Regulations apply.

**Termination of municipal service**

**39.** If any part of the service provided by an associated municipality is terminated, each member employed in such service whose continuous service is discontinued as a result of that termination must elect –

(a) to be paid an amount equal to his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account; or

(b) to have an amount equal to the amount contemplated in paragraph (a) transferred to –

(i) a provident fund;

(ii) a retirement annuity fund;

(iii) a pension fund; or

(iv) either an approved pension preservation fund or an approved provident preservation fund, as contemplated in the Pension Funds Act.

**Disestablishment of all associated municipalities**

40.(1) In the event of all associated municipalities being disestablished, the Board of Trustees must, subject and subsequent to the approval of the Registrar, appoint a Liquidator, who must, as from the date of the approval of his appointment, liquidate the Fund by dividing the moneys of the Fund among the members thereof in a manner recommended by the Actuary and approved by the Liquidator.

(2) The amount payable to a person who cannot be traced, must be disposed of in accordance with the provisions of the Pension Funds Act and item 13(a) of Schedule 3: Provided that no payment is made to a municipality.

(3)(a) Every member who left the service of the municipality during such period immediately prior to the date of liquidation as may be determined by the Liquidator, either voluntarily or due to a reduction or reorganisation of staff, is for the purposes of this Regulation regarded as being a member on the date of liquidation of the Fund.

(b) The benefit already paid to a member contemplated in paragraph (a) must be taken into consideration in determining the amount payable to him or her.

(c) In the event of the disestablished associated municipalities being re-established in a similar or amended form, the –

(i) newly established entities –

(aa) replace the disestablished associated municipalities; and

(bb) are, for purposes of these Regulations, deemed to be associated municipalities; and

(ii) Fund continues to exist as if such disestablishment had not taken place.

**Disestablishment of an associated municipality**

41.(1) If an associated municipality is disestablished, then, unless –

(a) a newly established entity contemplated in regulation 40(3)(c); or

(b) another municipality,

replaces such municipality, the Board of Trustees must instruct the Actuary to calculate the interest of the members employed by such disestablished municipality in the Fund, subject, with the necessary changes, to regulation 40(3), on a date as determined by the Board of Trustees.

(2) The amount of each such member's interest must, as the Board of Trustees in its sole discretion decides, be –

(a) transferred to a retirement annuity fund for his or her benefit;

(b) transferred to another provident or pension fund for his or her benefit; or

(c) paid to him or her.

(3) With effect from the date determined by the Board of Trustees as contemplated in sub-regulation (1), the disestablished municipality contemplated in sub-regulation (1) ceases to be associated with the Fund and its members cease to be members of the Fund: Provided that the amount payable to a person who cannot be traced, must be disposed of in accordance with the provisions of the Pension Funds Act and item 13 of Schedule 3: Provided further that no payment is made to a municipality.

**CHAPTER 7**  
**GENERAL PROVISIONS**  
*(Regulations 42 – 56)*

**Incidental and other powers, functions and duties of responsible Member of Executive Council**

42.(1) The responsible Member of the Executive Council has the incidental powers, functions and duties reasonably necessary to implement and administer these Regulations.

(2) In addition to the powers of the responsible Member of the Executive Council in accordance with section 7 of the Act, the responsible Member of the Executive Council may by notice in the Provincial Gazette –

(a) amend any schedule;

(b) issue notices concerning –

(i) any matter which is required or permitted by the Act and these Regulations;

- (ii) the introduction, implementation, and evaluation of a structure and a system of performance management for the Fund and all structures established as contemplated in these Regulations; and
  - (iii) a structure and a system for monitoring, evaluation and assessment for the Fund and all structures established as contemplated in these Regulations;
- (c) issue any further schedules that he or she considers necessary; and
- (d) issue binding practice notes concerning any matter he or she deems necessary: Provided that such practice notes may not be in conflict with any practice notes issued by the Financial Sector Conduct Authority.

(3) Any regulation, schedule, notice or practice note contemplated in this Regulation may provide that any person contravening or failing to comply with such regulation, schedule, notice or practice note, is guilty of an offence and liable on conviction to a fine, or to imprisonment not exceeding six months, or both.

#### **Appeals and reviews**

**43.**(1) Any member may apply for a review of, or lodge an appeal against, any act, including, but not limited to, a decision, by the Board of Trustees, the Principal Officer, the Actuary, or the Auditor.

(2) Any appeal or review contemplated in sub-regulation (1) must be dealt with in accordance with the provisions of the Pension Funds Act.

(3) Nothing in this Regulation limits the right of any member to access any competent court.

#### **Administrative justice**

**44.** Every associated municipality, Board of Trustees and any structure established as contemplated in these Regulations must exercise its powers, perform its functions and carry out its duties as contemplated in the national legislation referred to in regulation 2(1), the Act and these Regulations in compliance with the constitutional and national legislative framework relating to administrative justice.

#### **Promotion of access to information**

**45.** Every associated municipality, Board of Trustees and any structure established as contemplated in these Regulations must exercise its powers, perform its functions and carry out its duties as contemplated in the national legislation referred to in regulation 2(1), the Act and these Regulations in compliance with the constitutional and national legislative framework that promotes access to information.

#### **Copies to be made available**

**46.** The Principal Officer must ensure that an electronic version of these Regulations is –

- (a) maintained and updated on a monthly basis; and
- (b) made available to the members and interested parties for its access and perusal, and may be downloaded free of charge.

#### **Manual on functions of, and index of records held by, Fund**

**47.**(1) The Principal Officer, in his or her capacity as information officer as contemplated in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), must on or before the first day of every financial year –

- (a) submit the –
  - (i) updated manual contemplated in section 14 of that Act; and
  - (ii) information contemplated in section 15 of that Act,

to the Department of Justice and Constitutional Development;

(b) submit the information contemplated in section 32 of that Act to the Human Rights Commission on an annual basis; and

(c) publish and make the manual available in accordance with section 14 of that Act and regulation 2 of the Regulations regarding the Promotion of Access to Information made under section 92 of

that Act and published as Regulation Notice 187 of 15 February 2002, as amended from time to time.

- (2) The manual contemplated in this Regulation must –
- (a) indicate which categories of information are –
    - (i) automatically available as contemplated in section 15(1) of that Act; or
    - (ii) available on request made to the information officer; and
  - (b) also include any additional information that the responsible Member of the Executive Council may by notice in the Provincial Gazette require.
- (3) The following information must be included in the manual contemplated in sub-regulation (1):
- (a) the structure of the Fund;
  - (b) the functions of the Fund;
  - (c) the identity and contact details of the information officer of the Fund;
  - (d) a list of documents that are automatically disclosed;
  - (e) a list setting out the subjects and categories of records that may be requested, and the procedure to be followed to request such documents;
  - (f) the nature of services provided by the Fund;
  - (g) mechanisms to obtain access to services contemplated in paragraph (f);
  - (h) mechanisms to allow and promote public participation and involvement of members and other interested parties in the affairs of the Fund;
  - (i) any other information as may be prescribed by –
    - (i) the responsible Member of the Executive Council in accordance with sub-regulation (2); and
    - (ii) councils of the associated municipalities;
  - (j) information relating to the regularity of the updating of the manual; and
  - (k) annexures including –
    - (i) the organogram of the Fund;
    - (ii) the structure of the Fund;
    - (iii) the form to be submitted when a request for information as contemplated in sub-regulation (2)(a)(ii) is made;
    - (iv) a list indicating all services that the Fund provides; and
    - (v) the form to be submitted when notice of appeal for refusal to make a document available is lodged.

#### **Arrangements relating to delegation**

**48.(1)** Any delegation and sub-delegation, and any conditions or limitations imposed by the delegating authority, including an amendment or withdrawal thereof must be –

- (a) in writing; and
- (b) recorded in the inventory of delegations contemplated in regulation 49.

(2) Any person or entity effecting a delegation must –

- (a) monitor; and
- (b) review,

its implementation.

(3)(a) Any delegation or sub-delegation does not –

- (i) prevent the delegating authority from exercising that power or performing that function or duty; or
- (ii) relieve the delegating authority from being accountable for the exercise of the power or the performance of the function or duty.

(b) When a delegated authority exercises a power or performs a function or duty that has been delegated to it, the exercise of the power or the performance of the function or duty, as the case may be, has the same force as if it had been exercised or performed by the delegating authority.

(4) Any activity in the exercise of a power or the performance of a function or duty performed by a delegated authority –

- (a) has the same force as if it had been done by the delegating authority; and
- (b) which was done within the scope of the delegation –

- (i) remains in force; and
- (ii) is not invalidated by reason of –
  - (aa) the delegating authority electing afterwards to exercise that power or performing the function or duty; or
  - (bb) a later amendment or withdrawal of the delegation.

(5)(a) A delegating authority may amend or withdraw any delegation issued in accordance with these Regulations.

(b) Any act performed as contemplated in a delegation remains valid notwithstanding the subsequent withdrawal, amendment or lapse of such delegation.

(6) The delegating authority remains responsible for the enforcement of, and monitoring of compliance with, any conditions that may have been imposed in respect of any delegation.

(7)(a) All proceedings relating to any delegation contemplated in these Regulations must be in writing.

(b) The record of proceedings must be available for inspection and copying by the Board of Trustees or any member, at all reasonable times.

### **Inventory of delegations**

**49.**(1) The Principal Officer must establish and maintain an inventory of all delegations, which for purposes of this Regulation includes sub-delegations, made in accordance with these Regulations by the Board of Trustees, other structures that may be established as contemplated in these Regulations or the Principal Officer.

(2) The inventories contemplated in this Regulation must –

- (a) be updated upon each –
  - (i) new delegation being made;
  - (ii) review or amendment to an existing delegation or instruction; or
  - (iii) withdrawal of an existing delegation or instruction; and
- (b) contain the following information:
  - (i) delegation number;
  - (ii) description of delegation;
  - (iii) delegating authority;
  - (iv) delegated authority; and
  - (v) revision number and date.

(3) The Principal Officer must publish an updated version of the inventory contemplated in this Regulation on the Fund's website on the first day of every financial year.

(4) The inventory must be available for inspection and copying by any person, at all reasonable times.

(5) Nothing in this Regulation limits the power of the responsible Member of the Executive Council to make delegations and sub-delegations in accordance with section 40A of the Pension Funds Act.

### **Assets, liabilities and resources**

**50.**(1) The Fund may, in accordance with the provisions of the Pension Funds Act –

- (a) acquire, own, possess, hold and procure by lease, any movable or immovable property;
- (b) acquire rights and incur liabilities in executing, performing and carrying out its powers, functions and duties;
- (c) establish and administer a trust; and
- (d) alienate, encumber or dispose of any movable or immovable property.

(2) The Fund and every structure that may be established as contemplated in these Regulations, to whom assets and resources have been allocated, must efficiently manage such assets and resources.

### **Accountability of governance and management structures**

**51.** The Fund is liable to compensate any loss suffered by –

- (a) any person or category of persons;
- (b) public or private service providers; or



(c) any other entity,  
in cases of proven wilful or negligent conduct or omission by the Board of Trustees, the Principal Officer or any other official of the Fund, as regards the performance of his or her functions and the carrying out of his or her duties as determined in these Regulations.

#### **General offences and penalties**

**52.**(1) Any person who contravenes or fails to comply with these Regulations, any Schedule hereto, or any notice issued in terms hereof, is guilty of an offence and upon conviction liable to a period of imprisonment not exceeding six months or a fine or to both a period of imprisonment and a fine.

(2) Nothing in this Regulation precludes the Registrar from imposing an administrative penalty in accordance with section 37 of the Pension Funds Act.

#### **Arrangements relating to special conditions**

**53.** Every structure established as contemplated in these Regulations must comply with the framework for arrangements relating to the special conditions as contemplated in Schedule 4 of these Regulations.

#### **Provision of administrative services**

**54.**(1) The Fund may enter into an agreement with an independent entity which provides administrative services to retirement funds to provide such services to the Fund.

(2) The independent entity contemplated in sub-regulation (1) must be registered –  
(a) with the Registrar in accordance with the Pension Funds Act;  
(b) as a financial institution as defined in the Financial Institutions (Protection of Funds) Act;  
(c) as a financial services provider in accordance with section 8 of the Financial Advisory and Intermediary Services Act; and  
(d) in accordance with any applicable law.

(3) The following may not have any interest in the independent entity contemplated in sub-regulation (1) –

- (a) a member of the Fund;
- (b) an associated municipality;
- (c) an office-bearer of an associated municipality;
- (d) a member of the Municipal Council of an associated municipality;
- (e) any appointed or elected representative as contemplated in Part 2 of Schedule 1;
- (f) any alternate appointed or elected, as the case may be, as contemplated in item 2(3) of Schedule 1; and
- (g) any person who was previously or is currently in accordance with the Regulations repealed by regulation 55 or these Regulations –
  - (i) employed as an official by the Fund; or
  - (ii) appointed by the Fund as the –
    - (aa) Actuary; or
    - (bb) Auditor,

whether prior to the commencement of these Regulations or thereafter.

(4) The Fund must reimburse the independent entity contemplated in sub-regulation (1) for all expenses related to such administration, subject to –

- (a) submission, at the end of each calendar month, of a detailed invoice and original copies of supporting documentation; and
- (b) approval of such detailed invoice by the –
  - (i) Board of Trustees; and
  - (ii) Principal Officer.

#### **Repeal of laws**

**55.** The laws mentioned in the first and second columns of Schedule 7 to these Regulations are hereby repealed to the extent set out in the third column of the said Schedule.

#### **Short title**

**56.** These Regulations are called the Regulations Relating to the KwaZulu-Natal Joint Municipal Provident Fund, 2019.

**SCHEDULE 1**  
**BOARD OF TRUSTEES AND ADMINISTRATIVE MATTERS**  
*(Regulation 29)*

All structures established as contemplated in these Regulations, government institutions, organs of state, public entities and the employees of the aforementioned who are involved in the subject matter concerned, in the Province, must comply with the provisions of this Schedule.

**Part 1: General provisions**  
**Items 1 – 2**

**Duty of Principal Officer**

1.(1) The Principal Officer is responsible for –

- (a) ensuring –
  - (i) compliance with all provisions relating to appointment and election contemplated in the Regulations and this Schedule; and
  - (ii) that the internal auditors undertake an audit of the election process contemplated in Part 2 and submit a report to him or her; and
- (b) submitting the internal auditor's report as contemplated in paragraph (a)(ii) –
  - (i) to the audit sub-committee of the Board of Trustees for consideration; and
  - (ii) thereafter to the Board of Trustees for consideration and approval.

(2) The Principal Officer may draft and approve internal policies relating to the administration and management of the Fund or the Board of Trustees: Provided that such internal policies must be –

- (a) aligned to, and consistent with, any guidelines that may be issued by the Financial Sector Conduct Authority from time to time; and
- (b) approved by the Board of Trustees if such internal policies relate to the administration and management of the Board of Trustees.

**Annual Information Meetings**

2.(1) An Annual Information Meeting of the Fund, which all members and councillors from associated municipalities are eligible to attend, may be held at such place and on such date as the Board of Trustees determine from time to time: Provided that, in the event that an Annual Information Meeting is not held in a particular year, the Board of Trustees must utilise another form of communication with members and councillors of associated municipalities.

(2) At every Annual Information Meeting, the Chairperson must –

- (a) provide the –
  - (i) annual reports;
  - (ii) statutory or interim valuation reports, as the case may be; and
  - (iii) financial statements,as presented by the Board of Trustees, for consideration and noting; and
- (b) conduct any other business relating to the management and operation of the Fund.

(3) The Principal Officer must transmit a copy of the English text of the annual report and the financial statements of the Fund to the responsible Member of the Executive Council and to each associated municipality at least 45 days prior to the Annual Information Meeting.

(4) Each member of the Fund is, upon written request to the Principal Officer, entitled to receive a copy of the annual report and the financial statements of the Fund in either the English or isiZulu text.

**Part 2: Board of Trustees**  
**Items 3 – 14**

**Continuation of Board of Trustees**

3. Subject to the provisions of section 8(1) of the Act and regulation 21, the members of the Board of Trustees of the Fund on the date of commencement of these Regulations constitute the Board of Trustees of the Fund.

**Appointment and election of municipal representatives and alternates to Board of Trustees**

4. The municipal representatives elected as contemplated in item 4 of Schedule 1 to the Superannuation Fund Regulations, are the municipal representatives of the Fund.

**Appointment and election of member representatives and alternates to Board of Trustees**

5.(1) Six member representatives must be elected to the Board of Trustees in the first year of every five year cycle, with the first five year cycle to commence in 2019

(2)(a) The Principal Officer must invite members of the Fund, without limitation of the number of nominees, to nominate member representative nominees for election to the Board of Trustees on the same date in each five-year cycle as contemplated in sub-item (1).

(b) Every nominee –

(i) must –

(aa) be a South African resident;

(bb) be in a financially sound position;

(cc) indicate his or her willingness to act as a representative by accepting the nomination on the nomination form;

(dd) indicate that he or she is prepared to travel and able to attend meetings of the Board of Trustees and sub-committees;

(ee) indicate that he or she is prepared and able to attend training;

(ff) be accessible by telephone, fax and e-mail;

(gg) authorise the Fund to investigate his or her eligibility; and

(hh) attach his or her curriculum vitae to the nomination form; and

(ii) may not –

(aa) be an unrehabilitated insolvent; or

(bb) within the previous 10 years, have been convicted in the Republic of South Africa 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 No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or any offence involving dishonesty.

(3) The Principal Officer must –

(a) by not later than three months after the commencement date of the Act, the promulgation and commencement dates of these Regulations, and the date of approval of these Regulations by the Financial Sector Conduct Authority, whichever occurs the last, and thereafter on the same date in the first year of each five-year cycle as contemplated in sub-item (1), circulate the –

(i) member representative nominations received in accordance with sub-item (2); and

(ii) curricula vitae of the persons nominated in accordance with sub-item (2),

to all members of the Fund together with ballot papers containing the names of all member representative nominees to enable a ballot; and

(b) conduct the ballot in a fair and impartial manner.

(4) A member may not vote for more than six members.

(5) Not more than two members may be elected from any one municipality, irrespective of the number of vacancies on the Board of Trustees.

(6)(a) The six member representatives of the Fund who receive the –

(i) highest number of votes, numerically, are deemed to be duly elected as the member representatives and declared as such; and

(ii) second highest number of votes, numerically, are deemed to be the alternates.

(b) Any ballot paper containing more names than the stipulated number of votes for the member representatives and the alternates, is –

(i) deemed to be a spoilt paper; and

(ii) not taken into account in determining the results of the ballot.

(7) In the event of an equality of votes, the Principal Officer must determine the result by lot in the following manner –

(a) the Principal Officer, after the other members of the Board of Trustees have been appointed in accordance with this Schedule, must forthwith proceed, in an open and transparent manner, to determine by lot, which of the member representative nominees who received an equality of votes must be elected; and

(b) the Principal Officer must conduct the lot by –

(i) ensuring that the name of each one of the relevant member representative nominees in respect of whom there is an equality of votes as contemplated in this sub-item, is written on a separate piece of paper of equal size in identical shape and colour;

(ii) displaying the pieces of paper contemplated in sub-paragraph (i) to every member of the Board of Trustees who is present at the place where the lot is being conducted who is desirous of inspecting any such piece of paper;

(iii) folding every such piece of paper in such a manner that the name thereon is not visible, and placing all such pieces of paper in an empty container;

(iv) appointing an impartial person as the drawer to draw the number of pieces of paper from such container, equal to the number of vacancies of member representatives on the Board of Trustees;

(v) shaking the container in such a manner as to thoroughly mix the pieces of paper therein, and holding such container in such a position that the drawer is unable to see the pieces of paper inside, whereafter the drawer must draw the number of pieces of paper as contemplated in sub-paragraph (iv) from the container and hand them to the Principal Officer without unfolding any of them; and

(vi) unfolding each of the pieces of paper handed to him or her as contemplated in sub-paragraph (v), reading out the name or names, as the case may be, written thereon and displaying every such piece of paper to every member of the Board of Trustees who is present at the place where the lot is being conducted and who is desirous of inspecting the same.

(8) In the event that –

(a) a member representative vacancy arises on the Board of Trustees, it has the power to appoint an alternate member representative, according to the number of vacancies, from the respective alternates elected in accordance with sub-item (6)(a)(ii): Provided that the appointed alternate member representative must be from the alternates elected at elections held in accordance with this item immediately preceding the date upon which such vacancy arises;

(b) there is no alternate to fill such vacancy as contemplated in paragraph (a), the vacancy must be filled by the appointment of the member representative nominee receiving the –

(i) next highest number of votes after the member representative and the alternate who had previously been appointed to the Board of Trustees, as the member representative to the Board of Trustees; and

(ii) next highest number of votes after the member representative nominee contemplated in sub-paragraph (i), as the alternate of the member representative to the Board of Trustees; and

(c) there is no member representative alternate or nominee contemplated in paragraph (a) or (b), as the case may be, the Board of Trustees is entitled, at its discretion, to appoint an independent trustee to fill such vacancy: Provided that, for purposes of this sub-item, an independent trustee means a person who is not one of the following:

(i) a member; or

(ii) a municipal representative,

of the Fund.

### **Appointment of additional member and alternate to Board of Trustees**

6.(1) The responsible Member of the Executive Council may appoint a –

(a) person with specialised practical experience in, and knowledge of, the control and investment of trust money, as an additional member of the Board of Trustees; and

(b) similarly qualified person as an alternate to the additional member appointed in accordance with paragraph (a),

subject to sub-items (2) and (3).

(2) The additional member and alternate contemplated in sub-item (1) –

(a) must be appointed by the responsible Member of the Executive Council –

- (i) annually; or
- (ii) in the event of the resignation from office or death of such member or alternate, as a successor to such member or alternate;
- (b) are not eligible for election as Chairperson or Vice-Chairperson of the Board of Trustees;
- (c) must be paid an attendance and travelling allowance by the Fund in accordance with the tariffs in force from time to time; and
- (d) for the purposes of these Regulations, but subject to the provisions of this item, are deemed to be elected members of the Board of Trustees.

(3) The Fund is not responsible for meeting any additional remuneration which may be determined by the responsible Member of the Executive Council for, or in respect of, such additional member or his or her alternate.

#### **Assumption of office, retirement, cessation and termination of term of office**

7.(1) Subject to the provisions this item, the term of office of members of the Board of Trustees –

- (a) commences when such members have been declared duly elected by the Principal Officer as contemplated in this Schedule; and
- (b) automatically ceases five years after the date of election, after the election of new members in accordance with this Schedule.

(2) The term of office of an alternate member elected to the Board of Trustees expires when the term of office of the member whom he or she replaced, would have expired.

(3) A retiring member, if otherwise eligible, is eligible for re-election.

(4) Every member elected in accordance with this Schedule must comply with the qualification criteria as contemplated in section 47(1)(c), (d) and (e) of the Constitution: Provided that any member of the Board of Trustees who becomes disqualified as contemplated in section 47(1)(c), (d) and (e) of the Constitution, loses his or her membership with immediate effect.

(5) The term of office of a member of the Board of Trustees is terminated if he or she –

- (a) ceases to be a –
  - (i) Councillor in the case of a municipal representative; or
  - (ii) member of the Fund in the case of a member representative;
- (b) absents him- or herself from two consecutive meetings of the Board of Trustees without the written consent of the Board of Trustees;
- (c) dies;
- (d) resigns; or
- (e) commits an act of misconduct as contemplated in sub-item (6).

(6) A member of the Board of Trustees is deemed to have committed an act of misconduct if he or she –

- (a) breached any term of the Code of Conduct for members of the Board of Trustees, or of any annexure thereto;
- (b) breached any Regulation; or
- (c) failed to comply with any guideline, directive, circular or policy statement issued from time to time by the Registrar in accordance with the Pension Funds Act.

(7)(a) The Principal Officer must, in the event that –

- (i) he or she becomes aware of any alleged misconduct by a member of the Board of Trustees as contemplated in sub-item (6); or
- (ii) any allegation or statement alleging misconduct is made in writing to him or her, investigate, and prepare a report on the facts and circumstances of such alleged contravention.
- (b) The member of the Board of Trustees allegedly committing such misconduct must be given the opportunity to provide written comments on the report contemplated in paragraph (a) within a period not exceeding 15 days after the receipt of the report.
- (c) In the event that the Principal Officer, after considering the report and written comments, is of the opinion that there has been an alleged act of misconduct as contemplated in sub-item (6), he or she must submit the report and written comments to the Board of Trustees at its next meeting: Provided that if the member concerned does not furnish the Principal Officer with his or her written comments as

contemplated in paragraph (b), the Principal Officer must submit his or her report to the Board of Trustees without such comments.

(d) The Board of Trustees must, immediately upon receipt of the report contemplated in paragraph (a) with the supporting documentation, including the written comments, if any, take such action as it considers appropriate, including –

- (i) terminating the term of office of such member; or
- (ii) suspending such member from the Board of Trustees for such period and in respect of such function as the Board of Trustees in its sole discretion may decide, subject to any terms and conditions as may be imposed by the Board of Trustees.

(e) Notwithstanding anything to the contrary contained in these Regulations, in the event that the member of the Board of Trustees declines to vacate his or her office as required by the Board of Trustees in accordance with paragraph (d), the Board of Trustees must apply for the removal of such member by either –

- (i) referring the matter to the Financial Sector Conduct Authority; or
- (ii) lodging an application to any competent court with jurisdiction.

### **Code of Conduct**

8.(1)(a) The Board of Trustees must –

- (i) prepare or cause to be prepared by the Principal Officer; and
- (ii) approve,

a Code of Conduct for members of the Board of Trustees.

(b) The Code of Conduct contemplated in paragraph (a) must include, but is not limited to, the following as annexures –

- (i) a declaration of acceptance of fiduciary responsibilities to be signed by each member of the Board of Trustees;
- (ii) a declaration of interests to be completed and signed by each member of the Board of Trustees; and
- (iii) a policy on gifts to individual members of the Board of Trustees by third parties.

(c) The Code of Conduct and annexures contemplated in this item must incorporate –

- (i) any statutory and common law rights and responsibilities of members of the Board of Trustees;
- (ii) the relevant provisions of the Pension Funds Act and any relevant rules issued thereunder relating to the rights and obligations of the members of the Board of Trustees; and
- (iii) any guidelines, principles, policy directives and circulars which may, from time to time, be issued by the Registrar for the assistance and guidance in the administration of Pension Funds:

Provided that, for the purposes of this sub-item, any references to “**members of the Board of Trustees**” and “**Board of Trustees**” have the corresponding meaning in the Code of Conduct to “**Board of Trustees**”.

(2)(a) The Principal Officer must provide every elected member of the Board of Trustees, immediately following such member’s election, with a copy of the Code of Conduct and annexures.

(b) Every member contemplated in paragraph (a) must –

- (i) complete and sign the Code of Conduct with annexures; and
- (ii) return the completed and signed Code of Conduct and annexures to the Principal Officer prior to the commencement of the second meeting of the Board of Trustees following such member’s election: Provided that such member’s failure to comply with this sub-paragraph, constitutes misconduct to which the provisions of items 7(5), (6) and (7) apply.

(c) The provisions of this sub-item apply to all members of the Board of Trustees, including any alternates elected or appointed.

### **Attendance and travelling allowance**

9. The Fund must pay an attendance and travelling allowance in accordance with the tariff as determined from time to time by the Board of Trustees in its Subsistence and Travel Policy, to all the –

- (a) members of the Board of Trustees; and
- (b) alternates,

when involved in matters directly related to the Fund.

**Chairperson and Vice-Chairperson**

10.(1) The Board of Trustees must annually elect a Chairperson and Vice-Chairperson from amongst its members at the first meeting of the Board of Trustees in each calendar year.

(2) In the event that the term of office of the Chairperson or Vice-Chairperson is terminated as contemplated in item 7(5), the Board of Trustees must forthwith elect a successor in accordance with this Schedule.

(3) The Chairperson and Vice-Chairperson hold office until the next election of a Chairperson and Vice-Chairperson as provided for in this item.

(4)(a) If more than two members of the Board of Trustees are nominated for the offices of either the Chairperson or Vice-Chairperson, separate elections by ballot must take place, with the nominee receiving the lowest number of votes at the end of every ballot being eliminated, until a final ballot between the two remaining nominees for each office is held.

(b) The nominee receiving the highest number of votes in the final ballot for the election of the –

(i) Chairperson; or

(ii) Vice-Chairperson,

is the duly elected Chairperson or Vice-Chairperson, as the case may be.

(c) In the event of an equality of votes, the Board of Trustees must determine the result by lot in the following manner:

(i) the Board of Trustees must forthwith proceed, in an open and transparent manner, to determine by lot, who must be elected as the Chairperson or Vice-Chairperson, as the case may be; and

(ii) the Principal Officer must conduct the lot by –

(aa) ensuring that the name of each one of the nominations is written on a separate piece of paper of equal size in identical shape and colour;

(bb) displaying the pieces of paper contemplated in sub-paragraph (aa) to every member of the Board of Trustees who is present at the place where the lot is being conducted who is desirous of inspecting any such piece of paper;

(cc) folding every such piece of paper in such a manner that the name thereon is not visible, and placing all such pieces of paper in an empty container;

(dd) appointing an impartial person as the drawer to draw a piece of paper from such container;

(ee) shaking the container in such a manner as to thoroughly mix the pieces of paper therein, and holding such container in such a position that the drawer is unable to see the pieces of paper inside, whereafter the drawer must draw a piece of paper from the container and hand it to the Principal Officer without unfolding it; and

(ff) unfolding the piece of paper handed to him or her as contemplated in sub-paragraph (ee), reading out the name written thereon and displaying such piece of paper to every member of the Board of Trustees who is present at the place where the lot is being conducted and who is desirous of inspecting the same.

(5)(a) The Chairperson and Vice-Chairperson elected in accordance with this item are the Chairperson and Vice-Chairperson of the Board of Trustees and must preside at the Annual Information Meeting of the Fund.

(b) The Chairperson, and in his or her absence, the Vice-Chairperson must preside at all meetings of the Board of Trustees, and in the event of an equality of votes at any such meeting has, in addition to his or her deliberative vote, also a casting vote.

(6)(a) In the absence of the Chairperson and Vice-Chairperson, the representatives present at an Annual Information Meeting of the Fund or the Board of Trustees, as the case may be, must elect an acting Chairperson for the meeting concerned.

(b) The Chairperson elected in accordance with paragraph (a) has, in addition to his or her deliberative vote, also a casting vote.

**Meetings**

11.(1) The Board of Trustees must –

(a) meet at least once every two months;

(b) supervise the keeping of the accounts and books of the Fund; and

(c) exercise the powers, perform the functions and carry out the duties conferred upon it as provided for in regulation 23.

(2) The Principal Officer must give at least seven days' written notice of every meeting of the Board of Trustees to each member of the Board of Trustees: Provided that in the case of a special meeting, the Principal Officer must give at least two days' written or electronic notice, and telephonic notice of such meeting to each member of the Board of Trustees.

(3) Non-receipt by a member of the notice contemplated in sub-item (2) does not invalidate such meeting.

(4)(a) The Chairperson must appoint one of the alternates elected in accordance with this Schedule to attend a meeting of the Board of Trustees in the event that a member of the Board of Trustees is unable to attend such meeting for any reason.

(b) The alternate contemplated in paragraph (a) is a member of the Board of Trustees for the duration of such meeting.

(5)(a) The members of the Board of Trustees of the Fund may agree that, in the interest of expediency, any meeting of the Board of Trustees may be held in conjunction with any meeting of the Superannuation Fund and the Retirement Fund.

(b) At the first such combined meeting in any calendar year, the members of the Boards of Trustees of the Fund and the Superannuation Fund and the Retirement Fund must elect a Chairperson and Vice-Chairperson, who must act as such at all combined meetings during the relevant financial year.

#### **Quorum and voting**

12.(1) The quorum for a meeting of the Board of Trustees consists of –

- (a) 50% of all its members, rounded upwards; plus
- (b) one member,

Provided that the attendance by the additional member appointed by the responsible Member of the Executive Council in accordance with item 6 is not taken into account when determining whether a quorum as contemplated in this sub-item exists.

(2)(a) One vote is allocated to each –

- (i) member representative; and
- (ii) municipal representative.

(b) The additional member appointed by the responsible Member of the Executive Council in accordance with item 6 has one vote.

(3) All the members of the Board of Trustees attending a meeting as contemplated in sub-item (1) –

- (a) must participate in the business of the Board of Trustees at the meeting;
- (b) must, without derogating from the generality hereof, participate in, and contribute to, the discussion and debate relating to every matter before the meeting; and
- (c) are collectively responsible for the decisions taken on any matter, as if every member voted in favour of the decision concerned.

#### **Appointment and membership of sub-committee**

13.(1) The Board of Trustees may appoint any sub-committee with such delegated authority as it may deem necessary: Provided that a sub-committee may–

- (a) make recommendations to the Board of Trustees; and
- (b) not make decisions on any matters.

(2) A sub-committee contemplated in sub-item (1) must consist of an equal number of members appointed by the –

- (a) municipal representatives on the Board; and
- (b) member representatives on the Board.



**Liability****14.(1)** Notwithstanding –

- (a) anything to the contrary contained in these Regulations; and
- (b) the provisions of item 12 relating to the right of a member of the Board of Trustees to vote on a specific matter,

all the members of the Board of Trustees are collectively and individually liable for any breach of the governance of the Fund.

(2) For purposes of sub-item (1), breach of governance includes, but is not limited to, and without detracting from the generality hereof, any –

- (a) negligence;
- (b) dishonesty;
- (c) wilful misconduct;
- (d) breach of faith;
- (e) breach of fiduciary responsibilities; or
- (f) breach of the Code of Conduct contemplated in item 8,

which results in any loss to the Fund, its members or its beneficiaries.

**Part 3: Administrative matters**  
**Items 15 – 20**

**Appointment and determination of duties and services of Principal Officer and other officials****15.** The Board of Trustees –

(a) must –

(i) appoint –

(aa) a Principal Officer; and

(bb) any other officials required for the proper transaction of the business of the Fund;

(ii) employ any professional or other assistants which may from time to time be deemed expedient;

(iii) decide on the remuneration of such persons or assistants as contemplated in sub-paragraphs (i) and (ii); and

(iv) determine the duties and services required of the persons or assistants as contemplated in sub-paragraphs (i) and (ii); and

(b) may appoint a person as the Deputy Principal Officer to act during the absence of the Principal Officer or other officials irrespective of the reason for their absence.

**Powers, functions and duties of Principal Officer**

**16.(1)** The Principal Officer must execute all the powers, perform all the functions and carry out all the duties as determined in –

(a) the Pension Funds Act; and

(b) these Regulations.

(2) The Principal Officer must keep separate accounts for the Fund in compliance with the accounting standards as determined by the Registrar from time to time, indicating –

(a) all –

(i) sums of money received or due and disbursed or payable in respect of members; and

(ii) particulars of the matters for which the sums of money contemplated in sub-paragraph (i) have been received or disbursed;

(b) the –

(i) time of commencement of membership;

(ii) amounts due;

(iii) dates of payment of all contributions; and

(iv) chronological and other particulars necessary to enable the –

(aa) keeping of proper accounts; and

(bb) performing of an actuarial valuation at any time;

(c) all amounts due to or by municipalities; and

- (d) all other matters of account provided for, or contemplated in, these Regulations or in the scheme prepared in accordance with regulation 8.
- (3) The Principal Officer must –
- (a) cause the books and accounts of the Fund to be balanced up to 31 March of every year; and
  - (b) prepare financial statements in respect of the Fund, made up at the date contemplated in paragraph (a).
- (4) All financial statements must –
- (a) comply with –
    - (i) the provisions of the Pension Funds Act and any rules issued thereunder; and
    - (ii) any guidelines, principles, directives, circulars and policy statements which may, from time to time, be issued by the Registrar in accordance with the Pension Funds Act;
  - (b) first be signed by the Principal Officer; and
  - (c) thereafter be countersigned by the Auditor.
- (5) The Principal Officer must prepare on 31 March of every year, in the format which may, from time to time, be prescribed by the Financial Sector Conduct Authority, a statement showing the number of –
- (a) contributing members;
  - (b) annuitants; and
  - (c) members who have –
    - (i) joined;
    - (ii) left;
    - (iii) retired; or
    - (iv) died,
- during the year,  
together with such further particulars as the Board of Trustees may from time to time direct.
- (6) The Principal Officer must furnish the Board of Trustees with such further statements as it may from time to time require.

#### **Termination of employment contract, suspension and dismissal of Principal Officer and other officials**

17.(1) The Board of Trustees may at any time terminate the employment contract of the Principal Officer or any other officer upon written notice of not less than one month, unless otherwise stipulated in the employment contract of the officer concerned.

- (2) The Board of Trustees, in accordance with the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) and the Labour Relations Act, 1995 (Act No. 66 of 1995), may –
- (a) suspend the Principal Officer or any other official with or without salary or emoluments in the event of alleged –
    - (i) medical or other incapacity; or
    - (ii) misconduct; and
  - (b) dismiss the Principal Officer or any other official.

#### **Financial matters and power to write off debts**

18.(1) All moneys received on account of the Fund must be paid into a bank account.

- (2) All cheques drawn against the Fund must be –
- (a) signed by an officer, other than the Principal Officer, authorised in writing by the Board of Trustees; and
  - (b) countersigned by –
    - (i) the Principal Officer; or
    - (ii) by such other person nominated by the Board of Trustees to act on behalf of the Principal Officer in the absence of the Principal Officer, irrespective of the reason of his or her absence:

Provided that the Chairperson may sign any cheque instead of either of the two signatories contemplated in paragraphs (a) and (b).

- (3) The Board of Trustees has the power by resolution to write off any debts due or other claims which are payable to the Fund, which, in the opinion of the Board of Trustees, are desirable to write off as –
- (a) being irrecoverable; or
  - (b) the recovery of which would –
    - (i) be too difficult or costly; or
    - (ii) not be reasonably practicable.

#### **Availability of books, accounts and all other records and documents for inspection**

19. The Principal Officer must ensure that all books, accounts and other records and documents of the Fund are open and available for inspection at all times by any –

- (a) member of the Board of Trustees; and
- (b) Auditor appointed in accordance with regulation 12 or 13(2)(b), as the case may be.

#### **Power of Board of Trustees and Principal Officer to recover costs and expenses**

20. The –

- (a) members of the Board of Trustees; and
- (b) Principal Officer,

may recover from the Fund any costs and expenses incurred by them, him or her, as the case may be, as a result of any claim for expenses incurred in connection with the Fund: Provided that such claim does not arise from any negligence, fraud or other wilful misconduct on the part of the person concerned.

### **SCHEDULE 2** **FRAMEWORK FOR ARRANGEMENTS RELATING TO MEMBERSHIP, CONTRIBUTIONS AND EVIDENCE** *(Regulation 32)*

All structures established as contemplated in these Regulations, government institutions, organs of state, public entities and the employees of the aforementioned who are involved in the subject matter concerned, in the Province, must comply with the provisions of this Schedule.

#### **Pensionable emoluments**

1.(1) Subject to the provisions of these Regulations, pensionable emoluments include –

- (a) salaries or wages;
- (b) cost of living allowance, long service allowance and any other allowance approved by the Board of Trustees for inclusion in the members' pensionable emoluments; and
- (c)(i) any allowance granted in lieu of the provision of free quarters; or
- (ii) one-sixth of the amounts referred to in paragraphs (a) and (b) whenever occupation of quarters, as a portion of the member's emoluments, whether belonging to the municipality or not, is allowed rent free.

(2) Subject to the provisions of these Regulations, pensionable emoluments exclude any –

- (a) special remuneration which may be received for performing special duties or while acting in an office, whether permanently or temporarily vacant;
- (b) travel or subsistence allowance;
- (c) fees, honoraria or bonuses of any kind;
- (d) overtime payment; and
- (e) other allowance not herein specified.

(3) In the event that the pensionable emoluments of a member, including a section 57 contract employee, at any time increase in excess of that assumed by the Actuary from time to time for valuation purposes in accordance with regulation 15, the Board of Trustees, on the advice of the Actuary, may direct that the municipality that –

- (a) employed such member; or
- (b) continues to employ such member,

pay a lump sum adjusted contribution in accordance with item 4 to the Fund.

**Contributions by members**

2.(1) Subject to Schedule 5 item 5 and Schedule 6 item 2, every member must contribute 5% of his or her pensionable emoluments to the Fund as from the date of becoming a member: Provided that –

(a) each person becoming a member may elect in writing to the Fund on becoming a member to contribute at a rate of –

(i) 7%; or

(ii) 9,25%:

Provided that such member is entitled to cancel the said election, or to elect the alternative option, by written notice to the Fund during the first six months of membership: Provided further that such cancellation or amendment may not have retrospective effect; and

(b) subject to the provisions of paragraph (a), a member who has elected an option in terms of paragraph (a)(i) or (ii) may not cancel the election or the alternative option within a period of 12 months commencing on the effective date of election, and must give not less than 3 months' written notice to the Fund of any such cancellation or amendment.

(2) The contributions to be paid by a member in accordance with sub-item (1) are –

(a) a first charge upon the salary or wage payable to such member;

(b) deducted monthly or at shorter intervals by the associated municipality concerned and paid into the bank account of the Fund as provided in these Regulations; and

(c) credited to the member share account as contemplated in regulation 10(7)(a)(ii).

(3) The associated municipality must –

(a) within seven days after the expiration of the period in respect of which the members' contributions is being paid, certify in writing to the Principal Officer the amount of the contributions and late payment interest paid by the members to the Fund in the preceding calendar month; and

(b) supply the Principal Officer with such further information as it may require for the purpose of these Regulations.

(4) A member, who remains in the service of a municipality after he or she has attained the pension age, is not allowed to continue to contribute to the Fund after the last day of the month in which he or she attains the pension age.

**Additional voluntary contributions**

3.(1) A member may, subject to the approval of the Board of Trustees, make additional contributions to the Fund in order to secure greater benefits in accordance with such conditions and procedures as the Board of Trustees may prescribe from time to time.

(2) The payment of additional contributions to the Fund is subject to the limitations and requirements of the Income Tax Act, 1962 (Act No. 58 of 1962).

(3) Such additional contributions must be allocated to the member's share account as contemplated in regulation 10(7)(a)(iv).

**Contributions by municipalities**

4.(1) An associated municipality must pay into the bank account of the Fund within seven days after the expiration of the period in respect of which the contribution is being paid –

(a) the contributions and late payment interest paid by the members in the preceding calendar month in accordance with the provisions of item 2(1) by the members in its service; and

(b) an amount equal to 1,95 times the contributions paid by the members in accordance with item 2(1), which contributions must be apportioned, subject to the rate at which a member contributes to the Fund, as follows:

(i) any member contributing 5% of his or her pensionable emoluments –

(aa) 1,2 times the contributions paid by members is credited to the member share account in accordance with regulation 10(7)(a)(iii); and

(bb) 0,75 times the contributions paid by members is credited to the risk reserve account in accordance with regulation 10(2)(a)(ii): Provided that from such contributions, the premiums due by the municipality to the insurance company with

whom the unapproved risk benefits are insured, must first be paid to the insurance company by the municipality;

- (ii) any member contributing 7% of his or her pensionable emoluments –
  - (aa) 1,41 times the contributions paid by members is credited to the member share account in accordance with regulation 10(7)(a)(iii); and
  - (bb) 0,54 times the contributions paid by members is credited to the risk reserve account in accordance with regulation 10(2)(a)(ii): Provided that from such contributions, the premiums due by the municipality to the insurance company with whom the unapproved risk benefits are insured, must first be paid to the insurance company by the municipality;
- (iii) any member contributing 9,25% of his or her pensionable emoluments –
  - (aa) 1,54 times the contributions paid by members is credited to the member share account in accordance with regulation 10(7)(a)(iii); and
  - (bb) 0,41 times the contributions paid by members is credited to the risk reserve account in accordance with regulation 10(2)(a)(ii): Provided that from such contributions, the premiums due by the municipality to the insurance company with whom the unapproved risk benefits are insured, must first be paid to the insurance company by the municipality; and
- (c) the lump sum contemplated in item 1(3); and
- (d) the contributions contemplated in regulation 15(2)(b):

Provided that nothing in this item precludes a municipality from paying to the Fund an amount in excess of the contribution rates contemplated in this sub-item, which are deemed to be the minimum contribution rates payable by a municipality to the Fund: Provided further that if the member is paying by instalments, the municipality may make a lump sum payment to the Fund in lieu of its instalments.

(2) Whenever a municipality fails to make payment in accordance with the provisions of sub-item (1), it must pay to the Fund interest on the amount payable at the interest rate prescribed by the Minister of Finance in accordance with section 13A(7) of the Pension Funds Act from time to time.

(3) The terms and conditions applicable to the –
 

- (a) premiums contemplated in sub-items (1)(b)(i)(bb), (1)(b)(ii)(bb) and (1)(b)(iii)(bb); and
- (b) payment of the unapproved risk benefits,

 must be set out in the policy issued by the insurance company with whom such benefits have been insured.

(4) The Fund is not liable for payment of any unapproved risk benefits and a member has no such claim against the Fund.

#### **Contributions by members whilst on leave**

5.(1) When a member is on leave with full pay or with pay less than full pay, he or she must continue to contribute to the Fund on the basis of his or her full pensionable emoluments.

(2)(a) When a member is on unpaid leave, he or she may, on application to the Board of Trustees, be permitted to contribute to the Fund on the basis of his or her full pensionable emoluments for the calendar month immediately preceding the commencement of his or her unpaid leave.

(b) Such application must be made, and the amount due in respect thereof must be paid, by the member within one month of his or her return to duty.

(c) The Board of Trustees may allow such member to pay the amount contemplated in this sub-item in six or less monthly instalments which may be deducted from the emoluments payable to him or her.

(d) Absenteeism is not regarded as unpaid leave.

(e) Except as provided for in this item, no contributions may be collected or are payable in respect of any period of unpaid leave.

#### **Reduction in pensionable emoluments or hours of service**

6.(1) Subject to the provisions of sub-item (2), in the event that the pensionable emoluments of a member are reduced for any reason other than misconduct, he or she may elect in writing to continue to contribute to the Fund as if no reduction has taken place, in which event his or her pensionable emoluments are, for purposes of these Regulations, deemed not to have been reduced.

(2) In the event that a member leaves the employ of an associated municipality, and enters the employ of another associated municipality, and his or her pensionable emoluments in the latter municipality are lower than his or her pensionable emoluments in the former municipality, the provisions of sub-item (1) apply, with the necessary changes: Provided that –

- (a) he or she did not leave the service of the former municipality on account of misconduct;
- (b) he or she entered the service of the latter municipality within a period of 12 months after leaving the service of the former municipality; and
- (c) the consent of the latter municipality is first obtained.

(3) When the ordinary salary or wages or working hours of a specific member or group of members have been reduced as a measure of economy, each such member may elect in writing to contribute on the basis of the pensionable emoluments on which he or she was contributing immediately before the reduction.

### **Evidence to be produced**

7.(1) Subject to the provisions of this item, any documentary or other evidence directly related to the current or prospective membership of a member or prospective member that may be required in writing by the Board of Trustees, must be submitted by the member or prospective member, as the case may be, within the period stipulated in the written request.

(2) The Board of Trustees has the power to require evidence relating to age, and any other matter which, in the view of the Board of Trustees, is directly relevant for purposes of the current or prospective membership of the member or the prospective member, as the case may be.

(3) Documentary evidence of age satisfactory to the Board of Trustees must be produced by each member at the date of commencement of his or her contributions to the Fund and failing such production the deemed age of such member for purposes of these Regulations must be determined by the Board of Trustees.

### **Benefit claim procedure**

8.(1) A claimant must –

- (a) notify the Fund in writing of the occurrence of an event giving rise to a claim for a benefit contemplated in terms of these Regulations, within a period not exceeding 90 days after such event; and
- (b) at a written request by the Fund, provide all documentation, completed forms and written information and other evidence which, in the opinion of the Board of Trustees, is considered necessary to determine the admissibility and amount of any claim.

(2) The Fund is not liable for any costs involved in obtaining any information or evidence required from any person for the admission of a claim, unless such evidence is specifically requested in writing by the Board of Trustees.

(3) The Board of Trustees may in writing –

- (a) request additional evidence; and
- (b) specify requirements in order to assess a claim.

(4) The claimant must provide all documentation, information and evidence as required from time to time in writing as provided for in this item before a claim for the payment of a benefit will be admitted or made by the Fund.

(5) Notwithstanding the provisions of this item, the Board of Trustees may, at its sole discretion, waive compliance by a claimant with any or all of the requirements of this item in order for a benefit or claim to be admitted or a benefit paid.

**SCHEDULE 3**  
**FRAMEWORK FOR ARRANGEMENT OF BENEFITS AND RELATED MATTERS**  
*(Regulation 34)*

All structures established as contemplated in these Regulations, government institutions, organs of state, public entities and the employees of the aforementioned who are involved in the subject matter concerned, in the Province, must comply with the provisions of this Schedule.

**Termination of service on account of retirement at pension age or earlier**

1.(1) A member must be deemed to have retired from the service of a municipality on the last day of the month in which he or she attains the pension age, in which event he or she must be granted his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account.

(2) A member who has attained an age seven years earlier than the pension age, and who has had at least 10 years' continuous service, may be required by the associated municipality to retire, in which event he or she must be granted his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account.

(3)(a) Notwithstanding the provisions of sub-items (1) and (2), a member who –  
(i) had at least 10 years' continuous service; and  
(ii) has attained an age of 10 years or less younger than the pensionable age,  
has the right to elect to retire.

(b) A member who elects to retire in accordance with paragraph (a) must –  
(i) give three months' written notice of his or her intention to the municipality concerned; and  
(ii) be granted his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account.

**Termination of service on account of retirement owing to ill-health**

2.(1) If a member or the associated municipality in whose service such member is, is of the opinion that such member is permanently incapable of efficiently discharging his or her duties by reason of any bodily or mental infirmity, the following documents must be submitted by the municipality to the Board of Trustees –

(a) an affidavit in a form approved by the Board of Trustees setting out the state of health of the member and sworn to by the member;

(b) a report by the municipality in a form approved by the Board of Trustees, setting out –  
(i) the member's state of health;  
(ii) the manner in which his or her work is performed;  
(iii) the amount of sick leave granted to the member during the immediately preceding two years; and  
(iv) any other information as the Board of Trustees may require; and

(c) reports concerning the member's state of health completed independently by two medical practitioners, one selected by the –  
(i) associated municipality; and  
(ii) member.

(2) Upon receipt of the documents contemplated in sub-item (1), the Board of Trustees may, in its discretion, require the member to be further examined by a medical practitioner or medical practitioners appointed by the Board of Trustees.

(3) If the Board of Trustees, after consideration of all the information at its disposal, is of the opinion that –

(a) the member is permanently incapable of discharging his or her duties; and

(b) his or her state of health was not occasioned by his or her own wilfulness or negligence,  
the member concerned is, on the termination of his or her service with the associated municipality, entitled to receive his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account.

(4) All fees payable to medical practitioners in respect of the examination of a member for purposes of sub-items (1) and (2) must be paid by the Fund: Provided that where the Board of Trustees, after consideration of all information at its disposal, is of the opinion that the –

(a) member's state of health as contemplated in sub-item (3) was occasioned by his or her own wilfulness or negligence; or

(b) member is not permanently incapable of discharging his or her duties,

such fees are payable by the member or associated municipality, as the case may be, at whose request the member's state of health was examined.

#### **Termination of service on account of retirement owing to reorganisation**

3.(1) A member is entitled to receive his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account, if his or her employment is discontinued by an associated municipality –

(a) on account of –

(i) the abolition of his or her office or post;

(ii) a reduction in, or re-organisation of, staff; or

(iii) retrenchment generally; or

(b) in order to facilitate improvements in efficiency or organisation:

Provided that no benefit is payable in the event that a commensurate office or post has been offered to him or her by the associated municipality concerned.

(2) Notwithstanding the provisions of sub-item (1), if the position of a member becomes redundant on account of any alteration in the continued existence of any associated municipality as a result of the provisions of the Local Government: Municipal Structures Act, the provisions of sub-items (1) applies to such member.

#### **Termination of service on account of voluntary retirement or voluntary leaving of service of municipality in circumstances not elsewhere provided for**

4.(1) If a member voluntarily leaves the service of an associated municipality on account of voluntary retirement or for any other reason not elsewhere provided for in these Regulations, he or she is entitled to receive a benefit equal to his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account, at the date of leaving service.

(2) Unless the member becomes a preserved member in terms of item 1 of Schedule 6, the lump sum as contemplated in sub-item (1) must be paid as soon as administratively possible, which may not exceed a period of three months after the end of the month in which the member leaves the service of the associated municipality concerned.

(3) Notwithstanding the provisions of sub-item (1), if a member retires voluntarily from or leaves the services of an associated municipality in order to enter the service of another associated municipality, in such circumstances that the relevant provisions of item 9 apply to him or her, he or she is not entitled to a benefit as contemplated in sub-item (1).

(4) A member who qualifies in accordance with sub-item (1) for a benefit, may, if he or she has had at least 10 years' continuous service, elect to receive his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account at that time: Provided that –

(a) the member may only receive such benefit once he or she has reached the age of 55; and

(b) if such member dies before attaining the pension age, the benefit payable from the Fund must be his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account at the date of his or her death.

#### **Termination of service on account of dismissal**

5.(1) If a member is –

(a) dismissed from the service of an associated municipality on account of –

(i) a criminal offence;

(ii) misconduct;



(iii) negligence;  
(iv) dereliction of duty; or  
(v) any other act prejudicial to the effective operation of the municipality's service; or  
(b) allowed to retire from the service of the municipality or to resign in order to avoid dismissal as contemplated in paragraph (a);  
such member's service with the municipality must cease and the provisions of Schedule 5 or Schedule 6, as applicable, must apply to payment of his or her benefit.

(2) A member whose service with the municipality has ceased as contemplated in sub-item (1), is entitled to receive an amount equal to his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account, at the date of leaving service.

(3) In the event that the conduct of a member contemplated in sub-item (1) resulted in financial loss to the associated municipality concerned, the amount of such loss, as certified by the municipal manager or chief executive officer, as the case may be, is –

- (a) deducted, subject to the provisions of section 37D of the Pension Funds Act, from such benefit; and  
(b) paid over to the municipality concerned as a preferential charge.

(4) Any resignation tendered during an enquiry into the conduct of a member before the result of such enquiry is announced, is deemed to be a resignation in order to avoid dismissal.

(5) In the event that the services of a member are terminated or dispensed with for reasons not solely within his or her control, other than those specified in sub-item (1) or elsewhere in these Regulations, he or she is entitled to receive his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account: Provided that the final decision as to whether or not this item applies vests in the Board of Trustees.

(6) Unless the member becomes a preserved member in terms of item 1 of Schedule 6, the lump sum as contemplated in sub-item (1) must be paid as soon as administratively possible, which may not exceed a period of three months after the end of the month in which the member leaves the service of the associated municipality concerned.

#### **Termination of service on account of death**

**6.(1)(a)** The provisions of section 37C of the Pension Funds Act apply to this item, and in the event of an irreconcilable conflict between the application of section 37C of that Act and the provisions of this item, section 37C prevails.

(b) The provisions of this item only apply to member benefits if the member dies on or after the promulgation and commencement date of these Regulations: Provided that in the event that a member died before the promulgation and commencement date of these Regulations, the provisions of the Regulations repealed in accordance with regulation 55 apply.

(2) In the event that a member dies while in the service of a municipality, a benefit equal to the sum of –

- (a) his or her member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account; and  
(b) 0,7% of his or her annual pensionable emoluments at the date of his or her death for each complete month of the period from the date of his or her death to the date on which he or she would have attained the pension age had he or she lived, subject to a maximum of 2,1 times such annual pensionable emoluments,  
must be paid to such member's dependants.

(3)(a) If in the discretion of the Board of Trustees no claim is made by a dependant within a reasonable period of time, which may not be less than 12 months, subsequent to the death of a member, it is presumed that no dependant exists.

(b) An amount equal to the member's member share as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account is, subject to the provisions

of section 37C of the Pension Funds Act, payable to such member's estate after which date no claim in respect of the deceased lies against the Fund.

#### **Member share**

7.(1) A member's member share must be held in such member's member share account in accordance with regulation 10(7).

(2) The Board of Trustees must, at least once in a year, inform each member of the amount of such member's share in the member share account.

#### **Minimum benefit**

8.(1) The provisions of section 14A of the Pension Funds Act apply to this item, and in the event of an irreconcilable conflict between the application of section 14A and the provisions of this item, section 14A prevails.

(2) If a person ceases to be a member of the Fund prior to retirement, in circumstances other than the liquidation of the Fund, the benefit payable to, or in respect of, him or her must be at least equal to his or her minimum individual reserve.

#### **Member re-joining service of same or another associated municipality**

9.(1)(a) In the event that a member –

(i) leaves the service of an associated municipality for any reason other than –

(aa) retirement as contemplated in items 1, 2 or 3; or

(bb) dismissal in accordance with item 5;

(ii) receives a benefit in accordance with item 4; and

(iii) is re-employed –

(aa) before he or she has attained the pension age, by such municipality or by another associated municipality; and

(bb) within 12 months from the date of his or her having left such service,

he or she may elect, within a period not exceeding four months after the date on which he or she is so re-employed, to refund any benefit received from the Fund in accordance with paragraph (b).

(b) The refund contemplated in paragraph (a) may be paid –

(i) in one sum; or

(ii) by instalments approved by the Board of Trustees, together with interest at a rate determined by the Board of Trustees, compounded yearly from the date he or she received such benefit to the date or dates of repayment.

(2) In the event that a member has refunded a benefit as contemplated in sub-item (1) –

(a) the break in his or her service is condoned; and

(b) he or she again contributes to the Fund from the date of his or her re-employment.

(3) In the event that the date of re-employment is more than 12 months, but less than 24 months, after the date that the member left such service, he or she may elect in writing –

(a) within a period not exceeding four months after the date on which he or she rejoins the service; and

(b) with the consent of the Board of Trustees,

to refund any benefit received from the Fund and the provisions of this item apply.

(4) In the event that a benefit has been paid to a member in accordance with item 5, the Board of Trustees in its sole discretion, may decide that such member is not excluded from the provisions of this item.

#### **Benefits not assignable or executable**

10.(1) The provisions of the Pension Funds Act apply to this item, and in the event of an irreconcilable conflict between the application of the Pension Funds Act and the provisions of this item, the provisions of the Pension Funds Act prevail.

(2) A benefit or right to a benefit cannot under any circumstances be –

- (a) assigned;
- (b) transferred;
- (c) otherwise ceded;
- (d) pledged; or
- (e) hypothecated.

(3) A benefit, right to a benefit or any contributions made by a member or on his or her behalf may not under any circumstances be subjected to –

- (a) attachment; or
- (b) any form of execution in accordance with a judgement or order of any court of law.

(4) In the event of a beneficiary attempting to –

- (a) assign;
- (b) transfer;
- (c) otherwise cede;
- (d) pledge; or
- (e) hypothecate,

a benefit or right to a benefit in contravention with the provisions of sub-item (2), payment thereof may be withheld or suspended, if the Board of Trustees so determines: Provided that the Board of Trustees may direct the payment of a benefit or part thereof to any one or more dependants of the beneficiary or to a trust for such dependant or dependants during such period as it may deem fit.

#### **Effect of insolvency on payment of benefits**

**11.(1)** The provisions of section 37B of the Pension Funds Act apply to this item, and in the event of an irreconcilable conflict between the application of section 37B and the provisions of this item, section 37B prevails.

(2) In the event that the estate of any person in receipt of a benefit is –

- (a) sequestrated;
- (b) surrendered; or
- (c) assigned,

for the benefit of his or her creditors, the benefit concerned, in accordance with the provisions of section 37B of the Pension Funds Act, does not form part of the insolvent estate of the member concerned.

(3) Any payment to the person contemplated in sub-item(2) –

- (a) is only for his or her own personal use;
- (b) may, subject to section 16 of the Maintenance Act, 1998 (Act No. 99 of 1998), not in any way be taken, attached, sold or appropriated by –
  - (i) the trustee in insolvency;
  - (ii) any assignee; or
  - (iii) his or her creditors; and
- (c) does not form part of his or her insolvent estate.

#### **Deduction of debt owed and payable to associated municipality from benefit**

**12.(1)** The provisions of section 37D of the Pension Funds Act apply to this item, and in the event of an irreconcilable conflict between the application of section 37D and the provisions of this item, section 37D prevails.

(2) For purposes of this item –

- (a) “**debt**” means a money debt owed and payable by a member to the associated municipality in whose employ he or she is; and
- (b) any such debt is deemed to be so owed and payable, if it is certified as such by the municipal manager or chief executive officer, as the case may be, of the municipality concerned.

(3)(a) Notwithstanding anything to the contrary contained in these Regulations or in any other law, any debt due by a member to the associated municipality in whose employ he or she is, may, subject to the provisions of section 37D of the Pension Funds Act, be deducted –

- (i) as a lump sum from the benefit payable to, or in respect of, him or her; or
- (ii) in the case of a pension payable to such member, in such instalments as the Board of Trustees may decide,

the amounts deducted in accordance with this sub-item must be paid by the Fund to the municipality concerned.

(4) If the Board of Trustees receives more than one claim for the payment of debts, it must determine the –

- (a) order of priority of the payment of such claims; or
- (b) apportionment between such claims of the amount available for payment,

in accordance with this item.

(5) No claim lies against the Fund in respect of any amount paid to an associated municipality in accordance with this item.

### **Unclaimed benefit**

13.(1) Any unclaimed benefit –

- (a) due to a beneficiary; and
- (b) that has not been paid by the Fund,

must be retained by the Fund pending a claim by such beneficiary or any other person in respect of such beneficiary, subject to item 6(3) and paragraph (c), with the necessary changes.

(2) The benefit so retained attracts interest at a rate to be determined by the Board of Trustees from time to time from the date on which such benefit became due and payable until the date of payment.

(3) The Fund is entitled to deduct from the unclaimed benefits account any necessary and reasonable costs incurred by it, to include, but not limited to, administration and tracing costs in the determination of beneficiaries.

(4) The provisions of this item do not apply to any benefit lawfully withheld by the Fund in accordance with these Regulations or the Pension Funds Act.

(5) Notwithstanding the provisions of paragraphs (1) to (4), the Board of Trustees may transfer any unclaimed benefits to a registered unclaimed benefit fund, as contemplated in section 37C of the Pension Funds Act.

### **Delayed payment of benefits**

14. Interest must be added to a benefit in respect of which payment has not been made to a former member or beneficiary on the date on which payment became due –

- (a) for the period from the due date of payment to the actual date of payment; and
- (b) at a rate of interest equal to the Johannesburg Interbank Acceptance Rate, as amended from time to time.

### **Special grant by associated municipality to member**

15.(1) If, in the case of a member who was in the service of a municipality on the date it became associated with the Fund, the continuous service of such member is calculated without taking into account the whole period of service of such a member with a municipality before it became an associated municipality, or with another unassociated municipality before such date, such associated municipality may, subject to prior written approval by the responsible Member of the Executive Council, make a special grant to such a member in respect of such prior service, by way of –

- (a) a special payment.
- (b) an annual allowance; or
- (c) any other allowance.

(2) The special allowance contemplated in sub-item (1) –

- (a) is payable in addition to any benefit due or received from the Fund in accordance with this Schedule to such member; and
- (b) must be made by the associated municipality out of its own revenue.

- (3) The sum of the benefit due by the Fund and the special allowance contemplated in sub-item (1), may not exceed in value the amount of the benefit that would have been payable by the Fund if the –
- (a) member had been a member of the Fund for such period of prior service; or
  - (b) benefit for such service had not been reduced to a proportion of the benefits specified in these Regulations.

#### **Effect of Regulations on other laws**

**16.** Notwithstanding the provisions of any other law, an associated municipality may only grant a benefit to a member of the Fund, in accordance with the provisions of the Act and these Regulations.

### **SCHEDULE 4 ARRANGEMENTS RELATING TO SPECIAL CONDITIONS (Regulation 53)**

#### **Special conditions applicable to persons who are contract employees in accordance with section 57 of the Local Government: Municipal Systems Act**

1.(1) In this Schedule –

- (a) “**contract employee**” means a person who is in the service of a municipality on a fixed period contract;
- (b) “**fixed period contract**” means a contract in accordance with the provisions of the Local Government: Municipal Systems Act;
- (c) “**pensionable emoluments**” means a percentage of the total remuneration package of a contract employee, being the total cost to the employer of employing a contract employee as his or her pensionable emoluments amounted to at the commencement of these Regulations: Provided that –
  - (i) such contract employee is not entitled to adjust his or her pensionable emoluments during the period of his or her membership of the Fund, save for any inflation linked adjustments to his or her total package remuneration pursuant to his or her fixed period contract;
  - (ii) at all times the pensionable emoluments may be adjusted by the Board of Trustees in its sole discretion after consultation with the Actuary; and
  - (iii) pensionable emoluments of contract employees who concluded fixed period contracts prior to the commencement of this item are not adjusted retrospectively; and
- (d) “**total cost to employer contract**” means a contract in terms of which a member is employed on a total cost to company remuneration package.

(2) Notwithstanding the provisions of these Regulations, the provisions of this item only apply to persons who are contract employees as contemplated in section 57 of the Local Government: Municipal Systems Act.

(3)(a) No contract employee who immediately prior to the commencement of his or her fixed period contract was a member of the Fund, is obliged on the commencement of his or her fixed period contract to retain his or her membership of the Fund.

(b) In the event of the contract employee electing to remain a member of the Fund –

- (i) the provisions of regulation 30 apply with the necessary changes to his or her membership: Provided that no contract employee on a fixed period contract who was not at the commencement of his or her contract a member of the Fund is entitled to elect to become a member of the Fund; and
- (ii) a percentage required to be contributed in accordance with items 2, 4 and 5 of Schedule 2 together with any additional contribution or surcharge contemplated in regulation 15 must be deducted in full from the contract employee’s total package remuneration.

(4) The benefits payable to a contract employee who makes an election in accordance with sub-item (3)(b) must be in accordance with these Regulations.

(5) The provisions of item 3 of Schedule 3 do not apply to contract employees.

- (6) In the event that a contract employee –  
(a) ceases to be a member in the circumstances other than those referred to in items 1, 2 or 6 of Schedule 3; and  
(b) is a member of the Fund in accordance with sub-item (3),  
the provisions of Schedule 5 and item 4 of Schedule 3 apply.
- (7)(a) Any renewal of a contract employee's fixed period contract by the municipality concerned, is deemed to be a continuation of the contract employee's membership of the Fund.  
(b) There is no termination of membership at the expiration of –  
(i) the initial period; and  
(ii) any renewal thereafter,  
of such fixed period contract.
- (8)(a) If a fixed period contract is terminated by either the member or the municipality, or is not renewed, the member is entitled to the benefits provided for in sub-item (6).  
(b) There is excluded from the calculation of any benefit payable to a contract employee in accordance with paragraph (a) any administration charges of the Fund, including any costs in respect of death or disability cover, in an amount as determined from time to time by the Board of Trustees on the advice of the Actuary.
- (9)(a) A member who becomes a contract employee must inform the Fund thereof within two months of the commencement of the contract with the municipality, or such longer period as the Board of Trustees may determine.  
(b) The contract employee may, within such period of two months contemplated in paragraph (a), apply to the Fund for his or her contributions not to be based on his or her pensionable emoluments as defined in accordance with sub-item (1), but on such pensionable emoluments as may be determined by such contract employee: Provided that any approval of such application may be subject to such conditions as the Board of Trustees may determine.  
(c) In the event that the member fails to inform the Fund in accordance with the provisions of paragraph (a) that he or she is a contract employee and the member's –  
(i) application in accordance with paragraph (b) is granted; and  
(ii) contributions are not based on his or her pensionable emoluments as defined in sub-item (1),  
the contract employee's pensionable emoluments for purposes of determining the death and disability benefits in accordance with items 2 and 6 of Schedule 3, as defined, may be adjusted by the Board of Trustees in consultation with the Actuary.
- (10) The provisions of this item apply to all contract employees notwithstanding that their fixed period contracts were concluded with the municipalities concerned prior to the commencement of these Regulations.
- (11) In the event that a contract employee who was compelled to become a member of the Fund in accordance with Regulation 30(5) elects, after the commencement of these Regulations, not to remain a member of the Fund, the benefits payable to such member must be in accordance with sub-item (6).
- (12) Nothing contained in this item derogates from any greater right acquired by or accrued to any contract employee in accordance with these Regulations: Provided that proof of the greater right is upon the contract employee who must establish same to the satisfaction of the Board of Trustees in consultation with the Actuary and if so established, is thereupon entitled to any such additional benefits.

## **SCHEDULE 5**

### **ANNUITY STRATEGY AND ARRANGEMENTS RELATING TO DEFERRED RETIREES**

#### **Annuity strategy**

- 1.(1) The Board of Trustees must develop and implement an annuity strategy in accordance with the provisions of all relevant national and provincial legislation, whether principal or subordinate.
- (2) From time to time but at least annually, the Board of Trustees must review the annuity strategy to ensure that it remains appropriate for members.

(3) When a member retires in terms of item 1, item 2, item 3, item 4 or item 5 of Schedule 3 the following applies –

- (a) if the member meets the qualifying criteria, he becomes an in-fund annuitant: Provided that on the election date, a member may elect either –
  - (i) that his or her benefit, or part thereof, be paid to him as a cash lump sum; or
  - (ii) that the benefit in sub-paragraph (i), after payment of any lump sum in terms of the provisions of that sub-paragraph (i), be transferred to a registered insurer to purchase an annuity in his or her own name in accordance with the provisions of item 2 of this Schedule;
- (b) if the member does not meet the qualifying criteria, the benefit in paragraph (a)(i) must be transferred to a registered insurer to purchase an annuity in his or her own name in accordance with the provisions of item 2 of this Schedule: Provided that on the election date, a member may elect that such benefit be paid in part or in full to him or her as a cash lump sum; and
- (c) in the case of contract employees contemplated in Schedule 4, the provisions of Schedule 4 also apply.

#### **Conditions relating to purchase of annuity from a registered insurer**

2. If the annuity is to be purchased from a registered insurer in terms of item 1(3)(a)(ii) or item 1(3)(b) of this Schedule, the following applies –

- (a) the amount referred to in item 1(3)(a)(i) must be transferred to a registered insurer chosen by the member and approved by the Board of Trustees;
- (b) the annuity must be purchased in the name of the member and the terms and conditions applicable to such annuity including options elected by the member and the determination of any benefits arising on his or her death, must be –
  - (i) agreed between the member and the registered insurer; and
  - (ii) set out in writing by the registered insurer;
- (c) the annuity so purchased is subject to the provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), the Long-term Insurance Act, 1998 (Act No.52 of 1998) and any requirements specified by the South African Revenue Service from time to time; and
- (d) the Fund has no further obligation to, or in respect of, the preserved member, as all such obligations transfer to the registered insurer from whom such annuity or annuities are purchased.

#### **Conditions relating to payment of annuity from the Fund**

3.(1) If a retiring member becomes an in-fund annuitant in terms of the provisions of item 1(3)(a) of this Schedule, the following applies –

- (a) the benefit referred to in item 1(3)(a)(i) of this Schedule, after payment of any lump sum in terms of the provisions of that paragraph, must be transferred to the living annuity account;
- (b) each living annuity payable from the living annuity account is payable to the in-fund annuitant in accordance with the terms and conditions of the living annuity policy: Provided that –
  - (i) the amount of a living annuity payable to an in-fund annuitant must, subject to –
    - (aa) any requirements and restrictions imposed by the South African Revenue Service from time to time; and
    - (bb) the provisions and restrictions set out in the living annuity policy,be determined by the in-fund annuitant at the commencement date of the payment thereof and thereafter annually as at the anniversary of the commencement date and is payable exclusively out of the living annuity account;
  - (ii) if the assets comprising the living annuity account in relation to a particular in-fund annuitant become less than an amount prescribed by legislation, the full remaining value of the assets comprising the living annuity account for that in-fund annuitant may be paid to the in-fund annuitant as a lump sum benefit;
  - (iii) each in-fund annuitant must provide such evidence of his or her survival as the Board of Trustees may require: Provided that if such evidence is not produced, the Board of Trustees may direct that payment of further instalments of the living annuity be suspended until such evidence is produced;
  - (iv) an in-fund annuitant may, with the consent of the Board of Trustees, elect that the balance of the assets comprising the living annuity account for that in-fund annuitant be transferred to a registered insurer of his or her choice to purchase an annuity in his or her own name.

(2) The provisions of item 2 of this Schedule apply with the changes required by the context to an annuity purchased from a registered insurer in terms of the provisions of this paragraph.

#### **Death of an in-fund annuitant**

4.(a) On the death of an in-fund annuitant, the balance of the assets comprising his or her living annuity account must be paid to his or her beneficiaries in accordance with the provisions of section 37C of the Pension Funds Act: Provided that if there are no beneficiaries the balance of the living annuity account must be paid to the estate of the deceased in-fund annuitant as a lump sum.

(b) A beneficiary who becomes entitled to payment of a benefit in terms of paragraph (a) may elect that the balance of the living annuity account or, if there is more than one beneficiary, his or her proportionate share of the balance of the living annuity account, be –

(i) transferred to a registered insurer of his or her choice to purchase an annuity in his or her name;

(ii) paid to him or her as a lump sum; or

(iii) paid from the Fund.

(c) If a beneficiary elects the option as specified in paragraph (b)(i), the provisions of item 2 of this Schedule apply with the changes required by the context to an annuity purchased from a registered insurer in terms of the provisions of this paragraph.

(d) If the beneficiary elects the option as specified in paragraph (b)(iii) the following applies –

(i) the amount available for the beneficiary must be used to secure a living annuity for the beneficiary from the living annuity account;

(ii) the beneficiary must become an in-fund annuitant and the provisions of item 3 of Schedule 5 apply with the changes required by the context; and

(iii) on the death of such in-fund annuitant, the balance of the assets comprising his or her living annuity account must continue to be paid to any beneficiaries in such proportions as the Board of Trustees may decide, taking into account the provisions of section 37C of the Pension Funds Act, and in accordance with the terms and conditions set out in item 3 of Schedule 5.

(e) The provisions of paragraph (a) and (b) apply with the changes required by the context to payment to such beneficiary and to payment to any further beneficiaries on the death of such beneficiary.

#### **Provisions applicable to a deferred retiree**

5. If a member who has retired from the service of the municipality in terms of item 1, item 2, item 3, item 4 or item 5 of Schedule 3 and elects to become a deferred retiree –

(a) such deferred retiree's member's share, as calculated in accordance with item 7 of Schedule 3 plus a proportionate share of the investment reserve account must be transferred to the deferred retiree account and the benefit must be determined in accordance with the provisions of regulation 10(9);

(b) contributions by and in respect of such deferred retiree in terms of Schedule 2 must cease;

(c) the benefit referred to in item 6(2)(b) of Schedule 3 is not payable if the deferred retiree dies before the election date;

(d) the benefit determined in accordance with regulation 10(9) becomes payable in the following circumstances:

(i) to the deferred retiree on the election date, subject to paragraph (e); or

(ii) in terms of section 37C of the Pension Funds Act if the deferred retiree dies before the election date; and

(e) on the election date, the provisions of item 1(3) of Schedule 5 applies with the changes required by the context to a deferred retiree.

### **SCHEDULE 6 ARRANGEMENTS RELATING TO PAYMENT OF BENEFITS ON LEAVING SERVICE OF MUNICIPALITY**

#### **Preservation and payment of benefit**

1.(1) When a member leaves the service of the municipality in terms of item 3, item 4 or item 5 of Schedule 3, his or her benefit must be preserved in the Fund in accordance with the provisions of item 2 of this Schedule unless upon leaving the service of the municipality the member elects that the benefit be –



- (a) paid to him or her as a lump sum; or
- (b) transferred to another approved provident fund, an approved pension fund, an approved retirement annuity fund, a provident preservation fund or a pension preservation fund: Provided that –

- (i) transfer to a provident preservation fund or a pension preservation fund is subject to the requirements of the South African Revenue service as specified from time to time; and
- (ii) if a member elects the option as specified in paragraph (a) or (b), the benefit must be paid to him or her or transferred to another fund as soon as possible after the date of leaving the service of the municipality.

(2) If a member on leaving the service of the municipality does not elect either option as specified in paragraph (1)(a) or (b), he or she becomes a preserved member and the provisions of item 2 of this Schedule apply to such member.

(3) If a member who elects either an option specified in paragraph (1)(a) or (b), dies after leaving the service of the municipality, but before payment of his or her benefit has been made, the benefit must be paid to his or her estate as a lump sum.

#### **Provisions applicable to a preserved member**

2. When a preserved member leaves the service –

- (a) No further contributions are made by or in respect of him or her after the date of leaving service;
- (b) his or her member's share plus a proportionate share of the investment reserve account must be transferred to the preserved member account and the benefit must be determined in accordance with the provisions of regulation 10(10); and
- (c) he or she is not entitled to any benefits from the Fund other than the benefit referred to in paragraph (b).

#### **Payment of benefit to the preserved member**

3. The benefit referred to in item 2(b) of this Schedule becomes payable as contemplated in paragraph 4 of the second Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), –

- (a) on the election date, in accordance with the provisions of item 1(3) in Schedule 5, which apply with the changes required by the context, as a retirement benefit;
- (b) on the death of the preserved member to his or her beneficiaries in terms of section 37C of the Pension Funds Act; or
- (c) earlier, if the preserved member elects that the benefit –
  - (i) be paid to him as a lump sum; or
  - (ii) be transferred to another approved provident fund, an approved pension fund, an approved retirement annuity fund or, subject to the requirements of the South African Revenue Services, to a provident preservation fund or a pension preservation fund.

#### **Retirement benefits counselling**

4. Before a benefit of a preserved member contemplated in item 2(b) is –

- (a) dealt with in terms of item 3(a);
- (b) paid in terms of item 3(c)(i); or
- (c) transferred to another fund in terms of item 3(c)(ii),

that preserved member must have access to retirement benefits counselling.

**SCHEDULE 7**  
**LAWS REPEALED**  
*(Regulation 55)*

**PART A: REGULATIONS MADE IN TERMS OF ACTS OF THE PROVINCE OF KWAZULU-NATAL**

<b><i>Number and year of law</i></b>	<b><i>Title</i></b>	<b><i>Extent of repeal</i></b>
Provincial Notice No. 135 of 1996	Regulations governing the Natal Joint Municipal Provident Fund, 1996, as amended	The whole

**PART B: RULES ISSUED IN TERMS OF REGULATIONS MADE IN TERMS OF ACTS OF THE PROVINCE OF KWAZULU-NATAL**

<b><i>Number and year of law</i></b>	<b><i>Title</i></b>	<b><i>Extent of repeal</i></b>
Provincial Notice No. 273 of 1996	Rules for the Management and Administration of the Natal Joint Municipal Pension Fund (Superannuation); the Natal Joint Municipal Pension Fund (Retirement); and the KwaZulu-Natal Joint Municipal Provident Fund, 1996, as amended	Only to the extent that the Rules apply to the Natal Joint Municipal Provident Fund







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