

H.B. 17, 2019.]

PENSIONS AND PROVIDENT FUNDS BILL, 2019

MEMORANDUM

This is a Bill to provide for the registration, regulation and dissolution of pension and provident funds as well as to repeal the Pension and Provident Funds Act [*Chapter 24:09*]. In more detail, the individual provisions of the Bill are as follows:

Clauses 1 and 2

Set out the short title of the Bill and define terms used in the Bill respectively.

Clause 3

Outlines the objects of the bill. These are to ensure protection of fund members and beneficiaries' interests, stability and security of funds and sustainability of the pension sector as a whole.

Clauses 4 and 5

Provide for the responsibilities of the Commissioner and delegation of functions by the Commissioner respectively.

Clause 6

Adds to the Commissions' functions conferred by the Insurance and Pensions Commission Act [*Chapter 24:21*]. The specific functions have the overall consequence of ensuring sustainability and security of the pension industry.

Clause 7

Enjoins the Commission to exercise its functions under this Act in an impartial, clear and open manner and to observe the provisions of section 194 (basic values and principles in public administration) of the Constitution in the discharge of its functions.

Clause 8

Obliges persons who want to establish or carry on the business of a fund to register their Funds and criminalises operation of unregistered funds.

Clause 9

Provides for the electronic and manual registration of funds, factors to be considered when deciding whether or not register a fund and issuance of a certificate of a fund.

Clause 10

Explains the legal status of funds. Upon registration a fund shall become a body corporate.

Clause 11

Spells out the evidential value and period of validity of a certificate of registration. A certificate of registration of a fund shall, upon its mere production and in the absence of proof of fraud, be conclusive evidence that all the requirements of this Act in respect of registration and all matters precedent and incidental thereto have been complied with and that the fund is duly registered. A certificate of registration issued to a fund shall be valid from the date of issue and shall remain in force until the fund is dissolved or certificate of registration is revoked in accordance with this Act.

Clause 12

Provides for —

- (a) circumstances for dissolution of fund. a fund may be dissolved in terms of the rules of the fund or where so directed by the Commission or where the certificate of registration has been revoked.
- (b) The appointment of a liquidator where a fund is to be dissolved in terms of the rules of the fund or where so directed by the Commission.
- (c) The liquidation process.

Clause 13

- (a) Empowers the Commission to revoke a certificate of registration of a fund if it discovers that the applicant willingly and knowingly made a false statement in the application, or the fund breaches the conditions of registration or contravenes this Act or regulations made in terms of this Act or the fund is merged, wound up or dissolved.
- (b) Requires the Commission to observe principles of natural justice when exercising powers of cancellation.

Clauses 14, 15 and 16

These spell out what must be contained in the rules of a fund, enjoin the board of directors of a fund to disclose important information to stakeholders and provide for the amendment and consolidation of rules of fund respectively.

Clause 17

Provides for the payment and remittal of contributions to the fund. Penalises non remittal of contributions by participating employers. Makes certain persons civilly and personally liable for non remittal of funds.

Clause 18

Enables persons who cease to be members of a fund and become a member of another fund to transfer to that other fund any benefit or right to which they have become entitled from the first-mentioned fund. The first-mentioned fund shall, within thirty days after the member has in writing requested it to do so, or within such longer period as the Commission may allow, transfer that benefit or right, in full, to the other fund.

Clause 19

Provides for the minimum benefits to be provided by a fund to its members and beneficiaries.

Clause 20

Provides the minimum amounts to be paid by members and participating employers of every defined contribution category fund.

Clause 21

Spells out what should happen where there is an actuarial surplus in a fund.

PART V

Clause 22

Enjoins funds to furnish the Commission with postal addresses, electronic mail addresses and physical addresses of registered offices.

Clauses 23, 24, 25, 26 and 27

Deal with the composition, functions and duties of the board, qualifications and disqualifications terms of office, and the capacitating of board members.

Clause 28

Provides for the appointment of a Principal Officer of Fund who shall be responsible for the day to day management of the fund and for ensuring that the duties imposed on the fund by this Act and any other Acts are carried out efficiently and effectively.

Clause 29

Provides for the appointment of auditors, valuers, custodian and fund administrators and factors to be considered when making such appointments.

PART VI

Clause 30

Defines terms used in this Part.

Clause 31

Provides that all the assets of a fund, including any policy of insurance, shall be controlled and held in the name of the fund or any other person who is approved by the Commission or who is a member of a class of persons approved by the Commission.

Clause 32

Enjoins every fund to maintain such financial records and any other records as are necessary for the purpose of holding and accounting for the assets and liabilities of the fund and to submit to the Commission within three months after the end of its financial year, audited financial statements, prepared in accordance with the Public Accountants and Auditor's Act [*Chapter 27:12*]

Clause 33

Enjoins life insurers to maintain separate Pensions Fund and separate accounts relating to the statement of comprehensive income of that insurer in respect of its pension and provident fund business.

Clause 34

Mandates a fund to cause its financial condition to be investigated and reported upon by an actuary as may be prescribed from time to time, and upon finalisation.

Clause 35

Provides that a fund shall at all times hold its assets in Zimbabwe in investments which are realisable in Zimbabwe provided that the Commission may, in writing, authorise a fund to hold part of its assets in other investments approved by the Commission, subject to such terms and conditions as it may from time to time fix and a fund to invest all or part of its assets in foreign markets, subject to such terms and conditions as the Commission may fix.

Clause 36

Deals with rescue and winding of troubled Funds

Clauses 37 and 38

Provides for the appointment and powers of inspectors for the purpose of assisting the Commission to monitor and supervise funds, to carry out investigations and to ensure compliance with this Act

Clause 39

Spells out action that may be taken by Commission upon discovering illegal conduct by funds. These include issuing a warning to the fund; instruction to the fund to undertake remedial action specified in the instruction, suspension all or any of its pension and provident fund business, placing the fund under the management of an interim administrator and restricting the disposal of the fund's assets.

Clauses 40, 41 and 42

Deal with investigation into affairs of fund where the Commission considers that an investigation is necessary for the purpose of protecting the interests of fund members, preventing or detecting a contravention of this Act or any other law, procedure on completion of investigation and action by Commission following investigation respectively.

Clause 43

Empowers the Commission to demand documents and information to provide the Commission with any record or information in relation to any matter connected with the business or transactions of that fund. Any person required to submit information shall submit such information within a period stated in the request by the Commission or within such further period as the Commission may allow.

Clause 44

Empowers the Commission to require unregistered fund to provide information.

Clauses 45

Empowers the Commission to extend the time limits given in this Act where necessary.

Clause 46

Gives stakeholders right to obtain copies of or to inspect records and to obtain information from the management.

Clause 47

Permits amalgamations, splits and transfers of all or part of the assets and liabilities of a Fund to another Fund.

Clause 48

Reserves the right of a Fund to terminate the services of any of its service providers on providing such notice in terms of any contractual and other agreements between the fund and its service provider and obliges a service provider whose service has been discontinued to cause the full membership, financial and statistical records to be compiled and passed on to the principal officer or such new appointee service provider as advised by the fund, not later than sixty days and ensure the transfer of assets shall be made within ninety days.

Clause 49

Provides that the board of every existing fund that is a defined benefit category fund shall as soon as possible after a currency conversion date cause the fund's actuary to calculate the fund's liabilities in the former currency towards its members, beneficiaries and other stakeholders at the currency conversion date and cause the fund's actuary to apportion the fair value of the fund's assets in the new currency between the members, beneficiaries and other stakeholder so as to establish, so far possible, the fund's liability in the new currency to each of those classes of persons.

Clause 50

Provides that documents required to be furnished to the commission be signed by the principal officer and one other person authorised by the board to sign the document.

Clause 51

Any document certified, by or on behalf of the Commissioner, shall be admissible in evidence in any court as if it were the original document.

Clause 52

Process in any legal proceedings against a fund may be served on that fund at its registered office.

Clause 53

Provides for appeals to the Minister and Administrative Court within the time and in the manner prescribed in rules of court for the latter

Clause 54

Provides that the Commission shall submit to the Minister a report in regard to pension and provident fund business in Zimbabwe during the previous calendar year and the Minister shall lay a copy of such report to Parliament.

Clause 55

Penalises improper use of certain titles.

Clause 56

Creates offences and fixes the attendant penalties.

Clause 57

Provides that the every employee shall be liable a where a Fund commits an offence under this Act: unless it is proved that he or she took no part in the commission of the offence.

Clause 58

Indemnifies members and employees of the commission where they have acted diligently and in good faith.

Clause 59

Allows a pension fund to convert from one type of fund to another.

Clause 60

Requires every registered person to conduct its business and other operations in accordance with sound administrative and accounting practices and procedures, adhering

to effective systems of risk-management policies and internal controls including effective functions for risk management, compliance, actuarial matters and internal audit and to take effective measures to combat money laundering and the financing of terrorism as defined in terms of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*].

Clause 61

Deals with service of civil penalty orders.

Clause 62

Deals with additional due process requirements before service of certain civil penalty orders.

Clause 63

Empowers the Commission to make regulations.

Clause 64

Repeals the Pension and Provident Funds Act [*Chapter 24:09*].

Saves any fund that was registered in terms of the repealed Act immediately before the appointed day. Saves any order, notice, application, exemption, approval, permission or other thing which was lawfully made, granted, given, issued, done or commenced in terms of the repealed Act and which, immediately before the appointed day, had or was capable of acquiring legal effect.

SCHEDULE (Section 29)

Deals with regulation of fund administrators and fund managers.

PENSIONS AND PROVIDENT FUNDS BILL, 2019

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BILL

To provide for the registration, regulation and dissolution of pension and provident funds; to provide for the additional functions of the Insurance and Pensions Commission, to repeal the Pension and Provident Funds Act [*Chapter 24:09*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Pension and Provident Funds Act [*Chapter.....*].

2 Interpretation

(1) In this Act—

“actuarial surplus” in relation to—

- (a) a fund that is subject to actuarial valuation, means the excess of the fair value of the fund’s assets; over the fund’s past, current and expected future liabilities ;
- (b) a fund that is exempt from actuarial valuation, means the difference between—

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- (i) the fair value of the fund’s assets; and
 - (ii) the sum of the values of—
 - A. all the accounts held for individual members of the fund, whether contributory or paid-up; and
 - B. any investment reserve account set up to facilitate the smoothing of investment returns credited to the members’ accounts; and 5
 - C. any contingency reserve accounts; and
 - D. any other liabilities of the fund;
- “actuary” means a person who is a fellow of an institute, faculty, society or association of actuaries approved by the Commissioner from time to time for the purposes of this Act; 10
- “actuarial valuation” means an analysis made by an actuary to determine the value of the fund’s assets and liabilities, calculated by reference to appropriate assumptions; 15
- “appointed day” means the date on which this Act becomes operational upon publications;
- “auditor” means a person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] or is a member of such class of persons as may be prescribed; 20
- “beneficiary” means a person designated by a member of a fund, or by the rules of the fund to benefit under the fund, as may be prescribed;
- “board” means the board of a fund constituted in terms of section 23;
- “Commission” means the Insurance and Pensions Commission established by section 3 of the Insurance and Pensions Commission Act [*Chapter 24:21*]; 25
- “Commissioner” means the Commissioner of Insurance, Pension and Provident Funds appointed in terms of section 19 of the Insurance and Pensions Commission Act [*Chapter 24:21*];
- “contingency reserve account” means an account established in order to provide for contingencies; 30
- “custodian” means an entity permitted in terms of section 38 of the Securities and Exchange Act [*Chapter 24:25*] to take responsibility of the safe custody of a fund’s securities, financial instruments and documents of title of assets;
- “deferred pensioner” means a member of a fund who is not yet entitled to a benefit but has left the service of the participating employer, retaining a right to such benefits as are defined in the rules of the fund; 35
- “defined benefit category” in relation to member benefits, means benefits that are guaranteed by the sponsoring employer, expressed in the form of an annuity or lump sum calculation, which are determined with reference to the employee’s duration of service, salary and an actuarial factor, regardless of investment performance of the fund; 40
- “defined contribution category” in relation to member benefits means a benefit on retirement determined as—

(i) the fixed rate of contributions paid by the members and by the participating employers on behalf of the members, where the fixed rates are defined in the rules of the fund; and

5 (ii) such investment returns and any share of actuarial surplus or transfer from a contingency reserve account as the board may determine;

less such expenses as shall be provided for in the rules of the fund;

“deposit administration policy” means a policy of insurance issued by an insurer to a fund in terms of which—

10 (a) the insurer maintains a deposit account in respect of the fund to which—

(i) is credited all amounts paid by the fund to the insurer; and

15 (ii) is debited all amounts withdrawn from the fund to provide benefits in terms of the rules of the fund and such administrative and other expenses as are agreed upon between the fund and the insurer from time to time; and

(iii) is credited or debited either—

20 A. interest at the rate agreed upon between the fund and the insurer and such bonuses as the insurer declares from time to time; or

B. such investment income and capital profits or losses as are agreed upon between the fund and the insurer as being for the account of the fund;

and

25 (b) the liability of the insurer at any given time, other than in respect of benefits, if any, actually purchased by the fund from the insurer, is limited to the amount standing to the credit of the deposit account referred to in paragraph (a) after all credits and debits have been taken into account;

30 “deposit administration scheme” means an insurance company scheme which is operated by means of a deposit administration policy;

“employee”, in relation to—

35 (a) a company, includes a director of the company whose time, in the Commission’s opinion, is wholly or almost wholly occupied in the service of the company;

(b) a partnership or other association of persons, includes a member of the partnership or association whose time, in the Commission’s opinion, is wholly or almost wholly occupied in the service of the partnership or association;

“sponsor” means a person who establishes a fund;

40 “external fund” means a fund whose head office is outside Zimbabwe;

“fair value”, in relation to an asset of a fund, means an amount at which an asset could be exchanged between knowledgeable and willing parties in an arms length transaction;

- “fund” means any scheme or arrangement whose object is to provide benefits for persons who are or have been members of the scheme or arrangement upon their retirement on account of age or ill-health, whether or not the scheme or arrangement—
- (a) also provides benefits for dependants or nominees of deceased members; or
 - (b) continues to admit members or to receive contributions;
- and includes any fund established by or in terms of any other enactment:
- Provided that a scheme or arrangement which is established to benefit only one member or his or her dependants shall not be regarded as a fund;
- “fund administrator” a person ,who in terms of this Act is permitted to carry on business that includes the provision of day to day administration, management, ensuring timely payment of contributions and benefits, secretarial services and advising the fund on strategic fund matters including proper asset liability allocation decisions and any matters connected with or incidental to pensions statutes as may be prescribed, to a fund on behalf of its board, pursuant to a contract or other arrangement;
- “fund manager” means a person appointed by the members of the board to advise on the investment of the assets of the fund in accordance with such terms and conditions of service as may be prescribed in the instrument of appointment and accredited under this Act;
- “hybrid benefit category” means a fund with whose benefit structure is a combination of different benefits categories;
- “independent expert member” means a member of a board appointed by virtue of him or her having relevant expertise, and who does not have a material or pecuniary relationship with the fund or related persons, except sitting fees;
- “inspector” means a person appointed by the Commission in terms of section 37 , to inspect and examine the books of accounts, records, returns or any aspect of a fund;
- “Interim administrator” means a person appointed by the Commission to ensure the management, control and conduct of the affairs of a fund in place of the members of the board, or fund manager of the fund;
- “investment reserve account”, in relation to a defined contribution category fund, means an account established to compensate for the fluctuation in the value of invested assets for the purpose of smoothing investment returns;
- “insurance company scheme” means a scheme which provides for the establishment of a fund and its operation exclusively by means of one or more policies of insurance issued by an insurer;
- “insurer” means a person registered as an insurer in terms of the Insurance Act [Chapter 24:07];
- “internal fund” means a fund whose head office is in Zimbabwe;

- “life insurer” means an insurer which carries on life insurance business as defined in the Insurance Act [*Chapter 24:07*];
- “member” in relation to a fund means any person who is admitted to the membership of a retired benefit scheme;
- 5 “member’s individual account”, in relation to a defined contribution category member of a fund, means, the amount of the member’s account determined in accordance with the formula approved by the Commission;
- “minimum individual reserve”, in relation to a member of a fund, means the amount determined in accordance with the formula approved by the Commission;
- 10 “minimum pension increase” means the amount determined in accordance with the formula provided for in the approved by the Commission;
- “Minister” means the Minister responsible for Finance and Economic Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- 15 “officer”, in relation to a fund, means any person who is employed by the fund;
- “participating employer”, in relation to a fund, means an employer who contributes to the fund in terms of its rules;
- “pension” includes an annuity acquired through a fund;
- 20 “pension fund” means a fund whose principal object is to provide for the payment of a pension to a person who, on his or her retirement, is or has been a member of the fund;
- “pensioner”, in relation to a fund, means a person who is in receipt of a pension paid from the fund, whether or not the person is or was a member of the fund;
- 25 “principal officer”, means a person appointed in terms of section 28(1) to be the fund’s principal officer; or
- “provident fund” means any fund the principal object of which is to provide for the payment of a lump sum benefit to a person who is or has been a member of the fund upon his or her retirement;
- 30 “registered office” means the fund’s registered office referred to in section 22;
- “reserve account”, in relation to a fund means a contingency or investment reserve account as the case may be;
- “retirement” means—
- 35 (a) retiring on account of age, as specified in the fund rules, whether or not there is a termination of employment; or
- (b) the termination of employment on the grounds of ill-health or any other ground which is regarded, under the rules of the fund concerned, as constituting retirement;
- 40 “retirement annuity fund” means a fund which—
- (a) provides for the payment of a pension to a person who is or has been a member of the fund on his or her retirement; and

- (b) is operated either as an insurance company scheme or without payment of commission to any person for the introduction of business;

“return” includes—

- (a) all accounts required by section 32; and 5
- (b) any report by the valuator or auditor of a fund; and
- (c) any document and information which a fund is required by or in terms of this Act to furnish to the Commission;

“rules”, in relation to a fund, means the rules applicable to the fund, including—

- (a) any document by or in terms of which the fund is established, governed, administered or managed; and 10
- (b) provisions relating to the conduct of the business of the fund, the benefits which may be granted from the fund and the contributions which are payable to that fund;

“self-administered fund” means a fund, which is not an insurance company scheme; 15

“stakeholder”, in relation to a fund, means anyone who has interest in the affairs of the fund;

“transfer value” means the amount of a benefit or right that is or may be transferred from one fund to another in terms of section 18; 20

“valuator” means —

- (a) any actuary; or
- (b) a member of such class of persons as may be prescribed by the Commission.

3 Objects of this Act 25

(1) The objects of this Act shall be to—

- (a) ensure protection of fund members and beneficiaries’ interests;
- (b) ensure security of funds;
- (c) ensure sustainability of the pension sector as a whole.

(2) This Act shall be construed in such manner as best ensures the attainment of its objects referred to in subsection (1). 30

(3) This Act shall prevail over any other enactment inconsistent with it.

4 Responsibilities of Commissioner

The Commissioner shall, in consultation with the Commission’s Board, be responsible for carrying out the provisions of this Act and to exercise the functions and powers conferred upon the Commission in terms of this Act. 35

5 Delegation of functions by Commissioner

(1) Subject to the Insurance and Pension Commission Act [*Chapter 24:09*], the Commissioner may delegate to any officer employed in the Commission any function

that is conferred or imposed upon him or her by this Act, other than this power of delegation.

(2) An officer to whom a function has been delegated in terms of subsection (1) shall exercise it subject to the Commissioner's directions.

5 (3) A delegation in terms of subsection (1)—

- (a) may be revoked or modified by the Commissioner at any time; and
- (b) shall not preclude the exercise by the Commissioner of the function so delegated.

10 (4) Anything done by an officer in the exercise of a function delegated to him or her by the Commissioner in terms of subsection (1)—

- (a) may be set aside or revised, subject to this Act, by that officer or by the Commissioner; and
- (b) shall be deemed, until set aside, to have been done by the Commissioner

15 (5) This section shall be construed as being additional to, and not as derogating from, the Commissioner's powers of delegation under any other law.

6 Additional functions of the Commission under this Act

(1) In addition to its functions conferred by the Insurance and Pensions Commission Act [*Chapter 24:21*], the Commission shall have the following functions—

- 20 (a) to promote and protect members and beneficiaries' rights;
- (b) to register and de-register fund administrators;
- (c) to regulate the operations of fund administrators;
- (d) to provide for the management of troubled funds, provident funds and fund administrators and their dissolution;
- 25 (e) to supervise the establishment, administration and management and operation of funds; and
- (f) to issue—
 - (i) guidelines; or
 - (ii) directives; or
 - (iii) statements of prudent norms;
- 30 for the proper administration and management of funds;
- (a) to promote the development of the pension industry;
- (b) to ensure sustainability and security of the pension industry;
- (c) to advise the Minister on all matters relating to development and operation of the pension industry;
- 35 (d) to promote financial literacy and public awareness of the pension industry; and
- (e) to execute any other function that will promote the achievement of the objects of this Act.

40 (2) For the purpose of carrying out its functions, the Commission may exercise any or all of the following—

- (a) conduct an investigation or inquiry relevant to the pension industry; and
- (b) inspect and examine records or premises of a registered person or fund; and
- (c) search the premises of any registered person or any person suspected of carrying on the business of a fund, and seize any relevant documents or records. 5

7 Exercise of functions by Commission

(1) The Commission shall exercise its functions under this Act in an impartial, clear and open manner and shall observe the provisions of section 194 of the Constitution in the discharge of its functions. 10

(2) In the exercise of its functions under this Act, the Commission shall—

- (a) adopt fair, transparent and consistent measures in the regulation and supervision of funds;
- (b) create the necessary environment for the establishment, growth and development of funds; 15
- (c) adopt measures to minimise conflicts of interest and disputes between stakeholders in the pensions industry; and
- (d) observe due process and the rules of natural justice;
- (e) do all such things as are calculated to facilitate or are incidental or conducive to the performance of the function of the Commission in terms of this Act. 20

(3) Before reaching a decision that affects or is likely to affect the rights or interests of any person, the Commission shall—

- (a) notify the person of the nature of the decision to be made and the factors it may consider when making the decision; and 25
- (b) where necessary, allow the person access to the information available to the Commission in regard to the matter under consideration;
- (c) give the person an opportunity to make representations in the matter;
- (d) take into account any representations that the person may make in the matter. 30

(4) Where the Commission has made a decision or taken any action that adversely affects the rights or interests of any person, the Commission shall, in writing provide that person, with reasons for the decision or action.

(5) The Commission may co-operate with relevant authorities for purposes of enhancing the proper discharge of its functions. 35

PART II

REGISTRATION OF FUNDS

8 Funds to be registered

(1) No person shall establish or carry on the business of a fund unless that fund is registered. 40

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

9 Registration of fund

5 (1) A person who wishes to apply for the registration of a fund shall submit to the Commission an application for such registration in the prescribed form.

(2) Where, after considering an application for the registration of a fund, the Commission is satisfied that the fund is or will be based on sound financial principles and the fund's rules are consistent with this Act the Commission shall register the fund
10 and—

- (a) issue to the fund a certificate of registration in the prescribed form; and
- (b) return to the fund a copy of the rules endorsed by the Commission.

(3) Where, on consideration of an application for the registration of a fund, the Commission is of the opinion that any record submitted to it does not comply with
15 the requirements of this Act or by reason of any omission or misdescription has not been duly completed or contains any error, alteration or erasure, the Commission may refuse to register the fund or inform the fund specifying the inconsistencies, errors or omission and shall return the record to the fund for reconsideration and amendment.

10 Effect of registration of fund

20 (1) On the registration of a fund, the fund shall become a body corporate capable, in its registered name, of suing and being sued and of doing everything necessary or incidental to the exercise of its powers on the performance of its functions under this Act.

(2) Notwithstanding anything to the contrary in any law, constitution or rules
25 on the registration of a fund—

- (a) all the assets, rights, liabilities and obligations pertaining to the fund's business shall be deemed to be assets, rights, liabilities and obligations of the fund to the exclusion of any other person;
- 30 (b) no person shall have any claim on the assets or rights or be responsible for any liabilities or obligations of the fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with a transaction relating to the fund's business;
- (c) the assets, rights, liabilities and obligations of the fund, including any
35 assets held by any person in trust for the fund, as existing immediately before its registration, shall vest in and devolve upon the fund.

11 Conclusiveness and validity of certificate of registration

(1) A certificate of registration of a fund shall, upon its mere production and in the absence of proof of fraud, be conclusive evidence that all the requirements of this Act in respect of registration and all matters precedent and incidental thereto have
40 been complied with and that the fund is duly registered.

(2) A certificate of registration issued to a fund shall be valid from the date of issue and shall remain in force until the fund is dissolved or certificate of registration is revoked in accordance with this Act.

(3) Subject to the provisions of this Act, the rules of a fund shall be binding on the fund, its participating employers, members and its officers, and on any person who claims under the rules or whose claim is derived from a member or former member of the fund.

(4) Notwithstanding subsection (1) where the rules of a fund are inconsistent with this Act, the provisions of this Act shall prevail. 5

12 Dissolution of fund

(1) In this section—

“court” means the Magistrates Court unless the claim exceeds the court’s civil monetary jurisdiction under the Magistrates Court Act [*Chapter 7:10*]. 10

(2) Subject to this section, a fund—

- (a) may be dissolved in terms of the rules of the fund;
- (b) shall be dissolved where so directed by the Commission in terms of section 36;
- (c) shall be dissolved where the certificate of registration has been revoked in terms of section 13. 15

(3) Where a fund is to be dissolved in terms of subsection (2)(a) and (b), a liquidator shall be appointed in the manner provided for in the rules of the fund or, where the rules make no such provision or where a provision having been made, it becomes impracticable to implement it, in the manner directed by the Commission, the following provisions shall apply— 20

- (a) the liquidator, with the approval of the Commission, shall determine the date of liquidation and the period of back-dating, if any, for the purpose of including in the calculations in connection with the liquidation those members who during that period resigned or were discharged and who shall be deemed to be members for the purposes of the liquidation; 25
- (b) until the liquidation is completed, the provisions of this Act shall, as far as practicable, continue to apply to the fund as if the liquidator were the principal officer of the fund;
- (c) every claim against the fund shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the court, and the liquidator may require any claim to be made on affidavit; 30
- (d) the valuator shall submit to the liquidator a report showing the proportion of the amount available for distribution that the valuator recommends should be applied for the benefit of each beneficiary: 35

Provided that if the fund has not appointed a valuator, the amount to be applied for the benefit of each beneficiary shall be determined by the liquidator or a valuator appointed by the liquidator specifically for this purpose.

- (e) the liquidator shall, after a valuation by a valuator and as soon as possible, lodge with the Commission a list of the assets and liabilities of the fund certified by him or her as correct and a scheme setting out the manner in which he or she proposes to realise the assets of the fund, to discharge the liabilities to persons other than members and beneficiaries and to meet the expenses of liquidation; 40 45

- (f) the liquidator shall submit the report in terms of paragraph (d) to the Commission with the estimate of the total amount available for distribution and recommendation as to the manner in which the amount should be applied for the benefit of each member or beneficiary;
- 5 (g) the documents submitted by the liquidator in terms of paragraph (f) shall lie open for inspection by interested parties for thirty days at the registered office of the fund and in any other manner allowed by the Commission;
- (h) the Commission shall, at the expense of the fund, cause a notice to be published in the *Gazette* and in a newspaper circulating in the district or
10 in any other media approved by the Commission—
- (i) specifying the period during which and the places at which the documents referred to in paragraph (f) shall lie open for inspection in terms of paragraph (g); and
- (ii) calling upon every interested person who has any objection to the
15 method of distribution recommended by the liquidator to lodge his or her objection in writing with the Commission within such period as may be specified in the notice, being at least fourteen days from the last day on which the documents lie open for inspection;
- (i) if no objection is lodged with the Commission in terms of paragraph (h),
20 the Commission shall direct the liquidator to complete the liquidation in accordance with the scheme recommended;
- (j) if an objection is lodged with the Commission in terms of paragraph (h), the Commission shall consider the objection and, where appropriate, amend the scheme and thereafter shall direct the liquidator to complete
25 the liquidation in accordance with the scheme as recommended or as amended, as the case may be;
- (k) the Commission may give the liquidator such directions relating to the liquidation as it deems fit and such directions shall, subject to paragraph (l), be binding upon the liquidator;
- 30 (l) within fourteen days after receiving a direction from the Commission in terms of paragraph (k), the liquidator shall send a copy of such direction to every member, beneficiary and creditor of the fund, and the liquidator or any person aggrieved by the direction may apply for relief to the court within twenty one days after the direction was communicated to the
35 liquidator;
- (m) in an application referred to in paragraph (l), the court may set aside or alter the direction or make such other order as it deems fit, and the Commission and the liquidator shall comply with any such order;
- 40 (n) within thirty days after the completion of the liquidation of the fund, the liquidator shall lodge with the Commission a final account signed and certified by him or her as correct and showing the manner in which the assets of the fund have been realised and distributed.

13 Cancellation of registration of fund

- (1) The Commission may revoke a certificate of registration of a fund if—
- 45 (a) it discovers that the applicant willingly and knowingly made a false statement in the application; or

- (b) the fund breaches the conditions of registration; or
 - (c) the fund contravenes this Act or regulations made in terms of this Act.
 - (d) the fund is merged, wound up or dissolved.
- (2) Where the revocation is in terms of subsection 1(a), (b) or (c), the Commission shall give the board members of a fund thirty days' notice in writing specifying the reasons for the intended revocation of certificate of registration. 5
- (3) The Commission shall, before revoking a certificate of registration consider any written representation made by the fund opposing the revocation.
- (4) The Commission shall revoke the certificate of registration of a fund if—
- (a) the members of the board of a fund have not opposed the revocation within the thirty days referred to in subsection (2); or 10
 - (b) the Commission is not satisfied by the representation made by the members of the board of the fund under subsection (3), shall put it in writing, with reasons for the decision or action:
 - Provided that before revocation, the Commission shall— 15
 - (i) notify the members and beneficiaries of the fund of the proposed revocation of the certificate of registration; and
 - (ii) that provisions have been made for the protection of members' and beneficiaries' interests.
- (5) The revocation of a certificate of registration shall not prejudice the rights and interests of members and beneficiaries of the fund. 20
- (6) Where the certificate of registration is revoked, the Commission shall cause a notice to be published in the *Gazette* and in a newspaper having an appropriate circulation or in any other media approved by the Commission.

PART III 25

RULES OF FUND

14 Rules of fund

- (1) The rules of a fund—
 - (a) shall state the name of the fund; and
 - (b) shall provide for the following and any other requirements as may be prescribed— 30
 - (i) the membership of the fund;
 - (ii) the contributions to be paid to the fund, whether compulsory or otherwise;
 - (iii) the proportion of the total contributions attributable to any purpose, including but not limited to the following— 35
 - A. the members' accumulated credit; or
 - B. administration expenses; or
 - C. group life assurance premium; or
 - D. funeral assurance premium; 40

- (iv) the policy with regard to increases for pensioners and deferred pensioners;
 - (v) the requirement that no lump-sum pension benefits will be paid into a beneficiary's account without prior notice and consent of the member;
 - (iv) the benefits to be payable from the fund;
 - (vii) the indexation of pension fund benefits in line with changing values of assets;
 - (viii) the conditions under which a participating employer contributing to a fund can exit the fund, where the fund has more than one participating employer;
 - (ix) the constitution of the board fund;
 - (x) the procedure for the election, appointment of the board, voting rights and quorum required and the terms of office of members of the board of the fund;
 - (xi) the procedure to be followed at meetings of the board of the fund;
 - (xii) the powers of the board of the fund;
 - (xiii) the appointment of service providers;
 - (xiv) the dissolution of the fund, including the appointment and powers of a liquidator;
 - (xv) the amendment or repeal of the rules;
 - (xvi) the conditions or circumstances that require the fund to be paid up;
 - (xvii) the allocation or treatment of actuarial reserves;
 - (xviii) policies and procedures meant to ensure that fit and proper standards are met on an ongoing basis; and
 - (xix) the procedures for independent performance assessment of members of the board of the fund;
 - (xx) the procedure for record keeping of existing members and members who have exited the fund, outlining the time period within which to keep records of members who have exited the fund.
- (2) Subject to this Act, the rules of a fund shall be binding on—
- (a) the fund; and
 - (b) any participating employer and the members and officers of the fund; and
 - (c) any person who claims under the rules or whose claim is derived from a person claiming under the rules.

15 Communication with stakeholders

- (1) A fund shall, at its own expense, provide members with the following information—
- (a) a copy of the rules of the fund upon joining the fund, and of any amendment to them as and when such amendments have been registered; and

- (b) within six months after the end of the financial year or any other shorter period as may be prescribed, the individual members' annual benefit statement with the minimum disclosures as may be prescribed from time to time; and
- (c) such other information as may be prescribed. 5
- (2) A fund shall, within three months and at its own expense, make accessible to members the following information—
- (a) a copy of the fund's annual financial statements; and
- (b) a copy of every valuation or other report made by the fund's valuator; and 10
- (c) details of any reserve set aside for members when they leave the fund; and
- (d) an assessment of the fund's investment performance; and
- (e) the fund's investment policy statement; and
- (f) such other information as may be prescribed. 15
- (3) The board shall convene a meeting by giving all members and beneficiaries reasonable notice of the time, place and of the purpose of the meeting and ensure that the time and place of the meeting shall be reasonably convenient for the attendance of members and beneficiaries.
- (4) In addition to any other meetings it is required to convene, the board of the Fund shall be obliged to convene a meeting prior to— 20
- (a) changing an administrator;
- (b) conversion from one currency to the other;
- (c) conversion from defined benefit to defined contribution or such other conversion; 25
- (d) any other change that significantly affects the rights of members;
- (5) The fund shall not be obliged to hold any meeting except as provided in terms of this Act and the rules of the fund.
- (6) Unless otherwise provided in the rules of the fund, at any meeting of members and beneficiaries of the fund— 30
- (a) to constitute a quorum, there shall be present in person or by proxy, in writing, members or beneficiaries exceeding fifty *per centum* of the total members;
- (b) the chairperson of the fund shall be the chairperson of the meeting or, in the absence of a chairperson or vice chairperson, the meeting shall elect its own chairperson; 35
- (c) the chairperson shall not have casting vote.
- (7) Every fund shall cause minutes of all proceedings of meetings of its members and beneficiaries to be recorded and kept for that purpose, and any such minutes, if purporting to be signed by the chairperson of the meeting or of the next succeeding meeting, shall be evidence of the proceedings and evidence that the meeting was properly convened and conducted. 40

(8) The Commission may send representatives to the general meeting referred to in subparagraph (4) above but such representatives shall have no voting rights.

16 Amendment and consolidation of rules of fund

(1) Subject to this section, the rules of a fund may be amended or repealed at
5 any time in accordance with this Act and the procedure provided for in the rules of the fund.

Provided that no such amendment or repeal shall be valid until it has been approved by the Commission and registered in terms of subsection (4).

(2) Where the board passes a resolution approving the amendment or repeal of
10 any rule of a fund, the principal officer of the fund shall, within fourteen days after the resolution was passed, submit two copies of the resolution to the Commission, together with—

- (a) a certificate signed by the principal officer certifying that the rules of the
15 fund applicable to the amendment or repeal have been complied with;
and
- (b) a statement setting out the reasons for the amendment or repeal; and
- (c) if the amendment or repeal affects the financial position of the fund,
20 a certificate by the fund's actuary or, if the fund has no actuary, by its auditor, stating how the fund's financial soundness has been affected by the amendment or repeal having regard to the rate and payment of contributions by the employer and, if the fund is not financially sound, indicating what arrangements will be made to bring the fund to a sound financial condition:

25 Provided that where an electronic copy is filed with the Commission, a single copy shall be filed with the Commission.

(3) A principal officer of a fund who fails to comply with subsection (2) shall be guilty of an offence and liable to a category 1 civil penalty.

(4) If the Commission is satisfied that an amendment or repeal of the rules of a
30 fund is consistent with this Act, it shall register the amendment or repeal and return to the principal officer of the fund a copy of the amendment with the date of registration endorsed thereon:

Provided that if any such amendment or repeal has the effect of reducing any benefit that has accrued to a member in respect of his or her service prior to the amendment or repeal, the Commission may refuse to approve the amendment or repeal.

35 (5) If at any time the Commission considers that the rules of a fund require to be amended for the purpose of ensuring compliance with this Act, it shall direct the fund to amend them within such period as the Commission may specify, and the fund shall comply with the direction:

40 Provided that the fund may limit the application of any such amendment to persons who become members and beneficiaries of the fund after the effective date of the amendment, and the Commission shall not regard the rules of the Fund as so amended as being inconsistent with this Act solely on the ground that the amendment does not apply to persons who were members and beneficiaries before that date.

45 (6) If a fund fails to comply with a direction given to it under subsection (5), the principal officer shall be guilty of an offence and liable to a category 1 civil penalty.

(7) Where a direction under subsection (5) is given to any fund established by any other law that is not consistent with this Act, this Act shall take precedence.

(8) A fund shall after every amendment consolidate its rules, and in that event the principal officer shall forward to the Commission a copy of the consolidated rules and, if the Commission is satisfied that the consolidated rules are similar to the existing rules of the fund, the Commission shall register them and return a copy of them to the principal officer with the date of registration endorsed on them, and such consolidated rules shall thereupon take effect from the date of their registration. 5

(9) An amendment of the rules of a fund which has the effect of reducing, suspending or discontinuing any contributions to the fund shall not affect any person's liability to pay a contribution which became payable before the date of the resolution whereby the amendment was made, irrespective of the date on which the amendment may have taken effect. 10

(10) Notwithstanding any other provision of this section, when amending its rules, a fund shall pay due regard to the vested rights of stakeholders of the fund. 15

(11) A fund established in terms of any collective bargaining agreement or determination published in terms of the Labour Act [*Chapter 28:01*], or a fund established by or in terms of any enactment, other than the Labour Act [*Chapter 28:01*], shall allow in its rules for a participating employer, to discontinue his or her participation, or not participate within such fund, and set up a separate fund for his or her employees on condition that the separate fund provides benefits and conditions which are more favourable than a fund established in terms of this subsection. 20

Provided that the Commission may exempt a participating employer from complying with this subsection where, after receiving representations from the participating employer, the Commission is of the opinion that such exemption is to the best interest of the fund members. 25

PART IV

PAYMENTS TO AND FROM FUND

17 Payments to fund

(1) Notwithstanding anything to the contrary in the rules of a fund, every participating employer shall pay the following amounts to the fund in full— 30

- (a) any contribution which, in terms of the rules of the fund, the employer is required to deduct from the remuneration of a member; and
- (b) any contribution which the employer is liable to pay in terms of the rules of the fund. 35

and in connection with those payments the employer shall provide the fund, either at the time of payment or within fourteen days after the end of the month in respect of which the contributions were payable, with such information as may be prescribed.

(2) Notwithstanding any collective bargaining agreement or any arrangement to the contrary, all contributions to the fund shall be paid directly to the fund unless an alternative has been approved by the Commission. 40

(3) Every participating employer shall, not later than fourteen days after the end of the month in respect of which the contribution is payable, remit all contributions that are payable to a fund in terms of its rules.

(4) Any participating employer who fails to remit contributions within the period referred to in subsection (3) shall be guilty of an offence and liable to a category 1 civil penalty.

5 (5) Where a participating employer fails to remit contributions in terms of subsection (3), the Principal Officer shall report to the Commission, within seven days after the expiration of the fourteen days referred to in subsection (3).

(6) Any Principal Officer who fails to report to the Commission within the period referred to in subsection (5) shall be guilty of an offence and liable to a category 1 civil penalty.

10 (7) On the conviction of a participating employer for an offence which consists of a failure to pay any contribution in terms of this section; the court convicting such participating employer shall, in addition to any penalty which it may impose, give summary judgment in favour of the fund for the amount which the participating employer failed to pay together with interest at the prescribed rate on the amount due
15 with effect from the last day of the month in respect of which the contribution was payable.

(8) Without derogation from section 385 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], where a participating employer contravenes this section, the following persons shall be personally liable for the contravention—

- 20 (a) every director or executive officer who is regularly involved in the management of the participating employer's overall financial affairs;
- (b) every person in accordance with whose directions or instructions the governing body or structure of the participating employer acts or who controls or who is regularly involved in the management of the
25 participating employer's overall financial affairs;

unless it is proved that he or she took no part in the commission of the offence.

18 Transfer of accrued benefits and rights between funds

(1) Where a person ceases to be a member of a fund and becomes a member of another fund which permits him or her to transfer to that other fund any benefit or
30 right to which he or she has become entitled from the first-mentioned fund, the first-mentioned fund shall, within thirty days after the member has in writing requested it to do so, or within such longer period as the Commission may allow, transfer that benefit or right, in full, to the other fund.

(2) Where a fund fails to transfer a benefit or right within the period specified
35 in subsection (1), the registered transferor fund shall pay to the registered transferee fund interest at the prescribed rate on the value of the benefit or right, calculated from the date on which the fund was requested to make the transfer.

19 Minimum benefits

40 Every fund shall provide the following minimum benefits to its members and beneficiaries—

- (a) where a person ceases to be a member of the fund prior to retirement in circumstances other than dissolution of the fund, the benefits payable to him or her shall not be less than the prescribed minimum individual reserve;

- (b) where the fund is dissolved in the circumstances described in section 12, the benefits paid to each of its members shall not be less than the minimum individual reserve:

Provided that, where the fair value of the fund’s assets is lower than the sum of the minimum individual reserves for all members who are being included in the distribution of the assets after adjustment for any benefits previously paid to them and the cost of annuity policies to provide equivalent pensions to all existing pensioners and deferred pensioners, the minimum individual reserve may be proportionally reduced in the ratio which the fair value of the assets bears to the total of all the minimum individual reserves adjusted for any benefits paid previously plus the cost of such annuity policies;

- (c) where the fund is converted to a defined contribution category fund, the amount to be credited to each member’s individual account shall not be less than the minimum individual reserve:

- (d) a pension increase of an amount not less than the minimum pension increase shall be granted to pensioners and deferred pensioners on the effective date of the first actuarial valuation following—

- (i) the registration of the fund; or
- (ii) the appointed day, in the case of funds established before the appointed day;

and at least once every three years for a defined benefit fund and at least, once every year for a defined contribution fund, thereafter.

(2) A fund shall not make any *ex-gratia* payment out of such fund’s assets unless such payment is fully funded by the employer or any other person.

(3) Notwithstanding anything to the contrary in the rules of the fund concerned, persons who cease to be members of a fund shall receive, as part of their transfer values or benefit payments, a share of—

- (a) any actuarial surplus; and
- (b) the fund’s investment reserve account; and
- (c) such contingency reserve accounts as the board deems appropriate;

their share bearing the same ratio as the fund’s liability in respect of past service of the members leaving the fund bears to the fund’s liability towards all its members in respect of past service at the date on which the persons concerned ceased to be members:

(4) A participating employer of an existing fund may, in addition to contributing to the fund, take out a policy of life insurance in favour of each of his or her employees who are members of the fund, which policy shall provide benefits equivalent to at least the employee’s annual pensionable emoluments or such other amount as may be prescribed.

20 Minimum contributions

(1) Members and participating employers of every defined contribution category fund shall pay contributions of such minimum amounts as may be agreed upon in the rules of the fund.

(2) Members and participating employers who fail to pay contributions in terms of subsection (1) shall fall in contribution arrears.

21 Actuarial surpluses

(1) Where there is an actuarial surplus in a fund, it shall vest in the fund and shall be allocated, in the manner prescribed in the rules of the fund, in accordance with this section.

- 5 (2) Notwithstanding anything to the contrary in the rules of the fund, the board of the fund shall use an actuarial surplus for one or more of the following purposes—
- (a) to improve benefits for existing members and additionally, or alternatively, pensioners;
 - 10 (b) to supplement benefits previously paid to former members or to supplement transfer values previously transferred in respect of former members;
 - (c) to reduce current contributions due from participating employers of a defined benefit fund;
 - (d) for transfer, wholly or partly, to a contingency reserve account:

15 Provided that before the actuarial surplus is used in terms of this subsection, the fund shall seek approval from the Commission.

PART V

MANAGEMENT AND ADMINISTRATION OF FUNDS

22 Postal address, electronic mail address and registered office

- (1) Every fund shall have in Zimbabwe—
- 20 (a) a postal address; and
 - (b) a registered physical office and address; and
 - (c) if it transacts any business electronically, an electronic mail address;

particulars of which shall be notified to the Commission upon registration.

25 (2) Where a fund wishes to change its addresses referred to in subsection (1), it shall within fourteen days before such change, notify the Commission, in writing, of the change, and the fund shall publish in the *Gazette* and in a daily newspaper of appropriate circulation or any other media approved by the Commission, an advertisement stating the change of address and thereafter change the said address.

30 (3) Where the address of a fund is changed in terms of subsection (2) the Commission shall enter the new address in its register.

(4) A fund that contravenes this section shall be guilty of an offence and liable to a category 1 civil penalty.

23 Board of fund

35 (1) Every fund shall have a board consisting of at least of five members and a maximum of nine members, of which at least one-half shall be elected by the members of the fund and the other board members being appointed by participating employers:

Provided that the Commission, on application by a fund, may—

- 40 (a) if satisfied that a five-member board would be impractical or unduly expensive or is not in the best interest of the fund, authorise the fund to have a board of fewer than five members; or

- (b) if satisfied that more than nine members would be in the best interest of the fund, authorise the fund to have a board of more than nine members; or
- (c) exempt the fund from the requirement that at least one-half of its board members shall be elected by members if the fund is a retirement annuity fund and may at any time for good cause shown and on due notice to the fund, withdraw any such authorisation or exemption. 5

(2) A fund shall appoint at least one independent expert member who, in the opinion of the fund shall assist the board members in exercising their functions:

Provided that a person who is an officer or employee of the fund shall not be eligible for appointment in terms of this subsection. 10

(3) No person shall be appointed as a board member of more than three funds.

(4) At its first meeting, the board shall elect from amongst its members a chairperson and vice chairperson of the board.

(5) The vice chairperson of the board shall perform the functions of a chairperson whenever the chairperson is unable to do so. 15

(6) Whenever the office of chairperson or vice chairperson falls vacant the board shall within fourteen days elect one of its members to fill the vacancy.

(7) On the death of, or the vacation of office by a board member, the fund shall appoint a person to fill the vacancy within 2 months after the position becomes vacant. 20

(8) In electing or appointing the members of the board, the fund shall endeavour to ensure that gender equality and geographical representation is attained.

24 Functions and duties of board

(1) The board of every fund shall be responsible for directing, controlling and supervising the operations of the fund in accordance with this Act and the rules of the fund, and for that purpose the board shall— 25

- (a) ensure that proper control systems are put in place to ensure that the fund complies with this Act and any other law;
- (b) ensure that the rights and benefits of members and beneficiaries of the fund are protected and that such members and beneficiaries are adequately informed of their rights, benefits and duties in terms of the rules of the fund; 30
- (c) ensure that the rules, operations and administration of the fund comply with this Act and any other law;
- (d) take all reasonable steps to ensure that contributions to the fund are paid when they are due; 35
- (e) take all reasonable steps to ensure that the fund is managed in a sound manner;
- (f) where appropriate, obtain expert advice on matters on which the board lacks expertise; 40
- (g) formulate policies to further the objectives and purposes of the fund;
- (h) ensure that records of all its proceedings and of the business of the fund are kept;

(2) Board members shall, individually and collectively, in the exercise of their powers and discharge of their duties—

- (a) take reasonable steps to protect the interests of members and beneficiaries of the fund, especially in the event of—
 - 5 (i) the amalgamation of or transfer of any business; or
 - (ii) the split of the fund; or
 - (iii) the dissolution of the fund; or
 - (iv) the withdrawal of a participating employer or the termination or reduction of contributions by a participating employer; or
 - 10 (v) the conversion of the fund from a defined benefit scheme to defined contribution scheme, or vice versa;
- and
- (b) act honestly and in good faith with a view to the best interest of the fund; and
- 15 (c) exercise the care, due diligence and skill that a reasonable and prudent person would exercise in comparable circumstances; and
- (d) avoid conflict of interest; and
- (e) act impartially towards all members and beneficiaries;
- 20 (f) inform the Commission on becoming aware of any material matter relating to the affairs of the fund which, in the opinion of the board, may seriously prejudice the financial viability of the fund and its members

25 Qualifications and disqualifications for appointment as member of board

(1) No person shall be appointed, elected or continue to act as a board member unless he or she possesses such qualifications and additionally, or alternatively, has such experience or expertise as may be required for the proper administration of the fund.

(2) Notwithstanding the generality of subsection (1), every board member must—

- 30 (a) be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity to be entrusted with the responsibilities of the office; and
- (b) be conversant with rules of the fund.

(3) Every fund shall ensure that its board has an appropriate diversity of skills, experience or qualifications for managing the fund, including skills, experience or qualifications in—

- (a) the law relating to pensions and trusts;
- (b) the principles relating to—
 - 40 (i) the financial management of funds;
 - (ii) investment of assets of such funds;
 - (iii) risk management of funds.

(4) Subject to subsection (1) and (2), the degree of knowledge and understanding required for board members is that appropriate for the purpose of enabling such board member to properly exercise his or her powers and discharge his or her duties as a board member of any fund.

(5) Every fund shall within seven days, after appointing or electing a board member, forward to the Commission for approval the name of the appointed or elected board member together with the board member's— 5

(a) police clearance issued within a period of six months before the date of his or her appointment or election;

(b) declaration form in the form as may be prescribed; and 10

(c) any other relevant information as the Commission may reasonably require.

(6) No person shall be qualified for appointment or election or continue acting as a board member if—

(a) he or she has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or 15

(b) he or she has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or 20

(c) within a period of five years preceding his or her application for appointment or election, he or she has been convicted inside or outside Zimbabwe of an offence involving dishonesty; or

(d) within a period of five years preceding his or her application for appointment or election, he or she has been found guilty of an act involving dishonesty or financial offence such as terrorist financing and money laundering in any proceedings of a disciplinary nature; or 25

(e) there is a material conflict of interest between the board member and his or her role as such; or

(f) he or she has behaved in a manner which, in the opinion of the Commission, is of a disgraceful or undesirable nature which may include the following— 30

(i) gross mismanagement of a pension fund; or

(ii) improper recording or gross mismanagement of information;

or 35

(g) he or she has been certified either inside or outside Zimbabwe to be mentally challenged or intellectually handicapped or of unsound mind, and the certification remains in force; or

unless exempted by the Commission, he or she does not reside in Zimbabwe.

(7) The Commission may, in the public interest, remove from office any board member who, in terms of this section, is disqualified to hold office as such. 40

Provided that the Commission shall, before removing such board member from office, notify the board member of the proposed removal of such board member from office and call for representation from him or her.

26 Terms of office of board members

(1) Subject to this Part, a board member shall hold office for such period as shall be stipulated in the fund rules, which period shall not exceed ten years:

Provided that each term of office shall not exceed five years.

5 (2) On the expiry of the period for which a member has been appointed or elected, he or she shall continue to hold office until he or she has been re-elected or re-appointed or his or her successor has been elected or appointed:

Provided that a board member shall not continue to hold office under this subsection for more than three months.

10 (3) No board member shall be re-appointed to a board if he or she has already served on that board for one or more periods, whether consecutive or not, amounting in the aggregate to ten years or if he or she is a member of three other such boards.

(4) Where a board member resigns from the Board prior to the expiration of his term of office, the board and the board member must furnish the Commission with
15 the reasons for the board member's resignation.

27 Trainings and assessments

(1) Unless exempted by the Commission, every board member shall undergo training on core skills within 6 months of appointment or election as a board member.

20 (2) Any person who, before the coming into effect of this Act, was a board member shall unless exempted by the Commission, undergo training on core skills within one year from the date of publication of this Act.

(3) Any board member who without good cause shown fails to comply with this section shall be disqualified to act as such until he or she acquires the training on core skills.

25 (4) The core skills referred to in this section shall be determined by the Commission from time to time.

(5) The training providers, who provide trainings referred to in subsection (1), and the training curriculum shall be approved by the Commission.

28 Principal Officer of fund

30 (1) Every fund shall have a principal officer appointed by its board in terms of its rules, who shall be ordinarily resident in Zimbabwe.

(2) The chairperson of the board of a fund shall not be eligible to be appointed as the principal officer of the fund.

35 (3) The principal officer of a fund shall not be a board member and shall be responsible, subject to the control and direction of the board, for the day to day management of the fund and for ensuring that the duties imposed on the fund by this Act and any other Act are carried out efficiently and effectively.

(4) The principal officer shall be eligible to attend board meetings, but shall not exercise any voting rights.

40 (5) A fund shall notify the Commission in writing of the name and address of its principal officer.

(6) No fund shall appoint a principal officer or change the address of its principal officer unless it has given not less than 14 days prior written notice to the Commission of the change or appointment.

(7) Every principal officer shall be a fit and proper person with due regard to his or her experience, conscientiousness and integrity to be entrusted with the responsibility of the office, and sections 25 and 27 shall apply, with necessary changes, to the appointment of the principal officer. 5

(8) Every principal officer shall inform the Commission on becoming aware of any material matter relating to the affairs of the fund which, in his or her opinion may seriously prejudice the financial viability of the fund and its members. 10

(9) Every principal officer shall, in the discharge of his or her duties —

(a) take reasonable steps to protect the interests of members and beneficiaries of the fund, especially in the event of—

(i) the amalgamation of or transfer of any business; or

(ii) the split of the fund; or 15

(iii) the dissolution of the fund; or

(iv) the withdrawal of a participating employer or the termination or reduction of contributions by a participating employer; or

(v) conversion of the fund from a defined benefit scheme to defined contribution scheme, or vice-versa; 20

and

(b) act honestly and in good faith to the best interest of the fund; and

(c) exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances; and

(d) avoid conflict of interest; and 25

(e) act impartially towards all members and beneficiaries.

(9) Subsections (6), (7) and (8) shall apply to key personnel for stand-alone self-administered funds responsible for the following functions —

(a) internal audit;

(b) risk management; 30

(c) compliance;

(d) finance; and

(e) any other person as the Commission may specify.

(10) A fund that contravenes this section shall be guilty of an offence and liable to a category 2 civil penalty. 35

29 Auditor, valuator, custodian, fund administrator

(1) Every fund shall appoint in terms of its rules —

(a) an external auditor, who shall not be an officer of the fund; and

(b) a valuator who shall not be an officer of the fund; and

(c) a custodian, in the case of a self-administered fund; and 40

- (d) a fund administrator except in the case of a stand-alone self-administered fund; and
- (e) a fund manager;

Provided that—

- 5 (i) it shall not be obligatory for a fund which has been exempted in terms of section 34(3) to appoint an actuary.
- (ii) in the case of an insured fund, the actuary, auditor and custodian where applicable, shall be the valuator, auditor and custodian of the insurance company.
- 10 (iii) unless approved by the Commission, a fund shall not appoint the same person as its auditor or valuator for a continuous period of more than five years in any eight-year period.

(2) Every fund shall ensure that the persons it appoints in terms of subsection (1) are fit and proper persons who do not have a record of performing in an unprofessional
15 manner.

(3) In appointing the persons in terms of subsection (1), the fund shall consider whether the person—

- (a) has ever been declared bankrupt or insolvent, or has entered into arrangement with his or her creditors;
- 20 (b) has, within five years prior to the application, been convicted of an offence involving dishonesty terrorist financing and money laundering;
- (c) was previously in the management or administration of a fund whose certificate of registration has been revoked under this Act due to his or her fault either fully or partially;
- 25 (d) is disqualified under any other law, or his or her holding office as such is determined by the board as being in any way detrimental to the fund.
- (e) performed some unsatisfactory work for which any fund lodged a complaint with his or her professional body;
- 30 (f) has provided inadequate or services in an unsatisfactory manner resulting in any fund's certificate of registration being revoked by the Commission;
- (g) has adequate professional, technical and operational systems to perform the services they intend to perform for the fund;
- (h) meets any additional requirements as may be prescribed by the Commission from time to time.

35 (4) Where, in appointing a person in terms of subsection (1), the fund becomes aware that the person had a complaint lodged against him or her in terms of subsection (3)(e) and had performed work in a manner that caused a fund to have its certificate of registration revoked in terms of subsection (3)(f), it shall not appoint such person as its external auditor, valuator, custodian, fund administrator or fund manager.

40 (5) Every person referred to in subsection (1) shall have a general obligation to—

- (a) act honestly and in good faith with a view to protect the best interests of the registered fund;

- (b) exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances;
 - (c) avoid conflict of interest;
 - (d) act impartially; and
 - (e) report to the Commission as soon as reasonably practicable any occurrence which in his or her opinion could be detrimental to the rights of the members or beneficiaries of the fund; 5
- (6) The Second Schedule shall apply to the registration, and functions of fund administrators and fund managers.
- (7) A fund that contravenes subsection (1) and (4) shall be guilty of an offence and liable to category 2 civil penalty. 10

PART VI

FINANCIAL REQUIREMENTS

30 Definitions in this Part

In this Part— 15

“financial statements” means—

- (a) a statement of financial position; and
- (b) a statement of comprehensive income; and
- (c) a statement of cash flow; and
- (d) unaudited monthly, quarterly or audited annual financial accounts; and 20
- (e) any other statements that may be prescribed;

“financial year” in relation to a fund established in terms of this Act or any other enactment, means the period of twelve months ending on the 31st of December in any year. 25

31 Holding of assets of fund

(1) All the assets of a fund, including any policy of insurance, shall be controlled and held in the name of the fund or any other person who is approved by the Commission or who is a member of a class of persons approved by the Commission.

(2) Subject to subsection 1, where a fund acquires any asset, the fund shall as soon as possible register the asset in its name. 30

(3) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

32 Accounts and financial statements 35

(1) Every fund shall maintain such financial records and any other records as are necessary for the purpose of holding and accounting for the assets and liabilities of the fund.

(2) A fund shall, within three months after the end of its financial year, submit to the Commission audited financial statements, prepared in accordance with of the Public Accountants and Auditor’s Act [*Chapter 27:12*], together with— 40

- (a) a copy of any report by the auditor relating to any of the activities of the fund during that financial year; and
- (b) a copy of any annual report that the fund issued to its stakeholders in respect of that financial year; and
- 5 (c) a copy of any other statement that the fund presented to its stakeholders in respect of any of its activities during that financial year; and
- (d) such other statements, reports, documents and information as may be prescribed.

(3) The Commission may, by notice in writing, exempt a fund from submitting audited financial statements in terms of subsection (1) if the Commission is satisfied that the size of the fund does not warrant it, but the fund shall submit its unaudited annual accounts and the other reports and statements required by that subsection.

(4) Unless exempted by the Commission, every fund, other than insurance company scheme, shall cause its financial statement to be published in a newspaper of appropriate circulation or in any other manner approved by the Commission, within 15 three months after the end of its financial year.

(5) Any person who fails to comply with this section shall be guilty of an offence and liable to a category 1 civil penalty.

33 Life insurers to maintain separate Pensions Fund and separate accounts

(1) A life insurer which carries on pension and provident fund business shall maintain—

- 25 (a) a separate fund, to be called the “Pensions Fund”, representing the liabilities of that insurer in respect of its pension and provident fund business; and
- (b) separate accounts relating to the statement of comprehensive income of that insurer in respect of its pension and provident fund business.

(2) A life insurer which carries on pension and provident fund business shall, on the recommendation of a valuator which is based on the liabilities represented in 30 the insurer’s Pensions Fund, designate which of the insurer’s assets shall be regarded as assets of the Pension Fund, and the assets so designated shall be clearly shown in the statement of financial position of that insurer as being regarded as assets of the Pensions Fund.

(3) Part of the assets of a life insurer’s Pensions Fund may be held in the form of shares in a company which is the insurer’s holding company or in other subsidiary 35 companies of that holding company, as defined in section 2 of the Companies Act [Chapter 24:03]:

Provided that—

- 40 (i) the aggregate value of the shares, including shares held in a company which is a subsidiary company of the insurer itself, shall not exceed five *per centum* of the value of the total assets in the Pension Funds;
- (ii) the shares shall not confer any right on the life insurer to vote at any meeting of members of the holding company or subsidiaries, notwithstanding anything to the contrary in such companies’ articles 45 of association.

(4) At the end of the insurer's financial year, the insurer shall submit to the Commission a return showing the aggregate value of Pensions Fund, the detailed split of funds as well as each fund's share of the balances comprising the Pensions Fund together with details of the underlying assets supporting the Pensions Fund and such other information as the Commission may require. 5

(5) Unless exempted by the Commission, every life insurer shall cause a return showing the aggregate value of Pensions Fund to be published in a newspaper of appropriate circulation or in any other manner approved by the Commission, within three months after the end of its financial year.

(6) If, on the winding up of the operations of a life insurer which carries on pension and provident fund business, and the insurer's assets are insufficient to pay in full the claims of every holder of a policy issued by the insurer, the assets which have been designated in terms of subsection (2) as assets of the insurer's Pensions Fund shall be applied only for the benefit of the funds operated or administered by the insurer. 10

(7) Assets which have been designated in terms of subsection (2) as assets of the Pensions Fund shall not be attached to satisfy a claim against a life insurer which claim is not in respect of pension and provident fund business. 15

34 Actuarial Valuation

(1) Subject to this section, a fund shall cause its financial condition to be investigated and reported upon by an actuary as may be prescribed from time to time, and upon finalisation, the fund shall within 30 days of receiving a report from the actuary submit— 20

- (a) a signed copy of the actuarial report; and
- (b) a summary of the key findings of the actuarial report;

to the Commission. 25

(2) If the Commission is satisfied that the financial methods adopted by a fund are such as to render periodical investigations by an actuary unnecessary, the Commission may, if so requested by the fund, exempt the fund from compliance with subsection (1), subject to such conditions as the Commission may specify.

(4) The Commission may at any time vary any conditions fixed in terms of subsection (3) or cancel any exemption granted in terms of that subsection. 30

(5) A fund shall be exempted from compliance with subsection (1) if—

- (a) its rules provide for the payment of a lump sum benefit, based on a return of contributions with interest and a share of profits, which may be applied to the purchase of a pension from an insurer; or 35

(b) it is an insurance company scheme—

- (i) the rules of which provide that the contributions payable by the members and the participating employers will be shown in the insurance policy issued in connection with the scheme; and
- (ii) which does not provide for the payment of a pension based on the salary or emoluments of the member immediately before the pension becomes payable or the average of his or her salary or emoluments during a specified period. 40

(6) A fund which contravenes subsection (1) shall be guilty of an offence and liable to a category 1 civil penalty.

35 Investments

(1) Subject to subsection (7), a fund shall at all times hold its assets in Zimbabwe
5 in investments which are realisable in Zimbabwe.

Provided that the Commission may, in writing, authorise—

- (a) a fund to hold part of its assets in other investments approved by the Commission, subject to such terms and conditions as it may from time to time fix;
- 10 (b) a fund to invest all or part of its assets in foreign markets, subject to such terms and conditions as the Commission may fix.

(2) Subject to subsection (7)—

- (a) a registered fund that is not an insurance company scheme shall at all times hold and maintain investment in approved securities, of not less
15 than the prescribed amount, of the aggregate fair value of all its assets in Zimbabwe in—
 - (i) local registered securities which are issued or guaranteed by the State or which are issued by a local authority or statutory body; or
 - (ii) any other assets that may be approved by the Minister from time to
20 time.
- (b) an insurer which carries on pension and provident fund business shall at all times hold at least a certain *per centum* of its assets as may be prescribed from time to time, which are assets in Zimbabwe and which have been designated in terms of section 33(2) as being assets of its Pension Fund,
25 in securities or loans specified in paragraph (a)(i) or (ii).

(3) Subject to subsection (7), no fund shall invest or expose, whether by way of loans or otherwise—

- (a) more than a percentage prescribed by the Minister of the aggregate fair value of total assets in the following—
 - 30 (i) the business of—
 - A. a participating employer; and
 - B. holding company of a participating employer; and
 - C. a subsidiary of the participating employer's holding company; and
 - 35 D. a holding company of an associate of a participating employer; and
 - E. an associate of a participating employer;
 - and
 - (ii) any business which is controlled or managed by a participating
40 employer:

Provided that the Commission may exempt, either wholly or in part, any fund established by a local authority or a statutory body from this paragraph;

- (b) its assets in any business referred to in paragraph (a) unless the risk return trade off on the investment is reasonable and the investment is not prejudicial to the fund.
- (4) A fund shall not, without the prior approval of the Commission, directly or indirectly acquire or hold shares or any other financial interests in another entity which results in the fund exercising control over that entity. 5
- (5) A fund may, if its rules so provide, grant to a member a loan or a guarantee, for the purposes of purchasing an immovable property on which a dwelling house has been or is to be erected, secured by a first mortgage bond on such immovable property:
- Provided that the loan or guarantee shall not exceed— 10
- (a) the amount of the member’s individual minimum reserve on the date on which the loan or guarantee was granted, and does not exceed seventy-five *per centum* of the fair value of the property; or
- (b) the fair value of the property if the member’s employer guarantees the fund that he or she will meet any shortfall between the amount referred to in paragraph (a) and the fair value of the property. 15
- (6) No fund shall engage in or carry on any form of business other than for which it was registered under this Act.
- (7) A fund which—
- (a) contravenes subsection (2) or (3) in regard to the holding or investment of its assets; or 20
- (b) grants a loan to a member in excess of the maximum amount permitted under subsection (5); or
- (c) engages in or carries on business in contravention of subsection (6);
- shall be guilty of an offence and liable to a category 2 civil penalty. 25

36 Troubled Funds

- (1) If, after examining any return or report in terms of this Act in respect of a fund, the Commission is of the opinion that the fund is not in a sound financial condition and a satisfactory recovery plan for bringing the fund into a financially sound condition within such time as may be prescribed has not been submitted to it— 30
- (a) the Commission shall direct the fund to submit a recovery plan setting out arrangements for the purpose of bringing the fund into a financially sound condition within such reasonable period as the Commission may specify; and
- (b) the fund shall submit such recovery plan to the Commission by the date specified by the Commission in terms of paragraph (a), together with a report on the recovery plan by the valuator or, if the fund has not appointed a valuator, a report on the recovery plan by the fund’s auditor unless exempted by the Commission to do so. 35
- (2) After considering a recovery plan submitted to it in terms of subsection (1), the Commission may— 40
- (a) approve the recovery plan, either unconditionally or subject to such conditions as it deems fit; or

(b) reject the recovery plan, in which case the fund shall submit a new recovery plan in accordance with fresh directions from the Commission, together with a report on the recovery plan by the valuator or auditor who reported on the rejected recovery plan.

5 (3) If the Commission is of the opinion that the financial condition of a fund is such that it is not possible or practicable to bring the fund into a financially sound condition within a reasonable time, the Commission may direct that all or any part of the business of the fund shall be wound up and that section 12 shall apply, subject to such modifications as the Commission considers reasonable.

10 (4) A fund which has been directed to submit a recovery plan in terms of subsection (1) and which, without just cause, fails to deposit such a recovery plan within the period specified in paragraph (b) of that subsection, shall be guilty of an offence and liable to a category 2 civil penalty.

15 (5) A fund which fails, without just cause, to carry out the provisions of a recovery plan that has been approved by the Commission in terms of subsection (2) shall be guilty of an offence and liable to a category 1 civil penalty.

PART VII

SUPERVISION AND INVESTIGATION OF FUNDS

37 Appointment of inspectors

20 (1) For the purpose of assisting the Commission to monitor and supervise funds, to carry out investigations and to ensure compliance with this Act, the Commission may appoint as inspectors—

- (a) any of its employees; or
- 25 (b) subject to the Public Service Act [*Chapter 16:04*], any members of the Public Service; or
- (c) any other person who, in the Commission’s opinion, has the necessary experience, qualifications or skill to exercise all the functions of an inspector or any such particular function, as the case may be.

30 (2) The Commission may appoint a body corporate as an inspector in terms of subsection (1) and where it does so all officers and employees of the body corporate who are designated by the body corporate’s head shall be inspectors.

(3) The Commission shall provide every inspector with a document identifying him or her as an inspector, and he or she shall produce it on request.

38 Powers of inspectors

35 (1) In the exercise of his or her functions under this Act, an inspector may, subject to subsection (2)—

- (a) at any time during normal office hours enter the business premises of a fund or any other premises in which it is believed on reasonable grounds that there are documents pertaining to the business of a fund;
- 40 (b) require any officer, employee or agent of a fund to produce any of the fund’s documents;
- (c) having entered a fund’s premises in terms of paragraph (a)—

- (i) search the premises for any moneys or records pertaining to the fund's pension and provident fund business;
- (ii) open or cause to be opened any strong-room, safe or other container in which it is suspected, on reasonable grounds, that there are any of the fund's money or records; 5
- (iii) examine and make extracts from and copies of the fund's records;
- (iv) remove any records from the premises, for so long as may be necessary for the purpose of examining them or making extracts from or copies of them:

Provided that the inspector shall give a full receipt for any record so removed; 10

- (d) require any officer, employee or agent of a fund—
 - (i) to explain an entry in the fund's records or accounts;
 - (ii) to provide the inspector with such information concerning the fund's management or activities; 15
 as the inspector may reasonably require.

(2) The powers of entry and search conferred by subsection (1) shall not be exercised except with the consent of the fund or of the person in charge of the premises concerned or, in the absence of such consent the inspector has a search warrant from a competent court. 20

39 Action that may be taken by Commission upon discovering illegal conduct by fund

(1) If, following a report by an inspector and, where appropriate, after considering any representations made by the fund concerned in terms of subsection (2), the Commission is satisfied that a fund has contravened any term or condition of its registration or any provision of this Act or any directive, requirement or order made under this Act, the Commission may, subject to this section, do any one or more of the following— 25

- (a) issue a warning to the fund;
- (b) require the fund to appoint a person who, in the Commission's opinion, is qualified to advise the fund on the proper conduct of its business; 30
- (c) issue a written instruction to the fund to undertake remedial action specified in the instruction;
- (d) instruct the fund to suspend or remove any member of its board or officer or employee who is responsible for such contravention; 35
- (e) direct the fund to suspend all or any of its pension and provident fund business;
- (f) place the fund under the management of an interim administrator;
- (g) convene a meeting of the stakeholders of the fund to discuss the remedial measures to be taken; 40
- (h) remove or cause the replacement of external service providers or report them to applicable authorities;
- (i) restrict the disposal of the fund's assets; and
- (j) any other directive the Commission may deem fit.

(2) Before taking any action in terms of subsection (1), the Commission shall inform the fund concerned, in writing, of—

- (a) the contravention of which it is believed to be guilty of and the reasons for that belief; and
- 5 (b) the action the Commission proposes to take in respect of the alleged contravention;

and shall afford the fund an adequate opportunity to make representations in the matter:

10 Provided that, where the Commission considers that immediate action is necessary to prevent irreparable harm to the fund or its stakeholders or creditors, the Commission may take such action before affording the fund an opportunity to make representations in terms of this subsection.

40 Investigation into affairs of fund

(1) If—

- 15 (a) a fund has failed to provide the Commission with any record or information required by or under any provision of this Act within the period specified by the provision, and has not provided that record or information within fourteen days, commencing on the date upon which the Commission or an inspector reminded the fund in writing of its failure; or
- 20 (b) a fund has knowingly provided incorrect or incomplete information to the Commission, and has not furnished correct or complete information within fourteen days, commencing on the date upon which the Commission or an inspector called upon the fund in writing to correct or complete the information; or
- 25 (c) any document or information provided to the Commission by a fund shows that the fund has failed to comply with any provision of this Act; or
- (d) the Commission has informed the fund of an irregularity that requires correction and the fund has not corrected that irregularity within fourteen days, commencing on the date upon which the Commission called upon
30 the fund in writing to correct the irregularity; or
- (e) the Commission has reasonable cause to believe that the rights of any class of members or beneficiaries are being prejudiced by a fund; or
- (f) a fund or any of its officers, employees or agents has prevented an inspector from exercising any of his or her powers in terms of section 38;

35 and the Commission considers that an investigation is necessary for the purpose of protecting the interests of fund members, preventing or detecting a contravention of this Act or any other law, the Commission may direct an inspector to conduct an investigation into the fund concerned or any aspect of its management or activities.

40 (2) For the purposes of an investigation in terms of subsection (1), an inspector may—

- (a) seize any securities, records or accounts of the fund concerned which in the inspector's opinion may afford evidence of an offence or irregularity:

Provided that—

- 45 (i) the inspector shall issue a receipt for any securities, records, or accounts so seized; and

- (ii) any securities, records, or accounts so seized shall be retained only for so long as may be necessary for the purposes of the investigation;
- (b) examine, whether under oath or otherwise, any person who is or was a member of the board of the fund concerned, or an officer, employee, agent, auditor, legal practitioner, valuator or stakeholder of the fund: 5

Provided that—

- (i) any person so examined shall be entitled to have his or her legal practitioner present at the examination;
- (ii) no person shall be required to answer any question which he or she would not be required to answer if he or she were a witness in a civil or criminal case before a court; 10
- (c) require any person referred to in paragraph (b) to produce any security, record, or account of the fund concerned to which he or she has access, or to give any information at his or her disposal relating to the management or affairs of the fund: 15

Provided that no such person shall be required to produce anything or to answer any question which he or she would not be required to produce or answer, as the case may be, if he or she were a witness in a civil or criminal case before a court.

(3) A fund whose securities, records, or accounts have been seized under this section shall be entitled, through its authorised representative, to examine, make entries in and make extracts from them during office hours under such supervision as an inspector may determine. 20

(4) In conducting an investigation in terms of subsection (1), an inspector shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, with any necessary changes, in relation to an investigation made in terms of this section and to any person summoned to give or giving evidence at that investigation. 25

(5) If, in the opinion of the Commission, it would be in the interests of the fund's stakeholders to do so, the Commission may, for the period of an investigation under this section, prohibit a fund being investigated from— 30

- (a) engaging such fund activities as the Commission may specify;
- (b) disposing of any property connected with the business of the fund concerned, for which purpose the Commission or inspector may, to such extent as the Commission shall specify, prevent the fund from operating any account with any bank, building society or financial institution. 35

(6) If the Commission considers such a course necessary to protect the interests of stakeholders or creditors of the fund concerned, the Commission may, before or during an investigation under subsection (1), require the fund to lodge all or any of its securities with the Commission for safe-keeping. 40

(7) The Commission shall return to the fund any securities lodged with it in terms of subsection (6) as soon as the Commission considers it to be in the interests of the fund's stakeholders or creditors for the securities to be returned:

Provided that, if the fund is dissolved in terms of section 12, the Commission shall deliver the securities to the liquidator of the fund. 45

41 Procedure on completion of investigation

(1) On completion of an investigation in terms of section 40, an inspector shall forward his or her report thereon to the Commission.

(2) On receipt of a report in terms of subsection (1), the Commission shall—

- 5 (a) send a copy of the report to the fund that was the subject of the investigation; and
- (b) invite the fund to make representations on the report.

(3) A fund to which a copy of the report has been sent in terms of subsection (2) shall, within thirty days, submit to the Commission representations on the report.

10 42 Action by Commission following investigation

(1) If, after considering an inspector’s investigative report sent to it in terms of section 41(1), together with any representations made by the fund concerned in terms of that section, the Commission is satisfied that the fund has contravened any term or condition of its registration or any provision of this Act or any directive, requirement or order made under this Act, the Commission may, subject to subsection (2), take any
15 action referred to in section 39(1).

Provided that where the fund does not make any representations the Commission will proceed to take action referred to in section 39 (1).

(2) Before taking any action referred to in subsection (1), the Commission shall—
20

- (a) inform the fund concerned, in writing, of the action it proposes to take; and
- (b) give the fund concerned fourteen days to make representations in the matter:

25 Provided that, where the Commission considers that immediate action is necessary to prevent irreparable harm in the fund or its stakeholders or creditors, the Commission may take such action before affording the fund an opportunity to make representations in terms of this subsection.

PART VIII

30 ADDITIONAL POWERS OF COMMISSION

43 Power to demand documents and information

(1) The Commission may at any time call upon—

- (a) a fund or a fund seeking registration; or
- (b) an officer of a fund or of a fund seeking registration; or
- 35 (c) a participating employer;

to provide the Commission with any record or information in relation to any matter connected with the business or transactions of that fund;

(2) Any person required to submit information in terms of subsection (1) shall submit such information within a period stated in the request by the Commission or
40 within such further period as the Commission may allow.

44 Commission may require unregistered fund to provide information

(1) The Commission may, by notice in writing, require any person whom it has reason to suspect is carrying on the business of a fund which is not registered to transmit to it, within such period as may be specified in the notice, a copy of the rules, if any, in terms of which the business concerned is being operated, together with a copy of the last annual accounts or any other accounts recorded by that person in relation to that business, and such other information relating to the business carried on by that person as the Commission may require, 5

(2) If a person who has been required in terms of subsection (1) to transmit any record, or information fails to comply with the notice within the period specified in the notice, the Commission may investigate or appoint an inspector to investigate the affairs or any part of the affairs of that person, and section 40 shall apply, with any necessary changes, in relation to the investigation 10

(3) Subject to section 8, if it appears from inquiries in terms of subsection (1) or an investigation in terms of subsection (2) that the person concerned is carrying on the business of a fund which is not registered, the Commission— 15

- (a) shall inform the person accordingly by notice in writing and cause the fund to register;
- (b) may, wind up the fund concerned, or take any measures that the Commission deems fit in a manner that minimises prejudice to members of the fund. 20

45 Commission may extend time-limits

Whereby in this Act any time is specified within which anything is to be done, the Commission may extend the time, if it is satisfied that the failure to comply with the provision relating to such time has not been or will not be due to culpable neglect or default on the part of the person concerned. 25

PART IX

GENERAL

46 Right to obtain copies of or to inspect records and to obtain information

(1) A fund shall provide to any stakeholder who requests it, at its expense as may be specified in the rules of the fund, a copy of— 30

- (a) the rules of the fund;
- (b) the latest financial statements of the fund.

(2) A stakeholder of a fund shall be entitled at all reasonable times to inspect, free of charge, at the registered office of the fund and to make extracts from— 35

- (a) the rules of the fund;
- (b) the latest financial statements of the fund;
- (c) the last report, if any, by a valuator in terms of section 34;

(3) A fund which, knowingly and without just cause— 40

- (a) fails to deliver any record to a stakeholder when required to do so in terms of subsection (1); or

- (b) prevents a stakeholder from exercising his or her rights in terms of subsection (2), or hinders or obstructs him or her in the exercise of those rights;

shall be guilty of an offence and liable to a category 1 civil penalty.

5 (4) Any person shall be entitled, on payment of the prescribed fee, to inspect any of the following records at the office of the Commission and to make copies of and take extracts from any such record—

- (a) the rules of any fund;
- (b) the latest financial statements of a fund;
- 10 (c) the last report, if any, prepared by a valuator in terms of section 34 in respect of any fund:

Provided that the Commission may waive the fee if it is satisfied that the inspection, copy or extract in question is required for the purpose of furthering a public interest.

15 (5) The Commission shall without charge provide any person, on request, with the address of the registered office of any fund and the name and contact details of its principal officer.

47 Amalgamations, splits and transfers

(1) Subject to this section and with the approval of the Commission—

- 20 (a) two or more funds may amalgamate and become one fund;
- (b) a fund may transfer all or part of its assets and liabilities to another fund;
- (c) a fund may split into two or more funds.

(2) Before an application is made to the Commission in terms of subsection (3), the boards of the funds shall cause a notice to be published in the *Gazette* and a newspaper of appropriate circulation or any other media approved by the Commission—

- 25 (a) of their intention to make the application for amalgamation, transfer or split; and
- (b) calling upon any member or interested person who has any objection to the proposed amalgamation, transfer or split to lodge his or her objection in writing with the Commission within such period as may be specified in the notice.
- 30

(3) A fund that desires to effect an amalgamation, transfer or split referred to in subsection (1) shall apply in writing for the Commission's approval, submitting with its application—

- 35 (a) a copy of a resolution by the board of each fund concerned; and
- (b) a copy of the scheme setting out details of the proposed amalgamation, transfer or split; and
- (c) a copy of every actuarial report or other statement taken into account for the purposes of the scheme; and
- 40 (d) any further information that the Commission may require, including any special report by a valuator or auditor.

(4) If, on receipt of an application in terms of subsection (3), the Commission is satisfied—

- (a) that the proposed amalgamation, transfer or split would be in the interests of the members and beneficiaries of the funds concerned; and
- (b) that the proposed amalgamation, transfer or split would not render any fund that is a party to it and which will continue to exist if the proposed amalgamation, transfer or split is completed unable to meet the requirements of this Act or to remain in a sound financial condition or, in the case of a fund that is not in a sound financial condition, to attain such a condition within a reasonable period; and
- (c) that any rules of a fund that is a party to the proposed amalgamation, transfer or split which are applicable to the proposed amalgamation, transfer or split have been complied with or that adequate arrangements have been made to ensure that they will be complied with at the appropriate time;

the Commission shall, as soon as possible and after considering any representations by members or any person, approve the amalgamation, transfer or split and forward a certificate of transfer, amalgamation or split to the funds concerned to the effect that the requirements of this section have been satisfied and that the funds concerned may amalgamate, transfer or split the assets and liabilities concerned, as the case may be.

Provided that the Commission may, in writing, authorise a fund to amalgamate with, transfer part or split all of its assets to a fund that is not registered in terms of this Act, subject to such terms and conditions as it may from time to time fix;

(5) Upon the completion of an amalgamation in terms of this section of two or more funds—

- (a) the amalgamated funds shall be deemed to be dissolved; and
- (b) the Commission shall cancel the registration of the amalgamated funds and register the new fund in terms of this Act; and
- (c) the assets of the amalgamated funds shall vest in the new fund and the new fund shall assume the liabilities of the amalgamated funds.

(6) Upon the completion of the transfer of all the assets and liabilities of one fund to another fund in terms of this section—

- (a) the transferor fund shall be deemed to be dissolved and the Commission shall cancel its registration; and
- (b) if any change in the name of the transferee fund has been agreed upon, the Commission shall enter that new name in its records in place of the former name and shall issue a certificate of registration to the fund concerned under its new name; and
- (c) the assets of the transferor fund shall be transferred to the transferee fund and the transferee fund shall assume the liabilities of the transferor fund.

(7) Upon the completion of a split of a fund in terms of this section, into two or more funds—

- (a) the split fund shall be deemed to be dissolved; and
- (b) the Commission shall cancel the registration of the split fund and register the new funds in terms of this Act; and

- (c) the assets of the split fund shall vest in the new funds and the new funds shall assume the liabilities of the split fund.

(8) Notwithstanding any other enactment, the Commissioner may, by order in the *Gazette*—

- 5 (a) direct the Master of the High Court, the Chief Registrar of Companies, the Chief Registrar of Deeds or any other official of the State or of any other authority specified in the order to make such endorsements on or alterations in his or her register or other records or to issue such certificates, deeds or other documents as may be specified in the order for
10 the purpose of recording and giving effect to an amalgamation, transfer or split approved by the Commission in terms of subsection (4); and
- (b) authorise or direct the waiver of the payment, in whole or in part, of any capital gains tax, transfer fee, stamp duty, registration fee, licence fee or other charge arising out of or in connection with an amalgamation,
15 transfer or split approved by the Commission in terms of subsection (4);

and the Master of the High Court, the Chief Registrar of Companies, the Chief Registrar of Deeds, the Commissioner-General of the Zimbabwe Revenue Authority or other official, as the case may be, shall comply with any such authorisation or direction.

- 20 (9) The amalgamation of two or more funds, the transfer of assets and liabilities from one fund to another or the split of a fund in terms of this section shall not affect the rights of any creditor of a party to the transaction otherwise than in his or her capacity as a member of such party.

- (10) When an amalgamation, transfer or split referred to in subsection (1) involves the transfer of assets or functions from one service provider to another, the transfer shall be effected within such period as may be prescribed or as the Commission
25 may approve.

(11) This section shall not apply to a transfer of assets and liabilities between two funds which is made by virtue of a change in employment of any member of a fund.

48 Termination of service

- 30 (1) In this section—
“service provider” means—

- (a) actuaries;
(b) asset managers;
(c) credit rating agencies;
35 (d) auditors;
(e) Fund managers and fund administrators.

(2) A fund reserves the right to terminate the services of any of its service providers on providing such notice in terms of any contractual and other agreements between the fund and its service provider.

- 40 (3) Upon the receipt of such notice to discontinue such service, a service provider shall cause the full membership, financial and statistical records to be compiled and passed on to the principal officer or such new appointee service provider as advised by the fund, subject to the following—

- (a) the maximum time frame to transfer the administration, accounting or secretarial service from one service provider to another as well as the full detailed records of the fund shall be sixty days;
- (b) the transfer of assets shall be made within ninety days:
- Provided that where the fund may be prejudiced because of assets held in a portfolio which cannot be immediately transferred, the insurer or fund, may apply to the Commission to extend the notice period but only for the portion of assets held in such portfolio, which extension shall not be for more than six months. 5
- (c) in the case of an insurance company fund, where the fund is invested in the insurer’s deposit administration scheme— 10
- (i) a maximum of three months to transfer that portion of the assets that have vested;
- (ii) a maximum of twelve months to transfer that portion of the assets that have not vested; 15
- (iii) an insurer may not discriminate by using a lower vested or non-vested bonus rate for paid-up or discontinuing contracts; and
- (iv) where an insurer has used an interim rate to calculate the assets to the transfer date, he/she shall make an appropriate adjustment upon the final declaration of the vested and non-vested bonus rate for the year in question. 20

49 Currency conversion

(1) In this section—

“currency conversion date” means—

- (a) the first currency conversion date, being the 1st February, 2009, when Zimbabwean dollars were suspended as legal tender by United States dollar; or 25
- (b) any subsequent date notified by the Minister in the *Gazette* as the date on which any currency which has been legal tender in Zimbabwe is superseded by any other currency; 30

“existing fund” means a fund that was in existence on the currency conversion date;

“former currency”, in relation to—

- (a) the first currency conversion date specified in paragraph (a) of the definition of “currency conversion date”, means Zimbabwean dollars; 35
- (b) any subsequent conversion date notified in terms of paragraph (b) of the definition of “currency conversion date”, means the currency which is superseded by a new currency as legal tender in Zimbabwe;

“new currency”, in relation to— 40

- (a) the first currency conversion date notified in terms of paragraph (b) of the definition of “currency conversion date”, means United States dollars;

(b) any subsequent currency conversion date notified in terms of paragraph (b) of the definition of “currency conversion date”, means the currency which supersedes the former currency as legal tender in Zimbabwe.

5 (2) The board of every existing fund that is a defined benefit category fund shall, as soon as possible after a currency conversion date—

(a) cause the fund’s actuary to calculate—

(i) the fund’s liabilities in the former currency towards its members, beneficiaries and other stakeholders at the currency conversion date, taking account of—

10

A. the investment return up to that date; and

B. the member’s contributions plus interest up to that date;

C. pensionable service of each member;

D. inflation;

15

E. other factors as may be necessary;

and assessing separately the fund’s liabilities towards its members, and its participating employers; and

(ii) the fair value of the fund’s assets in the former currency at the currency conversion date;

20

and

(b) cause the fund’s actuary to apportion the fair value of the fund’s assets in the new currency between the members, beneficiaries and other stakeholder so as to establish, so far possible, the fund’s liability in the new currency to each of those classes of persons.

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(3) The board of every existing fund that is a defined contribution category fund shall, as soon as possible after a currency conversion date, cause a valuator or other suitable person approved by the Commission to establish—

(a) the value in the former and the new currency of the accumulated contributions from members and employers, with interest, up to that currency conversion date; and

30

(b) the fair value of the fund’s assets in the former and the new currency at that currency conversion date;

and to apportion the fair value of the assets in new currency on an equitable basis between the members, beneficiaries and other stakeholders, taking account of the effects of inflation and other factors as may be necessary.

35

(4) Where assets which were held by an existing fund on a currency conversion date increase in value after that date, the increase shall be for the benefit of the members who were members, as the case may be, on that date.

50 Requirements for documents furnished to Commission

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(1) A fund shall be deemed not to have complied with any provision of this Act which requires such fund to furnish to the Commission a document prepared by the fund, unless the document is signed by the principal officer and one other person authorised by the board to sign the document.

- (2) Where a fund is required in terms of this Act to furnish to the Commission—
- (a) an original document, it shall also furnish such additional copies, not exceeding three, as the Commission may require;
 - (b) a copy of a document, it shall furnish one copy, certified by the fund’s principal officer, and such additional copies, not exceeding three, as the Commission may require. 5
 - (c) an electronic copy, copy shall be sent to the official electronic addresses provided by the Commission.

51 Effect of certificate of Commission on documents

Any document certified, by or on behalf of the Commissioner, to be a document lodged with the Commission in terms of this Act or to be a copy of such a document shall be *prima facie* presumed to be such a document or copy, and any such certified copy shall be admissible as evidence in any court as if it were the original document. 10

52 Service of process on fund

Process in any legal proceedings against a fund may be served on that fund at its registered office. 15

53 Appeals

- (1) Subject to this section, any person who is aggrieved by—
- (a) a decision of the Commission not to register a fund; or
 - (b) any term or condition attached to the registration of a fund, or a refusal by the Commission to specify a term or condition in a registration certificate; or 20
 - (c) any amendment of the registration of a fund; or
 - (d) a refusal by the Commission to give any consent or approval in terms of this Act; or 25
 - (e) any other decision, or action in terms of this Act;

may appeal to the Minister against the decision, or action concerned.

(2) An appeal in terms of subsection (1) shall be made in the form and manner prescribed and shall be lodged with the Minister within thirty days after the appellant was notified of the decision or action appealed against. 30

(3) In an appeal in terms of subsection (1), the Minister may conduct or cause to be conducted such inquiry into the matter as he or she deems appropriate and may confirm, vary or set aside the decision, or action appealed against.

(4) The Minister shall ensure that the appellant and the Commission are notified of any decision reached by him or her in terms of subsection (3). 35

(5) Any person who is aggrieved by a decision of the Minister on an appeal in terms of subsection (1) may appeal against the decision to the Administrative Court within the time and in the manner prescribed in rules of court.

54 Reports by Commission

(1) The Commission shall, within six months after the end of each financial year, submit to the Minister a report in regard to pension and provident fund business in Zimbabwe during the previous calendar year.

5 (2) The Minister shall lay a copy of a report submitted to him or her in terms of subsection (1) before Parliament on one of the fourteen days on which the Assembly sits next after he or she has received it.

(3) The Commission shall submit to the Minister a quarterly report in regard to pension and provident fund business.

10 55 Improper use of certain titles

(1) Without the written approval of the Commission, no person shall apply to any business carried on by him or her in Zimbabwe a name which includes the words “pension fund”, “provident fund” or “retirement annuity fund” or a name which indicates that he or she carries on the business of a fund unless the fund concerned is registered.

15 (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

56 Offences

(1) Any person who—

20 (a) in any statement, return, report, certificate, balance sheet or other document required by or for the purposes of this Act, intentionally makes a statement which is false in any material particular, knowing the statement to be false or not having reasonable grounds for believing it to be true; or

(b) with intent to deceive—

25 (i) destroys, mutilates, alters or falsifies any document or security belonging to a fund; or

(ii) makes or is a party to the making of a false or fraudulent entry in any register, account or other document belonging to a fund;

(c) fails or refuses to comply with a directive issued in terms of section 6;

30 shall be guilty of an offence and liable to a fine not exceeding level 10 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who, when called upon to do so in terms of this Act, without lawful excuse fails or refuses to—

(a) furnish information; or

35 (b) produce any document; or

(c) lodge any security; or

(d) render any other assistance to the Commission;

shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment

40 (3) Any person who, without lawful excuse, hinders or obstructs an inspector in the exercise of his or her functions under this Act shall be guilty of an offence and

liable to a fine not exceeding level 10 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) Any person who, without lawful excuse, fails to comply with any term or condition fixed or direction given by the Commission in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment: 5

Provided that this subsection shall not apply to offences whose penalties have been expressly stated in some provisions of this Act.

(5) Any person who fails, without lawful cause, to make a return or to transmit or deposit any recovery plan, report, account, statement or other document when required to do so in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment. 10

57 Liability of officers for offences of fund

Without derogation from section 385 of the Criminal Procedure and Evidence Act [Chapter 9:07] or from section 56, where a fund commits an offence under this Act: 15

- (a) the fund's principal officer; and
- (b) every person who is responsible for managing any part of the fund's business; and
- (c) every employee of the fund; 20

shall be guilty of that offence, unless it is proved that he or she took no part in the commission of the offence and may be charged and convicted accordingly.

58 Indemnity of members and employees of the Commission

(1) Subject to the provisions of this Act and any regulation made thereunder, no person shall incur any personal liability for any loss or damage caused by any act or omission by him or her in carrying out the duties under this Act or any regulation made thereunder, unless the loss or damage was occasioned intentionally or through recklessness or gross negligence. 25

- (2) The persons referred to in subsection (1) shall include the following—
- (a) members of the board of the Commission; 30
 - (b) committee members of the board of the Commission;
 - (c) Commissioner;
 - (d) employees of the Commission; and
 - (e) inspectors engaged by the Commission.

59 Conversion of fund 35

A pension fund may, with the approval of the Commission, convert from—

- (a) defined benefit fund to defined contribution fund; or
- (b) defined contribution fund to defined benefit fund; or
- (c) defined benefit fund or defined contribution fund to a hybrid fund; or
- (d) hybrid fund to either defined contribution fund or defined benefit fund; 40
or
- (e) any other such conversion.

60 Registered persons to conduct business prudently and lawfully

(1) Every registered person shall conduct its business and other operations in accordance with sound administrative and accounting practices and procedures, adhering to effective systems of risk-management policies and internal controls including effective functions for risk management, compliance, actuarial matters and internal audit.

(2) Every registered person shall take effective measures to combat money laundering and the financing of terrorism as defined in terms of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*].

(3) Any registered person who commits —

- (a) money laundering; or
- (b) financing of terrorism; or
- (c) proliferation financing.

shall be guilty of an offence and liable to the penalty as provided for in terms of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*].

61 Service of civil penalty order

(1) Where default is made in complying with any provision of this Act for which a civil penalty is specified to be leviable, the Commissioner may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act, or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate category specified in subsection (2) or (3) or any combination of such orders as the provision in question may allow.

(2) A category 1 civil penalty order referred to in subsection (1) provides for a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—

- (a) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;
- (b) which, upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide—
 - (i) a fixed penalty of the maximum amount for level fourteen for not meeting the specified deadline; and
 - (ii) a cumulative penalty of the maximum amount of level four for each day, not exceeding ninety days, for which the defaulter fails to pay the amount specified in subparagraph (i).

(3) A category 2 civil penalty order provides for a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the Commissioner or is possible), of which—

- (a) the fixed penalty shall be the maximum amount specified for level fourteen; and
- (b) the cumulative penalty shall be a penalty of the maximum amount of level four for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under paragraph (a).

(4) References to the Commissioner serving upon a defaulter any civil penalty order in terms of this Act, is to be interpreted as requiring the Commissioner to deliver such order (or such notice) in writing to the defaulter (or alleged defaulter) concerned in any of the following ways—

- (a) by registered post addressed to the defaulter’s (or alleged defaulter’s) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or 5
- (b) by hand delivery to the director, manager or any other senior officer of the defaulter (or alleged defaulter) in person (or through an inspector or other person employed in the office, or a police officer), or to a responsible individual at the place of business of the defaulter; or 10
- (c) by delivery through a commercial courier service to the defaulter’s (or alleged defaulter’s) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or
- (d) by electronic mail or telefacsimile at the electronic mail or telefacsimile address furnished by the defaulter (or alleged defaulter) to the Commissioner: 15

Provided that in this case a copy of the order or notice shall also be sent to the electronic mail or telefacsimile address of the defaulter’s (or alleged defaulter’s) legal practitioner in Zimbabwe. 20

(5) The Commissioner shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted shall be recorded by the Commission.

(6) The Commissioner may cite two or more defaults relating to different provisions of this Act if the defaults in question— 25

- (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
- (b) arose in connection with the same set of facts.

(7) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the Commissioner may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before— 30

- (a) summons is issued to the accused person for the prosecution of the offence; or
- (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or 35
- (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings). 40
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(8) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid, the defaulter shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

5 (9) The amount of any civil penalty shall —

(a) be payable to the Commission and shall form part of the funds of the Commission; and

(b) be a debt due to the Commission and shall be sued for in any proceedings in the name of the Commission in any court of competent civil jurisdiction.

(10) If the Commissioner in terms of subsection (9) (b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, he or she may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties—

(a) were all served within the period of twelve months preceding the institution of the proceedings; and

(b) were served on two or more companies or private business corporations whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(11) Unless the Commissioner has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subsection (8), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the Commissioner for the amount of any outstanding civil penalty due from the convicted defaulter.

62 Additional due process requirements before service of certain civil penalty orders

Where it appears to the Commissioner from written representations submitted to him or her that there may be a material dispute of fact concerning the existence or any salient aspect of the alleged default, the Commissioner must afford the alleged defaulter an opportunity to be heard by making verbal representations before the Commissioner, for which purpose the Commissioner shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply with necessary changes in relation to the hearing and determination before the Commissioner of the alleged default in question, and to any person summoned to give evidence or giving evidence before the Commissioner.

63 Regulations

(1) The Commission may make regulations with approval of the Minister, prescribing anything which under this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act and for ensuring the proper conduct of pension and provident fund business in Zimbabwe.

- (2) Regulations in terms of subsection (1) may provide for the—
- (a) form of any document referred to in this Act and the manner in which it shall be prepared, executed, registered, transmitted or delivered;
 - (b) fees to be charged in respect of anything required or permitted to be done by or in relation to the Commission; 5
 - (c) matters to be included in documents submitted with an application for the registration of a fund and the conditions and procedures for such registration;
 - (d) appointment of an actuary or an auditor, and the matters to be included in any report by a actuary or auditor; 10
 - (e) submission to the Commission of financial statements, reports, statistics, accounts and other documents;
 - (f) record keeping and preservation of the records by funds and fund administrators;
 - (g) fees to be paid for registering of persons, for inspecting or copying documents and for anything else done in terms of this Act; 15
 - (h) standards and requirements for expenses, capital adequacy, solvency and the management of risk to be observed by funds and fund administrators;
 - (i) principles relating to emergency, treatment and utilisation of actuarial surplus; 20
 - (j) minimum qualifications for officers of funds and fund administrators;
 - (k) standards of corporate governance to be observed by boards of funds and fund administrators;
 - (l) processes to be observed where a fund converts in terms of section 59;
 - (m) disclosure of remuneration, bonuses and other benefits paid to or received by officers and employees of funds and fund administrators; 25
 - (n) deductions by employers from emoluments payable to their employees of contributions to be paid to funds;
 - (o) the maximum benefits that may be payable by funds.
 - (p) withholding of benefits payable by a fund where the member concerned— 30
 - (i) has borrowed and not fully repaid money from the fund or from his or her employer and has pledged his or her rights to benefits from the fund as security for the loan; or
 - (ii) has been discharged because of dishonesty or terrorist financing and money laundering which has resulted in his or her employer suffering loss; 35
- and the person to whom such benefits, or any portion of such benefits, may be paid;
- (q) principles to be observed with respect to the investment of a fund’s assets;
 - (r) conditions subject to which the Commission may approve persons who are not insurers to act as fund administrators; 40
 - (s) issues relating to prohibition or control of the cession, pledging or hypothecation of benefits payable by a fund and the protection of such

benefits on insolvency or assignment or from attachment or execution under a judgement or order of a court;

- (t) any action necessary for promoting or facilitating financial planning for retirement;
- 5 (u) the manner in which employers may enable employees to obtain information and advice on pensions and saving for retirement;
- (v) the manner in which board members or managers of an occupational or personal pension fund may provide members with information and facilities to enable them to plan for their retirement;
- 10 (w) electronic registry for the Commission;
- (x) registration of fund administrators and fund manager;
- (y) treatment of unclaimed benefits;

(3) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof:

15 Provided that no such penalty shall exceed a fine of level twelve or imprisonment for a period of six months or to both such fine and such imprisonment.

(4) Regulations made in terms of subsection (1) shall not have effect until they have been approved by the Minister and published in the *Gazette*.

64 Contribution to Pension Protection Fund.

20 Every fund shall, except exempted by the Commission, contribute to a pension protection scheme established by the Commission in terms of the Insurance and Pensions Commission Act [*Chapter 24:21*].

65 Repeal of Cap. 24.09 and savings

(1) In this section—

25 “repealed Act” means the Pension and Provident Funds Act [*Chapter 24:09*].

(2) Subject to this section, the Pension and Provident Funds Act [*Chapter 24:09*] is repealed.

(3) Any fund that was registered in terms of the repealed Act immediately before the appointed day shall be deemed to have been registered in terms of this Act.

30 (4) The board of every fund referred to in subsection (3) shall take whatever steps are necessary to bring the rules and management of the fund into conformity with this Act within six months after the appointed day:

Provided that, when amending the rules, the board shall pay due regard to the vested rights of the fund’s members and beneficiaries.

35 (5) Any order, notice, application, exemption, approval, permission or other thing which was lawfully made, granted, given, issued, done or commenced in terms of the repealed Act and which, immediately before the appointed day, had or was capable of acquiring legal effect, shall continue to have, or be capable of acquiring as the case may be, the same effect as if it had been made, granted, given, issued, done or
40 commenced, as the case may be, under the appropriate provision, if any, of this Act.

SCHEDULE (Section 29)
FUND ADMINISTRATORS AND FUND MANAGERS

PART A

FUND ADMINISTRATORS

1. Registration of administrators 5

(1) A person shall not act as an administrator of a fund unless he or she has a certificate of registration issued in accordance with this Act.

(2) The provisions of subparagraph (1) shall not apply to a natural person who is an employee of a fund.

(3) Any person who contravenes this paragraph shall be guilty of an offence and liable to a fine not exceed level 14 or to imprisonment for a period not exceed 10 years or to such fine and such imprisonment. 10

2. Application and grant of certificate of registration of administrator

(1) An application for a certificate of registration to act as an administrator shall be in prescribed form and shall— 15

- (a) state whether the applicant has the adequate professional qualifications, technical knowledge, experience or operational ability to perform the functions of an administrator;
- (b) contain or be accompanied by any other information that the Commission may require for the purpose of determining the application; 20
- (c) contain the address of a place in Zimbabwe for the service on the applicant of any notice or document required or authorised to be served on the applicant under this Act; and
- (d) be accompanied by the prescribed fee.

(2) The Commission may grant a certificate of registration to an applicant who meets the requirements specified in subsection (1). 25

(3) The Commission shall publish in the *Gazette* and in a newspaper with wide circulation or in any manner a list of all registered administrators, at least once in every year.

(4) A person who acts as an administrator of a fund without a certificate of registration issued under this Act commits an offence and is liable on conviction to a fine not exceeding level 14 or to an imprisonment for a period not exceeding 10 years imprisonment or to both such fine and such imprisonment. 30

3. Refusal to grant certificate of registration of administrator

(1) The Commission may refuse to grant a certificate of registration to an applicant if the Commission is satisfied that— 35

- (a) the information contained in the application is false in any material particular;
- (b) the applicant is not a fit and proper person as prescribed;
- (c) the applicant has ever been an administrator of a fund whose certificate of registration was revoked by the Commission due to any fault either fully or partially of the applicant; or 40
- (d) the applicant does not meet any prescribed requirements specified.

(2) Where the Commission refuses to grant a certificate of registration to an applicant, the Commission shall, within five working days, notify the applicant of its decision and specify the reasons for refusal in writing.

4. Restriction on registration of administrator

5 A person shall not be issued a certificate of registration as an administrator of a fund if he or she—

- (a) has been sentenced to imprisonment by a court of competent jurisdiction for six months or more;
- 10 (b) is declared bankrupt or insolvent, or has entered into an arrangement with his or her creditors;
- (c) was previously involved in the management or administration of a fund whose certificate of registration has been revoked under this Act, due to any fault or partially of the applicant;
- 15 (d) is disqualified under any other written law, or his or her holding office as such is determined by the Commission as being, in any way, detrimental to the fund.

5. Validity of certificate of registration of an administrator

(1) A certificate of registration issued to an administrator shall be valid for one year and may be renewed upon payment of the prescribed fee.

20 (2) An application for the renewal of a certificate of registration under subsection (1) shall be made at least three months before the expiry of a certificate of registration.

6. Revocation of certificate of registration of administrator

(1) The Commission may revoke the certificate of registration of an administrator if—

- 25 (a) the Commission discovers after the certificate of registration has been issued that the administrator made a false statement in relation to the application;
- (b) an event occurs which renders the administrator ineligible to perform his or her functions as administrator;
- 30 (c) the administrator is in breach of any condition of the certificate of registration;
- (d) the administrator is disqualified by virtue of paragraph 5;
- (e) the administrative ceases to be a fit and proper person as may be prescribed;
- 35 (f) the administrator does not comply with any provision of this Act, or regulations made under this Act.

(2) The Commission shall give the administrator at least thirty days notice in writing specifying the reasons for the intended revocation of the certificate of registration.

40 (3) The Commission shall, before revoking a certificate of registration of an administrator, consider any representations made in writing by the administrator opposing the revocation.

(4) The Commission shall revoke the certificate of registration of an administrator within thirty days after issuing the expiration of the notice referred to in subparagraph (2), if the administrator has not opposed the revocation or the Commission is not satisfied by the representation made by the administrator under subparagraph (3).

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4. Functions of administrator

- (1) An administrator of a fund shall—
 - (a) ensure timely payment of contributions and benefits;
 - (b) carry out day to day administration and management;
 - (c) advise the fund on strategic fund matters including proper asset liability allocation decision; 5
 - (d) advice the fund on matters connected with or incidental to pensions laws or as may be prescribed under this Act;
 - (e) keep the records of the fund;
 - (f) process receipts and invoice; 10
 - (g) produce quarterly and annual accounts for audit;
 - (h) organise and arrange for meetings and take minutes therein; and
 - (i) prepare annual benefit statements and board member reports;
 - (j) advise the Commission on any material issues relating to the operations and strategic issues of the fund. 15
- (2) An administrator of a fund shall not act as a custodian, board member or fund manager of the same fund.
- (3) The provisions of subsection (2) shall apply to any assignee or related party of the administrator.
- (4) Any person who contravenes subparagraph (2) shall be guilty of an offence and liable to a category 2 civil penalty. 20
- (5) Part V to Part IX of this Act shall, with necessary changes, apply to fund administrators.

PART B

FUND MANAGER 25

- (1) A person shall not act as fund manager unless he or she has been permitted to do so in terms of section 38 of the Securities and Exchange Act [*Chapter 24:25*] and has been approved by the Commission
- (2) A fund manager shall—
 - (a) be responsible for management of funds and other assets of the fund for purposes of investment in accordance with the fund’s investment policy and the rules of the fund; 30
 - (b) provide advisory services on the investment of the funds and disseminating information concerning the assets available for investment of scheme funds. 35
- (3) A fund manager of a fund shall not act as a custodian, board member or administrator of the same fund.
- (4) The provisions of subparagraph (2) shall apply to any assignee or related party of the fund manager.
- (5) Any person who contravenes this paragraph shall be guilty of an offence and liable to a fine not exceed level 14 or to imprisonment for a period not exceed 10 years or to such fine and such imprisonment. 40