

**GENERAL RULES**

**OF THE**

**IF UMBRELLA PENSION FUND**

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# GENERAL RULES OF THE IF UMBRELLA PENSION FUND

## 1 INTRODUCTION

### 1.1 Name and Background

The IF Umbrella Pension Fund was established with effect from 1 January 2004. With effect from 1 July 2011 the RULES of the FUND were revised. These are the revised RULES of the FUND.

### 1.2 Objects

The object of the FUND is to provide benefits for MEMBERS of the FUND on their retirement or upon the death of such MEMBERS for their DEPENDANTS and/or NOMINEES.

### 1.3 Legal status

The FUND is a legal entity capable in law, in its own name, of suing and of being sued. The FUND is capable of doing all things that may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of the RULES.

### 1.4 Registered office

The registered office of the FUND is at 70 Grayston Drive, Sandhurst, Sandton, Johannesburg, 2196.

### 1.5 General Rules and Special Rules

1.5.1 The RULES of the FUND consist of these GENERAL RULES and the SPECIAL RULES.

1.5.2 The GENERAL RULES are applicable to all PARTICIPATING EMPLOYERS and MEMBERS of the FUND.

1.5.3 The benefits and special conditions applicable to each PARTICIPATING EMPLOYER and its MEMBERS are set out in the SPECIAL RULES. The provisions of the SPECIAL RULES

reflect the information set out in the EMPLOYER APPLICATION in respect of each PARTICIPATING EMPLOYER.

- 1.5.4 Each set of SPECIAL RULES will be registered as an amendment to the GENERAL RULES.
- 1.5.5 In the event of a conflict between the provisions of the GENERAL RULES and the SPECIAL RULES, the provisions of the GENERAL RULES will prevail.

## 2 DEFINITIONS AND INTERPRETATION

- 2.1 In the RULES, unless it is inconsistent with the context, or a contrary intention appears:
- 2.1.1 words and expressions defined in the ACT and not in the RULES will bear the meanings set out in the ACT;
  - 2.1.2 words and expressions reflecting one gender will include the other two genders;
  - 2.1.3 words and expressions denoting the singular number will include the plural and vice versa; and
  - 2.1.4 references to a natural person will include a juristic person and vice versa.
- 2.2 The headings are solely for ease of reference and must not be taken into account in the interpretation of the RULES.
- 2.3 The following words and expressions will bear the meanings set out below and cognate expressions will have corresponding meanings, namely:
- 2.3.1 “ACT” means the Pension Funds Act, 1956 and the regulations and conditions promulgated in terms of the Pension Funds Act, 1956, including any amendments which may be effective from time to time and any directive issued in terms of section 33A of the Pension Funds Act, 1956;
  - 2.3.2 “ACTUARY” means the actuary of the FUND appointed in terms of Rule 3.14 who is admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the Minister of Finance by notice in the Government Gazette;
  - 2.3.3 “AD HOC EXPENSES” means EXPENSES which are not necessarily able to be predetermined by the BOARD and/or

which may vary from time to time and/or which are not charged at a particular monthly or annual rate and will include, *inter alia*, fees, taxes, levies paid and accrued to service providers, the regulatory authorities, TRUSTEES, premiums in respect of professional indemnity and fidelity insurance and audit fees;

- 2.3.4 “ADJUDICATOR” means the Pension Funds Adjudicator appointed in terms of the ACT;
- 2.3.5 “ADMINISTRATOR” means the organisation appointed by the BOARD in terms of Rule 3.10.7 to attend to the day to day administration of the FUND;
- 2.3.6 “ANNUITY” means a compulsory non-commutable annuity payable for and based on the lifetime of the retiring MEMBER and his spouse, if a spouse’s annuity is elected by the MEMBER, which shall not be capable of being transferred, assigned, reduced, hypothecated or attached by creditors as contemplated in Sections 37A and 37B of the ACT, provided that this may include a LIVING ANNUITY;
- 2.3.7 “AON” shall mean Aon South Africa (Pty) Limited, a company duly registered in the Republic of South Africa, registration number: 1978/004501/07 with its registered address being 70 Grayston Drive, Sandhurst, Sandton.
- 2.3.8 “APPROVED FUND” means a fund registered in terms of the ACT and approved as a pension fund, provident fund or retirement annuity fund by the REVENUE SERVICE;
- 2.3.9 “APPROVED PENSION PRESERVATION FUND” means a fund registered in terms of the ACT and approved as a pension preservation fund by the REVENUE SERVICE;



- 2.3.10 "ASSET MANAGER" shall mean a person authorised by the REGISTRAR to act as an investment administrator in terms of s13B of the ACT;
- 2.3.11 "AUDITOR" means the AUDITOR appointed in terms of Rule 3.15 from time to time who must be registered with the Independent Regulatory Board of Auditors (IRBA);
- 2.3.12 "BENEFICIARY" means a person who is entitled to a benefit in terms of the RULES;
- 2.3.13 "BENEFICIARY FUND" means an association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits, referred to in section 37C of the ACT, on behalf of BENEFICIARIES, payable on the death of a MEMBER of the FUND and the members of any other APPROVED FUND or APPROVED PENSION PRESERVATION FUND;
- 2.3.14 "BOARD" means the BOARD of the FUND constituted in terms of Rule 3.1;
- 2.3.15 "BOARD MEMBER" means a person who has been appointed to serve as a member of the BOARD in terms of Rule 3.2;
- 2.3.16 "COMMENCEMENT DATE" means, in respect of the FUND, 1 January 2004 and in respect of a PARTICIPATING EMPLOYER the effective date as from which that PARTICIPATING EMPLOYER is admitted as a PARTICIPATING EMPLOYER in terms of the RULES of the FUND which date shall be reflected in the applicable EMPLOYER APPLICATION and SPECIAL RULES;
- 2.3.17 "DEPENDANT" in relation to a MEMBER means –

- 2.3.17.1 a person in respect of whom the MEMBER is legally liable for maintenance;
  - 2.3.17.2 a person in respect of whom the MEMBER is not legally liable for maintenance, if such person –
    - 2.3.17.2.1 was, in the opinion of the BOARD, upon the death of the MEMBER in fact dependent on the MEMBER for maintenance;
    - 2.3.17.2.2 was the spouse of the MEMBER at the time of his death which includes a person who was the permanent life partner or spouse or civil union partner of a member in accordance with the Marriage Act, 1961, the Recognition of Customary Marriages Act, 1998, or the Civil Union Act, 2006, or the tenets of a religion;
    - 2.3.17.2.3 was the child of the MEMBER, at the time of his death including a posthumous child, an adopted child and a child born out of wedlock ;
  - 2.3.17.3 a person in respect of whom the MEMBER would have become legally liable for maintenance, had the MEMBER not died;
- 2.3.18 “ELIGIBLE EMPLOYEE” means an employee of a PARTICIPATING EMPLOYER who meets the requirements of an ELIGIBLE EMPLOYEE in terms of the provisions of the SPECIAL RULES applicable to that PARTICIPATING EMPLOYER;

- 2.3.19 "EMPLOYER APPLICATION" means the written application of an employer to participate in the FUND, which must include the eligibility conditions, member categories, retirement ages, INSURED DEATH BENEFIT, contribution rates and any other benefits and conditions in respect of the employees in its service who are to become MEMBERS of the FUND;
- 2.3.20 "EXPENSES" means costs related to the management and administration of the FUND, the cost of audit and of actuarial investigations, BOARD MEMBER fees, professional fees, levies, taxes and any other costs regarded as falling within the definition of EXPENSES from time to time by the BOARD, provided that this will not include any costs related to the investment of the assets of the FUND;
- 2.3.21 "EXPENSES RESERVE ACCOUNT" means the account established and operated in accordance with the provisions of Rule 5.7;
- 2.3.22 "FINANCIAL YEAR" means the period commencing on 1 June each year and ending on the last day of May of the following year;
- 2.3.23 "FINANCIAL YEAR END" means the last day of May each year;
- 2.3.24 "FUND" means the IF Umbrella Pension Fund;
- 2.3.25 "FUND SALARY" means a MEMBER'S salary taken into account for the purposes of the FUND as defined in the SPECIAL RULES;
- 2.3.26 "INCOME TAX ACT" means the Income Tax Act, 1962 including any amendments effective from time to time;
- 2.3.27 "INVESTMENT RULES" means the policy set by the BOARD from time to time in respect of the election of a particular portfolio or portfolios by a MEMBER or a PARTICIPATING EMPLOYER, as the case may be, provided that such policy must include

information regarding the initial election by the MEMBER or PARTICIPATING EMPLOYER, any amendment to such election, any additional portfolios to be participated in, the allocation of contributions and transfer values, the allocation of investment returns, switching costs, and all other matters regarded by the BOARD as being relevant to the investment of the assets of the FUND in so far as the choice of MEMBERS and PARTICIPATING EMPLOYERS is concerned;

2.3.28 “INDEPENDENT BOARD MEMBER” means a BOARD MEMBER who is not employed by nor has a financial interest in the ADMINISTRATOR or any associate thereof;

2.3.29 “INSURED BENEFITS” means any benefit afforded in terms of these RULES or SPECIAL RULES for which the FUND has fully secured insurance cover in terms of policies with a REGISTERED INSURER;

2.3.30 “LIVING ANNUITY” means an annuity which complies with the following conditions -

2.3.30.1 The value of the annuity must be determined solely by reference to the value of the assets specified in the agreement which are held by or on behalf of the REGISTERED INSURER providing the annuity;

2.3.30.2 The amount of the annuity must be determined in terms of a method or formula prescribed by the Minister of Finance of the Republic of South Africa;

2.3.30.3 The full remaining value of the assets referred to in Rule 2.3.30.1 may be paid as a lump sum when the value of those assets at any time becomes less than an amount prescribed by the Minister of Finance of the Republic of South Africa;

- 2.3.30.4 The amount of the annuity is not guaranteed by the REGISTERED INSURER;
- 2.3.30.5 On the death of the former MEMBER the value of the assets referred to in Rule 2.3.30.1 must be paid to a DEPENDANT or NOMINEE of the former MEMBER as an annuity or lump sum or, in the absence of a DEPENDANT or NOMINEE to the deceased former MEMBER'S estate as a lump sum; and
- 2.3.30.6 The annuity must comply with any further requirements prescribed by the Minister of Finance of the Republic of South Africa;
- 2.3.31 "MEMBER" means a person who has been admitted to membership of the FUND in terms of the RULES, excluding a person who has received all the benefits which are due to such MEMBER from the FUND and whose membership has thereafter been terminated in accordance with the RULES, provided that in relation to a MEMBER "PARTICIPATING EMPLOYER" means the PARTICIPATING EMPLOYER in whose service such MEMBER is;
- 2.3.32 "NOMINEE" means a person, other than a DEPENDANT, who has been nominated in writing by a MEMBER as being a potential beneficiary to receive all or part of the death benefits provided by the FUND in terms of Rule 6.6 and whose nomination has not been retracted by the MEMBER;
- 2.3.33 "NORMAL RETIREMENT AGE" means the age specified as such in the SPECIAL RULES for each category of MEMBER employed by a PARTICIPATING EMPLOYER;

- 2.3.34 “NORMAL RETIREMENT DATE” means the last day of the month in which a MEMBER attains his NORMAL RETIREMENT AGE;
- 2.3.35 “PARTICIPATING EMPLOYER” means an employer, as set out in the SPECIAL RULES, whose EMPLOYER APPLICATION has been approved by the BOARD and which has been admitted to participate in the FUND;
- 2.3.36 “PREVIOUS FUND” means an APPROVED FUND in which a PARTICIPATING EMPLOYER participated prior to being approved as a PARTICIPATING EMPLOYER in terms of the RULES;
- 2.3.37 “PRINCIPAL OFFICER” means the person appointed in terms of Rule 3.13 in accordance with Section 8 of the ACT, and whose appointment has been approved by the REGISTRAR;
- 2.3.38 “REGISTERED INSURER” means an insurer registered in terms of the Long Term Insurance Act, 1998;
- 2.3.39 “REGISTRAR” means the Registrar or Deputy Registrar of Pension Funds appointed in terms of the Financial Services Board Act, 1990;
- 2.3.40 “REVENUE SERVICE” means the South African Revenue Service as defined in the INCOME TAX ACT;
- 2.3.41 “RULES” means the GENERAL RULES and the SPECIAL RULES, including any amendments which may become effective from time to time;
- 2.3.42 “SERVICE” means service as an ELIGIBLE EMPLOYEE of one or more of the PARTICIPATING EMPLOYERS as set out in the SPECIAL RULES relating to that PARTICIPATING EMPLOYER;

- 2.3.43 “SHARE OF FUND” means at any time-
- 2.3.43.1 an amount applicable to each unitised investment portfolio selected by or on behalf of the MEMBER, calculated by multiplying the UNITS allocated to the MEMBER in each portfolio by the unit price applicable to the investment portfolio; plus
  - 2.3.43.2 a proportionate share of any investment portfolio(s) selected by or on behalf of the MEMBER which are not unitised; plus
  - 2.3.43.3 any interest allocated to the SHARE OF FUND in terms of Rule 5.6; less
  - 2.3.43.4 any amounts deducted from the SHARE OF FUND in terms of Rule 5.5 that have not been catered for by the selling of UNITS;
- 2.3.44 “SPECIAL RULES” means the SPECIAL RULES (previously referred to as the Unique Rules), which form part of these RULES in terms of which the PARTICIPATING EMPLOYER has elected to participate in the FUND;
- 2.3.45 “UNCLAIMED BENEFIT” means-
- 2.3.45.1 any benefit, other than a benefit referred to in Rule 2.3.45.2, not paid by the FUND to a MEMBER, former MEMBER or BENEFICIARY within twenty-four (24) months of the date on which it in terms of the RULES, became legally due and payable; or
  - 2.3.45.2 any benefit that remains unclaimed by a MEMBER, former MEMBER or BENEFICIARY in the event that the FUND applies for cancellation of registration in terms of section 27 of the ACT or where the

LIQUIDATOR is satisfied that a benefit remains unclaimed,

excluding-

- 2.3.45.3 a benefit due to be transferred as part of a transfer of business in terms of section 14 of the ACT, where an annuity is purchased; or
- 2.3.45.4 a death benefit payable to a BENEFICIARY in terms of section 37C of the ACT not paid within twenty-four (24) months from the date of the death of the MEMBER or such longer period as reasonably justifiable by the TRUSTEES;
- 2.3.46 “UNCLAIMED BENEFITS FUND” means a fund, as selected by the TRUSTEES, that has been set up to deal with UNCLAIMED BENEFITS and has been registered in terms of the ACT and approved in terms of the INCOME TAX ACT.
- 2.3.47 “UNIQUE RULES” means the SPECIAL RULES;
- 2.3.48 “UNITS” means the total units purchased in the investment portfolio(s) selected by the MEMBER or the PARTICIPATING EMPLOYER which shall be calculated as follows:
  - 2.3.48.1 the total number of units purchased with the monthly contributions made by the MEMBER in terms of Rule 5.1 excluding such amounts as may be contributed in respect of INSURED BENEFITS and/or EXPENSES; plus
  - 2.3.48.2 the total number of units purchased with the monthly contributions made by the PARTICIPATING EMPLOYER in terms of Rule 5.2 in respect of a



- MEMBER excluding such amounts as may be contributed in respect of INSURED BENEFITS and/or EXPENSES; plus
- 2.3.48.3 the total number of units purchased with each amount transferred from a PREVIOUS FUND in respect of a MEMBER in terms of Rule 4.1.6; plus
- 2.3.48.4 the total number of units purchased with the net investment returns attributable to the MEMBER from time to time; less
- 2.3.48.5 the total number of UNITS which may be sold from time to time to meet the cost of AD HOC EXPENSES should this be required, less
- 2.3.48.6 the total number of UNITS which may be sold from time to time to make payment of an amount referred to in Rule 6.11.3.

### **3 MANAGEMENT OF THE FUND**

#### **3.1 Constitution of Board**

3.1.1 The management, control and administration of the FUND vest in a BOARD comprising of 4 (four) BOARD MEMBERS, of whom 2 (two) must be INDEPENDENT BOARD MEMBERS and of whom at least 2 (two) must have experience in the field of retirement funding and/or asset management. Additional BOARD MEMBERS may be appointed with the consent of the other BOARD MEMBERS.

3.1.2 The BOARD shall elect one of the BOARD MEMBERS as the Chairman of the BOARD. The Chairman will hold office for a period of 12 (twelve) months unless otherwise agreed upon by the BOARD. The Chairman may be elected to hold office for an additional consecutive term.

#### **3.2 Appointment and removal of Board Members**

3.2.1 AON shall appoint the BOARD MEMBERS in accordance with the constitution of the BOARD set out in Rule 3.1 above.

3.2.2 The BOARD must ensure that an exemption from the requirement that MEMBERS have the right to elect at least 50% (fifty percent) of the BOARD MEMBERS as permitted in terms of the provisions of section 7B(b)(i) of the ACT, is in place.

3.2.3 AON may appoint an alternate to any BOARD MEMBER should this be required.

#### **3.3 Term of office of Board**

3.3.1 The BOARD MEMBERS will hold office for such period as is determined by the ADMINISTRATOR from time to time, provided

that this period may not exceed 3 (three) years, and provided further that a BOARD MEMBER whose term of office has expired may be re-appointed.

3.3.2 A BOARD MEMBER will remain a BOARD MEMBER until –

3.3.2.1 the expiry of his term of office;

3.3.2.2 he resigns by giving the Chairman written notice to that effect, provided that such written notice must be given at a BOARD meeting and will only take effect at the meeting of the BOARD following the one at which such notice was given;

3.3.2.3 in the case of the Chairman resigning, he gives the rest of the BOARD written notice to that effect, provided that such written notice must be given at a BOARD meeting and will only take effect at the meeting of the BOARD following the one at which such notice was given;

3.3.2.4 he ceases to hold office in terms of Rules 3.4 or 3.5.1;

3.3.2.5 he is removed from office in terms of Rule 3.2.3.

#### 3.4 **Persons disqualified from being or acting as Board Members**

3.4.1 A person will not be permitted to be a BOARD MEMBER or a BOARD MEMBER will cease to be a BOARD MEMBER if:

3.4.1.1 he is or becomes mentally or physically incapable of acting; or

3.4.1.2 his estate has been or is sequestrated or surrendered or assigned in favour of his creditors; or

3.4.1.3 he has been or is convicted by a competent court of theft, fraud, forgery or a similar offence; or

3.4.1.4 he has been or is discharged by a competent court from an office of trust on account of misconduct; or

3.4.1.5 he has been or is convicted by a competent court on any charge and sentenced to a prison term without the option of a fine.

### 3.5 **Removal of Board Members and filling of vacancies**

3.5.1 A BOARD MEMBER will cease to hold office if –

3.5.1.1 at least 75% (seventy five percent) of the other BOARD MEMBERS resolve that he be removed from office because of a breach of his fiduciary duty towards the FUND or a breach of his duties to its MEMBERS and/or other BENEFICIARIES, after having given him a fair hearing, conducted by the BOARD or a committee of the BOARD; or

3.5.1.2 he has failed to attend 2 (two) consecutive BOARD meetings without showing good cause for such failure, such good cause being unanimously agreed to by the other BOARD MEMBERS.

3.5.2 A vacancy which arises as a result of a BOARD MEMBER ceasing to hold office during his term of office or being removed in terms of 3.5.1. will be filled in terms of Rules 3.2.1 or 3.2.3, as the case may be.

3.5.3 .

### 3.6 **Payments to Board**

3.6.1 The BOARD MEMBERS will receive from the FUND a refund of the expenses incurred by them, if any, on behalf of the FUND in accordance with the policies set by the BOARD from time to time.

3.6.2 In addition, an INDEPENDENT BOARD MEMBER may receive such payments for attending meetings and performing his functions as may be decided from time to time by the BOARD and the PRINCIPAL OFFICER, in consultation with AON, provided that any such payments must be market related.

3.6.3 The payments referred to above will be regarded as EXPENSES.

### 3.7 **Meetings of the Board**

3.7.1 The BOARD will meet from time to time as is necessary to conduct the business of the FUND but no less than 4 (four) times every calendar year.

3.7.2 The Chairman may convene a special meeting of the BOARD if the Chairman regards this as necessary. The Chairman must also convene a special meeting within 10 (ten) days of being so requested by at least 3 (three) of the BOARD MEMBERS, provided that such BOARD MEMBERS must provide the Chairman with written notice of the issues to be discussed at the special meeting and written reasons as to why the BOARD should not wait to discuss these issues at the next quarterly meeting of the BOARD.

3.7.3 The Chairman must cause at least 15 (fifteen) days' notice to be given of every BOARD meeting, specifying the place, date and time of the meeting, as well as the general nature of the business to be conducted at the meeting. Unless the majority of the BOARD MEMBERS agree that other matters may be discussed at the meeting, only those issues indicated in the notice may be discussed.

3.7.4 4 (four) BOARD MEMBERS including at least 1 (one) INDEPENDENT BOARD MEMBER will be required to constitute a quorum.

- 3.7.5 If a quorum is not present at the time determined for the start of the meeting, the meeting may be adjourned by the Chairman for a period of not less than 7 (seven) working days. At the postponed meeting the BOARD MEMBERS present, provided that this includes at least 1 (one) INDEPENDENT BOARD MEMBER, will constitute a quorum.
- 3.7.6 The meetings of the BOARD will be chaired by the Chairman. If the Chairman is temporarily absent or, for any other reason, is unable to perform his functions as Chairman, the BOARD shall elect a person from among its number present to act as Chairman. The Chairman will be responsible for the orderly conduct of the meetings and may suspend or exclude from a meeting any BOARD MEMBER who deliberately ignores the authority of the Chairman or who interferes with the orderly functioning of the BOARD.
- 3.7.7 The Chairman shall cause minutes to be kept of all meetings held by the BOARD and such minutes must be distributed within 10 (ten) working days of a BOARD meeting to the BOARD MEMBERS. Any amendments to the minutes must be lodged with the Chairman within 10 (ten) working days of distribution. If no amendments are received within 10 (ten) working days of the distribution of the minutes, the minutes of that meeting will be proposed, seconded and signed by the Chairman at the next BOARD meeting. Once those minutes are signed by the Chairman, they will constitute *prima facie* evidence of the business conducted at the meeting.
- 3.7.8 The BOARD shall seek consensus in all matters requiring a decision. Should the BOARD fail to reach consensus on any issue, a decision will be taken by a simple majority of votes of BOARD MEMBERS present at any meeting, each BOARD MEMBER having one vote. If no majority decision can be reached at that meeting, the matter must be referred, for a

recommendation, to a person agreed to by the BOARD and suitably qualified in the matter in dispute.

3.7.9 If no majority decision can be reached after the recommendation has been received by the expert, the matter in dispute shall be referred to an arbitrator chosen by the AUDITOR who must be a person suitably qualified in the matter in dispute. The arbitrator's decision on the matter will be final and binding on the BOARD.

3.7.10 A resolution agreed to in writing by the majority of the BOARD MEMBERS will be effective as if it had been passed at a meeting of the BOARD duly convened and held. Any resolution passed in terms of this Rule must be noted at the first meeting of the BOARD held after the passing of such resolution.

### **3.8 Board to direct and control Fund**

3.8.1 The object of the BOARD is to direct, control and oversee the operations of the FUND in accordance with applicable laws and the RULES.

3.8.2 In pursuing its object the BOARD shall-

3.8.2.1 take all reasonable steps to ensure that the interests of MEMBERS in terms of the RULES and the provisions of the ACT are protected at all times especially in the event of an amalgamation or transfer of any business contemplated in section 14 of the ACT or splitting of the FUND;

3.8.2.2 act in good faith towards the PARTICIPATING EMPLOYERS;

3.8.2.3 act with due care, diligence and good faith;

3.8.2.4 avoid conflicts of interest; and

3.8.2.5 act with impartiality in respect of all MEMBERS.

### 3.9 Duties of the Board

- 3.9.1 The duties of the BOARD shall, inter alia, include to –
- 3.9.1.1 ensure that proper registers, books and records of the operations of the FUND are kept, including proper minutes of all resolutions passed by the BOARD (incorporated in a minute book and a supplementary minute book);
  - 3.9.1.2 cause accounts of the FUND to be kept in accordance with general accounting practice and any guidelines issued by the AUDITOR from time to time, such accounts to be made up to the FINANCIAL YEAR END and fairly to present the state of affairs of the FUND and its business and financial position and to be audited by the AUDITOR;
  - 3.9.1.3 ensure that proper controls are used to protect the assets of the FUND, taking into account the advice of the AUDITOR;
  - 3.9.1.4 ensure that adequate and appropriate information is communicated to the MEMBERS of the FUND informing them of their rights, benefits and duties in terms of the RULES;
  - 3.9.1.5 obtain expert advice on matters in respect of which the BOARD may lack sufficient expertise;
  - 3.9.1.6 ensure that the RULES, operation and administration of the FUND comply with the ACT, the Financial Institutions (Protection of Funds) Act, 2001 and all other applicable laws and any other duties imposed by the RULES;



3.9.1.7 ensure that any contributions or other money received are deposited into a banking account opened in the name of the FUND no later than the first business day following the day of receiving the contribution or other money;

3.9.1.8 ensure that every cheque, contract or other document pertaining to the FUND is signed by such persons as the BOARD by resolution appoints and if applicable, in the manner set out in the ACT.

3.9.2 The references to the specific duties of the BOARD above will not, in any way, derogate from the other common law and statutory duties of the BOARD.

### 3.10 **Powers of the Board**

3.10.1 The BOARD shall, subject to the RULES, have all such powers as may be exercised by the FUND in terms of this Rule and any powers specifically granted to the BOARD in the RULES, provided that such specific powers shall not in any way be construed as derogating from the general powers of the FUND.

3.10.2 The power of investment of the BOARD shall be limited to the selection of investment portfolios. The investment of the assets of the FUND in a particular portfolio shall be made in accordance with the election of the MEMBERS of the FUND in accordance with the INVESTMENT RULES, provided that in the event that a PARTICIPATING EMPLOYER so elects in its EMPLOYER APPLICATION, the investment of the assets of the FUND in a particular portfolio shall be made in accordance with the election of the PARTICIPATING EMPLOYER in accordance with the INVESTMENT RULES.

3.10.3 To contract with the REGISTERED INSURERS for the issuing of policies of insurance to the FUND which provide INSURED

BENEFITS in respect of MEMBERS of the FUND subject to such INSURED BENEFITS being selected by the relevant PARTICIPATING EMPLOYER as set out in the EMPLOYER APPLICATION and SPECIAL RULES.

- 3.10.4 To contract on behalf of the FUND and to sign such contract or other document on behalf of the FUND, to institute legal action or process for the FUND and to conduct, settle or abandon such action or process, to defend or settle legal action or process instituted against the FUND.
- 3.10.5 To make, amend and rescind policies and procedures in respect of a matter concerning the FUND, provided that such policies and procedures do not conflict with the RULES, the ACT and the INCOME TAX ACT.
- 3.10.6 To amend the GENERAL RULES and at the request of and subject to the approval of a PARTICIPATING EMPLOYER to amend the SPECIAL RULES applicable to that PARTICIPATING EMPLOYER.
- 3.10.7 The BOARD shall be entitled, in its absolute discretion, to make any arrangements for the administration of the FUND and in this regard shall appoint the ADMINISTRATOR. The BOARD shall ensure that the ADMINISTRATOR is registered in terms of section 13B of the Act and shall enter into an administration agreement which complies with the relevant board notice.
- 3.10.8 The BOARD shall be entitled, in its absolute discretion, to appoint consultants, investment advisers, investment managers (provided that these investment managers are either a REGISTERED INSURER or an ASSET MANAGER), legal advisers and other professionals to assist the BOARD in performing its duties and functions where it considers this necessary or prudent.

3.10.9 The BOARD may, in accordance with the provisions of section 14 of the ACT, amalgamate any business carried on by the FUND with any business carried on by any other person, or transfer any business carried on by the FUND to any other person, or accept transfer of any business from any other person to the FUND, provided that the BOARD shall procure that a written notice, setting out full details of the proposed scheme, be sent to every MEMBER who will be affected thereby, at least thirty days prior to submitting the scheme to the REGISTRAR.

3.10.10 The BOARD shall have the power to take, generally, such steps as are, in its discretion, conducive to the attainment of the objects of the FUND.

3.10.11 The BOARD will have the power to furnish a guarantee in favour of a person other than the FUND in respect of a loan granted or to be granted by such other person to a MEMBER for the purposes set out in section 19 of the ACT.

### 3.11 **Delegation of powers by the Board**

3.11.1 The BOARD may delegate any of its powers to another person or a committee of the BOARD, with the power to sub-delegate such power, unless the empowering instrument, on a proper construction thereof, does not permit such power to be delegated, provided that any decision by the person or committee to whom the BOARD has delegated its power must be ratified by the BOARD in order to be effective.

3.11.2 For the purpose of interpretation of the RULES, it shall be deemed that when a Rule empowers the BOARD to perform a function or duty, that the BOARD may delegate the power concerned in terms of Rule 3.11.1 above, unless the context clearly indicates otherwise.

### 3.12 **Confidentiality of information**

The BOARD and all BOARD MEMBERS shall be entitled to only such information from a PARTICIPATING EMPLOYER as the BOARD may require for the exercise of their duties in terms of the RULES. Such information shall be used only for the purpose of the BOARD performing the duties in terms of the RULES and shall not be disclosed to any person or body other than such office-bearer or employee of the FUND, the INSURER and/or other REGISTERED INSURERS or the ADMINISTRATOR whose province it is to have such information.

### 3.13 **Principal Officer**

- 3.13.1 The BOARD shall appoint the PRINCIPAL OFFICER. Any such appointment may be changed by the BOARD in its sole discretion.
- 3.13.2 The BOARD shall notify the REGISTRAR, in writing, of the name of the PRINCIPAL OFFICER and shall furnish the REGISTRAR with the prescribed information in respect of the PRINCIPAL OFFICER within thirty (30) days of the appointment of the PRINCIPAL OFFICER.
- 3.13.3 If the PRINCIPAL OFFICER is absent from the Republic of South Africa for a period exceeding thirty (30) days or is otherwise unable to perform his duties, the BOARD must appoint another person to act as PRINCIPAL OFFICER subject to the provisions or Rule 3.13.2 above.
- 3.13.4 The REGISTRAR may object to the appointment if he, subject to the provisions of the Promotion of Administrative Justice Act, 2000, reasonably believes that the PRINCIPAL OFFICER is not, or is no longer, a fit and proper person to hold that office, or if it is not in the public interest that the PRINCIPAL OFFICER holds or continues to hold such office. The REGISTRAR must, in the aforementioned circumstances, state the grounds of his objection and provide those to the Chairman and the PRINCIPAL OFFICER.

3.13.5 If the REGISTRAR objects to the appointment of the PRINCIPAL OFFICER in terms of Rule 3.13.4 above, the BOARD must terminate the appointment within thirty (30) days of the REGISTRAR informing the BOARD of the finalisation of the processes and procedures provided for in the Promotion Administrative Justice Act, 2000.

3.13.6 The REGISTRAR may for purposes of assessing if the PRINCIPAL OFFICER is not, or is no longer, a fit and proper person in accordance with paragraph Rule 3.13.4 above, have regard to—

3.13.6.1 the competence and soundness of judgment of the person for the fulfilment of the responsibilities of the particular office and the type of fund;

3.13.6.2 the diligence with which the person concerned is likely to fulfil those responsibilities;

3.13.6.3 previous conduct and activities of the person in business or financial matters; and

3.13.6.4 any evidence that the person—

3.13.6.4.1 after 27 April 1994 has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004, an offence under the Prevention of Organised Crime Act, 1998, or any offence involving dishonesty;

3.13.6.4.2 has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993, took

- effect, and sentenced to imprisonment without the option of a fine;
- 3.13.6.4.3 has contravened the provisions of any law the object of which is the protection of the public against financial loss;
- 3.13.6.4.4 is a former principal officer of an APPROVED FUND or APPROVED PRESERVATION FUND and whose actions contributed to that fund's inability to pay its debts or caused financial loss to its members;
- 3.13.6.4.5 has taken part in any business practices that, in the opinion of the REGISTRAR, were deceitful, prejudicial, or otherwise improper (whether unlawful or not) or which otherwise brought discredit to that person's methods of conducting business; or
- 3.13.6.4.6 has taken part in or been associated with any other business practices, or conduct that casts doubt on his or her competence and soundness of judgement.
- 3.13.7 The REGISTRAR may request any person to assist him or her in assessing whether a person is fit and proper to act as PRINCIPAL OFFICER of the FUND.
- 3.13.8 The PRINCIPAL OFFICER must perform all the functions required to fulfil his duties in terms of the ACT, the RULES and the directions of the BOARD.
- 3.13.9 The PRINCIPAL OFFICER must—

- 3.13.9.1 within twenty-one (21) days of his appointment being terminated, other than in accordance with the conditions referred to in Rule 3.13.5, submit a written report to the REGISTRAR detailing his perceived reasons for the termination; and
- 3.13.9.2 on becoming aware of any matter relating to the affairs of the FUND which, in his opinion, may prejudice the FUND or its MEMBERS, inform the REGISTRAR thereof in writing.

### 3.14 **Actuary and actuarial valuations**

- 3.14.1 The BOARD shall appoint an ACTUARY, for such periods as they determine, and may withdraw any such appointment and make another appointment in its place.
- 3.14.2 The provisions of Rules 3.13.4, 3.13.5, 3.13.6 and 3.13.7 will apply *mutatis mutandis* to the ACTUARY.
- 3.14.3 The ACTUARY will be the valuator of the FUND in terms of the ACT and will, in addition to the function of valuator, perform such other functions as may be specified in the RULES.
- 3.14.4 Unless the FUND has been exempted from the valuation provisions of the ACT, the BOARD shall procure that the FUND will be valued by the ACTUARY at intervals not exceeding three years. Within twelve months of the valuation date the ACTUARY shall be required to submit a valuation report to the BOARD, who shall submit a copy thereof to the REGISTRAR. A copy of the valuation report or a summary thereof in the prescribed format will be open for inspection by the EMPLOYERS and MEMBERS at the registered office of the FUND.

- 3.14.5 The BOARD must maintain such records as may be required by the ACTUARY to perform the valuation function referred to above.
- 3.14.6 Should the FUND require exemption from the provisions of sections 9A and 16 of the ACT, the BOARD shall procure that the ACTUARY submits the certificate in the format as prescribed by Board Notices as issued from time to time, to the REGISTRAR at the time of application for registration of the FUND or at the time that the FUND meets the requirements for valuation exemption. .  
Should the FUND at any time fail to meet the requirements for valuation exemption, the BOARD must notify the REGISTRAR in writing, where after the valuation exemption will be withdrawn and the BOARD shall be required to submit valuations as set out in Rule 3.14.4

### 3.15 **Auditor and financial statements**

- 3.15.1 The BOARD shall appoint an AUDITOR, for such periods as they determine, and may withdraw any such appointment and make another appointment in its place.
- 3.15.2 The BOARD shall, within thirty (30) days of the appointment of the AUDITOR, apply to the REGISTRAR for approval of the appointment.
- 3.15.3 The provisions of Rules 3.13.4, 3.13.5, 3.13.6 and 3.13.7 will apply mutatis mutandis to the AUDITOR.
- 3.15.4 Where the AUDITOR is a partnership, the appointment of such AUDITOR will not lapse by reason of a change in the composition of the partnership, as long as not less than half of the partners in the reconstituted partnership are persons who were partners as at the date when the appointment of the partnership was last approved by the REGISTRAR.



- 3.15.5 The AUDITOR has for the purpose of performing his functions and duties –
- 3.15.5.1 the right of access at all reasonable times to the accounting records and all books, vouchers, documents and other property of the FUND;
  - 3.15.5.2 the right to require from the BOARD such information and explanations as he deems necessary;
  - 3.15.5.3 the right to investigate whether there are adequate measures and procedures for the proper application of sound economical, efficient and effective management of the FUND and for the utilisation of all the resources under the control of the BOARD; and
  - 3.15.5.4 the right to investigate any matter, including the efficiency and effectiveness of the internal control of the FUND, relating to expenditure by and the revenue of the FUND.
- 3.15.6 The BOARD must cause full and true accounts of the FUND to be kept in respect of each FINANCIAL YEAR. Such accounts must be made up as at each FINANCIAL YEAR END, audited by the AUDITOR, and submitted to the REGISTRAR, provided that all of the aforementioned functions must be performed in accordance with the provisions of the ACT.
- 3.15.7 The AUDITOR must—
- 3.15.7.1 within twenty-one (21) days of his appointment being terminated, other than in accordance with the conditions referred to in Rule 3.13.5, submit a written report to the REGISTRAR detailing his perceived reasons for the termination;
  - 3.15.7.2 if he, but for the termination referred to in Rule 3.13.7.1, would have had reason to submit a report

contemplated in section 45(3) of the Auditing Profession Act, 2005, submit such a report to the REGISTRAR; and

3.15.7.3 on becoming aware of any matter relating to the affairs of the FUND which, in his opinion, may prejudice the FUND or its MEMBERS, inform the REGISTRAR thereof in writing.

### 3.16 **Records and safe custody of securities**

3.16.1 The BOARD must ensure that complete records are kept of all BENEFICIARIES, PARTICIPATING EMPLOYERS and of matters essential to the efficient administration of the FUND.

3.16.2 All policies of insurance must be issued by the REGISTERED INSURER or REGISTERED INSURERS in the name of the FUND and will be held in safekeeping by the FUND.

### 3.17 **Disputes**

3.17.1 If a dispute arises between the FUND and a MEMBER or a BENEFICIARY in respect of the interpretation of the RULES, the administration of the FUND, the payment of any benefit, a decision of the BOARD or any other related matter, the MEMBER or BENEFICIARY may lodge a written complaint with the PRINCIPAL OFFICER.

3.17.2 The complaint shall set out the basis for the dispute in writing and the PRINCIPAL OFFICER shall, subject to the provisions of Rule 3.17.5, deliver the complaint to the Chairman.

3.17.3 The Chairman or his delegate shall in their sole discretion refer the dispute to –

- 3.17.3.1 the BOARD or an appropriate committee of the BOARD for consideration and decision; or
  - 3.17.3.2 an appropriate officer or employee of the FUND.
- 3.17.4 If a dispute is referred to the BOARD, the BOARD shall deal with the dispute as it would with any other decision in terms of Rules 3.7.8 and 3.7.9.
- 3.17.5 If a dispute is referred to an employee or officer of the FUND, such employee or officer shall attempt to resolve the dispute and if unsuccessful, shall advise the Chairperson or his delegate. The PRINCIPAL OFFICER shall, unless the matter is resolved and subject to the provisions of the ACT, inform the MEMBER or BENEFICIARY in writing of the decision taken on behalf of the FUND in terms of this Rule.
- 3.17.6 If the MEMBER or BENEFICIARY is not satisfied with the decision referred to above or if the PRINCIPAL OFFICER fails to reply to the matter the MEMBER or BENEFICIARY may lodge the complaint with the ADJUDICATOR in terms of the ACT.
- 3.18 Claims against the Fund and Participating Employers**
- 3.18.1 A MEMBER shall not have any claim against the FUND in respect of the *bona fide* investment of the assets of the FUND.
- 3.18.2 No person shall have any claim concerning the FUND either upon the FUND or against the BOARD or a PARTICIPATING EMPLOYER, except in accordance with the RULES.
- 3.18.3 The RULES shall not in any way be interpreted as restricting the right of a PARTICIPATING EMPLOYER to terminate the employment of a MEMBER lawfully and shall not grant the MEMBER any additional rights in this regard.

### 3.19 **Indemnity and Fidelity Insurance**

3.19.1 The BOARD, officers of the FUND and persons to whom they have delegated their functions shall not be personally liable for decisions taken or actions authorized except if such decisions or actions constitute a gross negligence, dishonesty, fraud or a breach of trust.

3.19.2 The BOARD shall safeguard the FUND against loss by insuring the FUND against loss due to the gross negligence, dishonesty or fraud of any of the officials of the FUND (including a BOARD MEMBER).

### 3.20 **Documents**

The BOARD may authorize BOARD MEMBERS or such person as they deem fit to approve and sign documents on behalf of the FUND, provided that documents to be deposited with the REGISTRAR shall be signed as prescribed in the ACT.

### 3.21 **Registration and approval of Fund**

3.21.1 The BOARD shall apply for registration of the FUND in accordance with the provisions of the ACT and shall apply to the REVENUE SERVICE for the approval of the FUND as a pension fund in terms of the INCOME TAX ACT.

3.21.2 The BOARD shall apply for the registration of the SPECIAL RULES applicable to each PARTICIPATING EMPLOYER.

3.21.3 The BOARD shall advise the REGISTRAR of the name of every PARTICIPATING EMPLOYER in the FUND and shall advise the REGISTRAR of the admission of a new PARTICIPATING EMPLOYER and of the withdrawal of a PARTICIPATING EMPLOYER.

- 3.21.4 The BOARD shall take such steps as the REVENUE SERVICE may require for the continued approval of the FUND in terms of the INCOME TAX ACT.

## 4 MEMBERSHIP

### 4.1 Employer participation

4.1.1 An employer may apply to become a PARTICIPATING EMPLOYER in the FUND. Such application shall be made to the BOARD by means of an EMPLOYER APPLICATION which shall include options with regard to, *inter alia*:

- 4.1.1.1 eligibility conditions;
- 4.1.1.2 NORMAL RETIREMENT AGE as well as early and late retirement conditions and age limitations;
- 4.1.1.3 benefits payable on resignation, death and withdrawal from SERVICE;
- 4.1.1.4 the definition of FUND SALARY;
- 4.1.1.5 contribution rates, including details as to whether the MEMBERS and/or the PARTICIPATING EMPLOYER is liable for contributions in respect of EXPENSES and/or INSURED BENEFITS and whether or not the contribution rates are inclusive or exclusive of those EXPENSES and/or INSURED BENEFITS;
- 4.1.1.6 disability income benefits and contributions payable in respect of such benefits, provided that such disability income benefits will be included for information purposes only as such benefits are not provided by the FUND and contributions in respect of disability income benefits do not accrue to the FUND, provided further that the FUND may act as agent of the PARTICIPATING EMPLOYER in paying those contributions to the INSURER or REGISTERED INSURER which provides disability income benefits; and

4.1.1.7 any other specific options or conditions which may apply.

4.1.2 The BOARD, in their sole discretion, may approve such application and admit such employer to participate in the FUND.

4.1.3 The BOARD shall arrange for SPECIAL RULES in respect of MEMBERS employed by such employer to be drafted, provided that the provisions of such SPECIAL RULES shall reflect the information set out in the EMPLOYER APPLICATION.

4.1.4 The BOARD shall arrange for the signing, registration and approval of such SPECIAL RULES in terms of Rule 7.5.

4.1.5 Once the provisions of Rule 7.5 have been complied with, the employer shall become a PARTICIPATING EMPLOYER with effect from the date of participation reflected on the EMPLOYER APPLICATION and relevant SPECIAL RULES.

4.1.6 In the event that the PARTICIPATING EMPLOYER participated in a PREVIOUS FUND prior to becoming a PARTICIPATING EMPLOYER in the FUND, the BOARD may, at the request of the PARTICIPATING EMPLOYER, arrange for the transfer of the assets and liabilities in the PREVIOUS FUND to the FUND, subject to the provisions of Section 14 of the ACT. The provisions of Rule 7.3 shall apply *mutatis mutandis*.

## 4.2 **Member eligibility and admission**

4.2.1 Subject to the provisions of Rule 4.2.2 below, membership of the FUND shall be a condition of service for every person who becomes an ELIGIBLE EMPLOYEE of a PARTICIPATING EMPLOYER on or after the COMMENCEMENT DATE. Each such ELIGIBLE EMPLOYEE shall become a MEMBER of the FUND on the first day of the month coincident with or following

that in which such person became an ELIGIBLE EMPLOYEE of a PARTICIPATING EMPLOYER.

- 4.2.2 An ELIGIBLE EMPLOYEE in SERVICE prior to the date on which his employer becomes a PARTICIPATING EMPLOYER (other than in circumstances of a merger or amalgamation of a PREVIOUS FUND with the FUND in terms of Rule 7.3) may, on application made within a period of not more than twelve months, become a MEMBER of the FUND. In the event of such ELIGIBLE EMPLOYEE waiving his right to join the FUND or electing not to join the FUND such ELIGIBLE EMPLOYEE shall not be permitted to join the FUND.
- 4.2.3 The membership of any MEMBER may be subject to such restrictions in respect of the benefits payable in terms of the RULES as the BOARD may determine.
- 4.2.4 A MEMBER who becomes entitled to a disability benefit in terms of the rules of a disability income benefit scheme (if any) shall be deemed to remain employed by his PARTICIPATING EMPLOYER while receiving such benefit and shall remain a MEMBER of the FUND. Contributions by the MEMBER and his PARTICIPATING EMPLOYER shall continue to be payable in terms of Rules 5.1 and 5.2 unless otherwise specified in the relevant SPECIAL RULES.

#### 4.3 **Absence**

- 4.3.1 When a MEMBER is on leave with full pay or with pay less than full pay, the MEMBER may continue to contribute to the FUND in accordance with Rule 5.1 and the PARTICIPATING EMPLOYER may continue to contribute on his behalf in terms of Rule 5.2, provided that both the MEMBER and the PARTICIPATING EMPLOYER has elected this option in writing. If the FUND does not receive such written election prior to the MEMBER going on



leave or within a reasonable period of the MEMBER going on leave, the provisions of Rule 4.3.2.1 shall apply.

4.3.2 If a MEMBER is on leave without pay, he may elect one of the following options, provided that such election is provided to the FUND in writing prior to the MEMBER going on leave or within a reasonable period of leave commencing and provided further that the PARTICIPATING EMPLOYER approves such election in writing:

4.3.2.1 for all contributions during the period of his leave to cease in which case the INSURED DEATH BENEFIT, if applicable, shall not be provided,

4.3.2.2 for all contributions during the period of his leave to continue, provided that his FUND SALARY immediately prior to the commencement of the period of leave shall apply, in which case the INSURED DEATH BENEFIT, if applicable, shall continue to be provided,

4.3.2.3 for contributions in respect of the INSURED DEATH BENEFIT, if applicable, to continue in which case the INSURED DEATH BENEFIT shall continue to be provided. The MEMBER'S FUND SALARY immediately prior to the commencement of leave shall apply to the INSURED DEATH BENEFIT.

4.3.3 If the MEMBER fails to exercise the options set out in Rule 4.3.2 within the time allowed he shall be deemed to have exercised the option in Rule 4.3.2.1.

#### 4.4 **Termination of membership**

4.4.1 Unless specifically provided for in the RULES, no MEMBER may terminate membership of the FUND while the MEMBER remains in SERVICE.

- 4.4.2 A MEMBER who for any reason leaves SERVICE and has received all the benefits from the FUND that he qualifies for, shall forthwith cease to be a MEMBER.
- 4.4.3 A MEMBER who leaves SERVICE as a result of the transfer of his contract of employment to another employer in terms of section 197 of the Labour Relations Act, 1995, may be permitted to remain a MEMBER of the FUND for such period and on such conditions as the BOARD may determine provided that, for that period, the employer of that MEMBER shall be deemed to be a PARTICIPATING EMPLOYER as defined in the RULES and the SPECIAL RULES which applied to the MEMBER immediately prior to the termination of his SERVICE shall apply in respect of the MEMBER and his employer which shall be deemed to be the PARTICIPATING EMPLOYER as defined in those SPECIAL RULES.
- 4.4.4 A MEMBER who leaves the SERVICE of one PARTICIPATING EMPLOYER to commence SERVICE with another PARTICIPATING EMPLOYER shall be entitled to elect the options set out in Rule 6.7, provided that such MEMBER may also elect to remain a MEMBER of the FUND in which case the SPECIAL RULES applicable to his former PARTICIPATING EMPLOYER shall cease to apply with effect from the termination of his SERVICE with the former PARTICIPATING EMPLOYER and the payment of all benefits relating to the MEMBER'S SERVICE with the former PARTICIPATING EMPLOYER. The SPECIAL RULES applicable to the subsequent PARTICIPATING EMPLOYER shall apply with effect from the date on which he becomes an ELIGIBLE EMPLOYER in terms of those SPECIAL RULES. The MEMBER shall have no claim against the FUND in terms of the SPECIAL RULES applicable to the former PARTICIPATING EMPLOYER in so far as benefits and contributions applicable after the date of termination of SERVICE with the former PARTICIPATING EMPLOYER are concerned.

- 4.4.5 When required by the BOARD, a MEMBER shall produce a birth certificate or other satisfactory evidence of age in respect of himself and of his DEPENDANTS and/or NOMINEES and shall give the BOARD such other information as the BOARD may require for the purposes of the FUND.
- 4.4.6 If a Member fails to comply with Rule 4.4.5 the BOARD may withhold payment of the SHARE OF FUND or any other benefit due to or in respect of him until the provisions are complied with.
- 4.4.7 The FUND shall not be liable for any loss sustained by a BENEFICIARY or a PARTICIPATING EMPLOYER arising from any misstatements or errors or omissions in any information supplied in terms of the RULES.

## 5 CONTRIBUTIONS AND FINANCIAL PROVISIONS

### 5.1 Member contributions

5.1.1 Each MEMBER shall contribute to the FUND in accordance with the contribution rates stipulated in the SPECIAL RULES. The SPECIAL RULES shall stipulate whether or not the MEMBER is liable or partially liable for EXPENSES and must reflect whether the contribution rates are inclusive or exclusive of such contributions in respect of EXPENSES.

5.1.2 A MEMBER may make additional voluntary contributions to the FUND. Such contributions shall be treated in the same way as the MEMBER'S contributions stipulated in the SPECIAL RULES.

5.1.3 MEMBERS shall, on being admitted to membership, be entitled to transfer amounts to the FUND from another APPROVED FUND.

### 5.2 Participating Employer contributions

5.2.1 Each PARTICIPATING EMPLOYER shall contribute to the FUND for retirement benefits in respect of MEMBERS in its employ in accordance with the categories and contribution rates set out in the SPECIAL RULES.

5.2.2 Should the MEMBERS employed by a PARTICIPATING EMPLOYER be entitled to INSURED BENEFITS, the PARTICIPATING EMPLOYER shall contribute the amounts set out in the SPECIAL RULES, provided that:

5.2.2.1 if the MEMBERS are not liable for any part of the cost of the INSURED BENEFITS, the PARTICIPATING EMPLOYER shall be liable for the full cost;

5.2.2.2 if the MEMBERS are liable for part of the cost of the INSURED BENEFITS, that part for which the

PARTICIPATING EMPLOYER is liable shall be set out;

5.2.2.3 if the MEMBERS are liable for the whole of the cost of the INSURED BENEFITS, the PARTICIPATING EMPLOYER shall not be liable for any part of that cost.

5.2.3 As regards EXPENSES, the PARTICIPATING EMPLOYER shall contribute a proportionate share of the cost of EXPENSES which must be set out in the SPECIAL RULES, provided that:

5.2.3.1 if the MEMBERS are not liable for any part of the proportionate cost of the EXPENSES, the PARTICIPATING EMPLOYER shall be liable for the full cost;

5.2.3.2 if the MEMBERS are liable for part of the proportionate cost of the EXPENSES, that part for which the PARTICIPATING EMPLOYER is liable shall be set out;

5.2.3.3 if the MEMBERS are liable for the whole of the proportionate cost of the EXPENSES other than the cost of INSURED BENEFITS, the PARTICIPATING EMPLOYER shall not be liable for any part of that cost and no contribution in respect of the EXPENSES shall be set out in the SPECIAL RULES.

### 5.3 **Investment of the assets of the Fund**

5.3.1 The BOARD shall make arrangements for the investment of the assets of the FUND.

5.3.2 Each MEMBER of the FUND shall select an investment portfolio or portfolios in accordance with the INVESTMENT RULES.

- 5.3.3 In the event that a MEMBER is unable or unwilling to make a selection in terms of Rule 5.3.2, the BOARD shall allocate the assets to a default portfolio selected by it, provided that such default portfolio shall be one of the portfolios selected by the BOARD.
- 5.3.4 In the event that the PARTICIPATING EMPLOYER employing the MEMBER has so elected in the EMPLOYER APPLICATION, the PARTICIPATING EMPLOYER shall elect the investment portfolio or portfolios in accordance with the INVESTMENT RULES.
- 5.3.5 The BOARD shall ensure that the REGISTERED INSURER or another body to which this function is delegated by the REGISTERED INSURER sets a unit price from time to time in respect of each of the investment portfolios. The unit price shall take into account the investment returns on the assets underlying the investment policy and expenses such as any taxes, levies, fees and other costs related to the investment of the assets of the FUND.

#### 5.4 **Payment of contributions**

- 5.4.1 Each PARTICIPATING EMPLOYER shall pay in full to the ADMINISTRATOR all contributions to be made by it and by the MEMBERS employed by it within 7 (seven) days of the expiry of the month in respect of which the contributions in question are payable.
- 5.4.2 An amendment of the RULES relating to the reduction of contributions or the suspension or discontinuation of the payment of contributions shall not affect any liability to pay any contributions which became payable at any time before the date of the resolution whereby the amendment was effected, irrespective of the date on which the amendment may take effect.

- 5.4.3 The BOARD shall procure that the PRINCIPAL OFFICER or an authorised person as contemplated in section 13A(6) of the ACT ensures that the provisions of section 13A of the ACT are complied with.

## 5.5 Expenses

- 5.5.1 EXPENSES, other than AD HOC EXPENSES, shall be dealt with as set out in the SPECIAL RULES applicable to a PARTICIPATING EMPLOYER and the MEMBERS employed by such PARTICIPATING EMPLOYER from time to time.
- 5.5.2 An amount in respect of AD HOC EXPENSES, other than AD HOC EXPENSES in respect of the termination of a MEMBER'S membership of the FUND for whatever reason, as determined by the BOARD from time to time will be deducted by selling UNITS in respect of each MEMBER or by way of a deduction from the SHARE OF FUND if the selling of UNITS is not regarded as appropriate by the BOARD. Such deductions will take place from time to time as determined by the BOARD, provided that the BOARD must ensure impartiality among the MEMBERS. The amounts so deducted will be credited to the EXPENSES RESERVE ACCOUNT.
- 5.5.3 The ADMINISTRATOR shall act as agent for the FUND and be responsible for making the appropriate payments to other service providers in respect of the EXPENSES, including AD HOC EXPENSES, referred to above.
- 5.5.4 The insurance premiums in respect of INSURED BENEFITS, if applicable, shall be paid to the INSURER and/or REGISTERED INSURER.
- 5.5.5 AD HOC EXPENSES in respect of the termination of a MEMBER'S membership of the FUND for whatever reason will be dealt with by selling UNITS in respect of such MEMBER or by

way of deduction from the SHARE OF FUND if the selling of UNITS is not regarded as appropriate by the BOARD. Such amount will not be credited to the EXPENSES RESERVE ACCOUNT but will be paid to the appropriate service provider.

## **5.6 Disinvestment of monies pending transfer or payment**

5.6.1 Notwithstanding anything to the contrary contained elsewhere in these RULES, in any of the circumstances set out in Rules 6.1, 6.2, 6.3, 6.4, 6.6, 6.7, 7.7, 7.8 or 7.9, the BOARD shall, within a reasonable period from the date on which it is notified of a retirement, death, withdrawal, transfer or liquidation, or within a reasonable time of the happening of the actual event, whichever is the later, arrange for the transfer of the SHARE OF FUND or the assets or appropriate portion of the assets of the FUND, whichever is applicable to a bank account in the name of the FUND.

5.6.2 Any reference to SHARE OF FUND, assets, appropriate share of the assets, transfer amount or similar terminology in Rules 6.1, 6.2, 6.3, 6.4, 6.6, 6.7, 7.7, 7.8 or 7.9 shall refer to that amount as at the date of transfer to the bank account referred to in Rule 5.6.1.

5.6.3 Interest earned on the amount referred to in Rule 5.6.1 shall form part of the benefit.

## **5.7 Expenses Reserve Account**

5.7.1 An EXPENSES RESERVE ACCOUNT is established for the purpose of funding the AD HOC EXPENSES of the FUND.

5.7.2 Any amount referred to in Rule 5.5.2 will be credited to the EXPENSES RESERVE ACCOUNT.



- 5.7.3 The assets underlying the EXPENSES RESERVE ACCOUNT will be invested in such portfolio as may be determined by the BOARD from time to time and the appropriate investment earnings will be credited to such account.
- 5.7.4 The EXPENSES RESERVE ACCOUNT will be debited with AD HOC EXPENSES other than AD HOC EXPENSES payable on the termination of a MEMBER'S membership of the FUND for whatever reason.

## 6 BENEFITS

### 6.1 Normal retirement

- 6.1.1 Subject to Rules 6.1.2, 6.2, 6.3 and 6.4 a MEMBER shall retire as at his NORMAL RETIREMENT DATE and shall become entitled to an ANNUITY.
- 6.1.2 Subject to the provisions of Rule 5.6, the amount of the ANNUITY shall be equal to that which may be purchased by the SHARE OF FUND, provided that the MEMBER has an option to choose to receive as a lump sum benefit up to one third of the SHARE OF FUND or up to the whole thereof should two-thirds of the SHARE OF FUND not exceed an amount as determined by the Minister from time to time, which lump sum benefit, less any applicable tax shall be payable within a reasonable period after the date on which the FUND receives written notice of his retirement, or of his NORMAL RETIREMENT DATE, which ever is the later.
- 6.1.3 The ANNUITY, if any, shall be purchased from the INSURER and/or another REGISTERED INSURER selected by the MEMBER. Once such ANNUITY, if any, has been purchased and any lump sum benefit, less any applicable tax, has been paid to the former MEMBER, the FUND shall have no further liability to or in respect of such former MEMBER and his DEPENDANTS and/or NOMINEES.

### 6.2 Early retirement

- 6.2.1 Subject to the written consent of the PARTICIPATING EMPLOYER a MEMBER may retire at any time after having attained the early retirement age specified in the SPECIAL RULES. Such early retirement shall be subject to the conditions, if any, specified in the SPECIAL RULES.

- 6.2.2 A MEMBER who is dismissed from SERVICE after having attained the early retirement age may retire if the PARTICIPATING EMPLOYER regards such dismissal as early retirement and such MEMBER has complied with the conditions, if any, specified in the SPECIAL RULES.
- 6.2.3 In either of the circumstances referred to in Rules 6.2.1 and 6.2.2 above, the MEMBER shall become entitled to an ANNUITY.
- 6.2.4 Subject to the provisions of Rule 5.6, the amount of the ANNUITY shall be equal to that which may be purchased by the SHARE OF FUND, provided that the MEMBER has an option to choose to receive as a lump sum benefit up to one third of the SHARE OF FUND or up to the whole thereof should two-thirds of the SHARE OF FUND not exceed an amount as determined by the Minister from time to time, which lump sum benefit, less any applicable tax, shall be payable within a reasonable period after the date on which the FUND receives written notice of his retirement, or of his actual retirement date, which ever is the later.
- 6.2.5 The ANNUITY, if any, shall be purchased from the INSURER and/or another REGISTERED INSURER selected by the MEMBER. Once such ANNUITY, if any, has been purchased and any lump sum benefit, less any applicable tax, has been paid to the former MEMBER, the FUND shall have no further liability to or in respect of such former MEMBER and his DEPENDANTS and/or NOMINEES.

### 6.3 **Ill-health early retirement**

- 6.3.1 A MEMBER who is unable to continue working due to ill-health may, on production of medical evidence acceptable to the PARTICIPATING EMPLOYER and the BOARD, retire at any time prior to his NORMAL RETIREMENT DATE.
- 6.3.2 The MEMBER shall become entitled to an ANNUITY.

- 6.3.3 Subject to the provisions of Rule 5.6, the amount of the ANNUITY shall be equal to that which may be purchased by the SHARE OF FUND less the cost of medical investigations regarded as necessary by the BOARD, provided that the MEMBER has an option to choose to receive as a lump sum benefit up to one third of the SHARE OF FUND or up to the whole thereof should two-thirds of the SHARE OF FUND not exceed R50 000,00, which lump sum benefit, less any applicable tax, shall be payable within a reasonable period after the date on which the FUND receives written notice of his retirement, or of his actual retirement date, which ever is the later.
- 6.3.4 The ANNUITY, if any, shall be purchased from the INSURER and/or another REGISTERED INSURER selected by the MEMBER. Once such ANNUITY, if any, has been purchased and any lump sum benefit, less any applicable tax, has been paid to the former MEMBER, the FUND shall have no further liability to or in respect of such former MEMBER and his DEPENDANTS and/or NOMINEES.

#### 6.4 **Late retirement**

- 6.4.1 Subject to the written consent of the PARTICIPATING EMPLOYER, which shall lapse twelve months after it was granted unless it is renewed, a MEMBER may retire late at any time prior to his seventieth birthday in which case contributions in respect of the MEMBER shall continue until the actual date of such late retirement unless otherwise specified in the SPECIAL RULES.
- 6.4.2 On his retirement the MEMBER shall become entitled to an ANNUITY.
- 6.4.3 Subject to the provisions of Rule 5.6, the amount of the ANNUITY shall be equal to that which may be purchased by the SHARE OF FUND at date of actual retirement, provided that the MEMBER

has an option to choose to receive as a lump sum benefit up to one third of the SHARE OF FUND or up to the whole thereof should two-thirds of the SHARE OF FUND not exceed an amount as determined by the Minister from time to time, which lump sum benefit, less any applicable tax, shall be payable within a reasonable period after the date on which the FUND receives written notice of his retirement, or of his actual retirement date, which ever is the later.

6.4.4 The ANNUITY, if any, shall be purchased from the INSURER and/or another REGISTERED INSURER selected by the MEMBER. Once such ANNUITY, if any, has been purchased and any lump sum benefit, less any applicable tax, has been paid to the former MEMBER, the FUND shall have no further liability to or in respect of such former MEMBER and his DEPENDANTS and/or NOMINEES.

## 6.5 **Notification of retirement**

A MEMBER and/or the PARTICIPATING EMPLOYER by whom the MEMBER is employed is required to provide the FUND with written notice of a MEMBER'S retirement. The written notice shall include the options elected by the MEMBER, in particular regarding payment of a lump sum benefit, if any, of up to the whole of the SHARE OF FUND and/or the ANNUITY selected and any other information which may be required by the BOARD, the ADMINISTRATOR and/or the INSURER from time to time.

## 6.6 **Death benefits**

6.6.1 Upon the death of a MEMBER, there shall be payable a lump sum death benefit equal to the INSURED DEATH BENEFIT, if any, as specified in the SPECIAL RULES plus the SHARE OF FUND, less any applicable tax. The aforementioned lump sum death benefit shall be dealt with in terms of the provisions of Rule

6.9 and the provisions of Rule 5.6 shall apply to the SHARE OF FUND.

6.6.2 Notwithstanding the provisions set out in Rule 6.6.1 above, the INSURED DEATH BENEFIT shall be limited to the amount paid to the FUND by the INSURER in terms of the applicable policy of insurance if this amount is, for any reason, less than the INSURED DEATH BENEFIT.

## 6.7 **Withdrawal benefits**

6.7.1 If a MEMBER resigns from SERVICE prior to his NORMAL RETIREMENT DATE or is dismissed for operational reasons, misconduct or incapacity prior to his NORMAL RETIREMENT DATE, he shall become entitled to his SHARE OF FUND, subject to the provisions of Rule 5.6.

6.7.2 The MEMBER may elect to receive his SHARE OF FUND, less any applicable tax, as a lump sum benefit, to transfer his SHARE OF FUND to another APPROVED FUND other than a provident fund approved as such in terms of section 1 of the INCOME TAX ACT, or an APPROVED PENSION PRESERVATION FUND or to receive part of his SHARE OF FUND as a lump sum benefit, less any applicable tax and transfer the balance to another APPROVED FUND other than a provident fund approved as such in terms of section 1 of the INCOME TAX ACT, or an APPROVED PENSION PRESERVATION FUND.

6.7.3 In the event of the MEMBER electing to receive a lump sum benefit or partial lump sum benefit in terms of Rule 6.7.2, payment shall take place within a reasonable period of the FUND receiving notification that the MEMBER has left SERVICE, provided that in the event that the FUND has, within a reasonable period, made application to the appropriate Receiver of Revenue for a tax directive and through no fault of the FUND, has not

received such document, the FUND may extend the first-mentioned period.

- 6.7.4 In the event of the MEMBER electing to transfer his benefit or part of his benefit in terms of Rule 6.7.2, the FUND shall, within a reasonable period of receiving the MEMBER'S written request ensure that the transfer takes place.

## 6.8 **Payment of benefits**

- 6.8.1 The BOARD shall be entitled to request any documentation prescribed by it as satisfactory proof as to the identity and right of a BENEFICIARY to a benefit before payment of a benefit is made to such BENEFICIARY.

- 6.8.2 Whenever a benefit is payable to a BENEFICIARY, the BENEFICIARY shall be deemed to have requested payment thereof by means of an electronic bank transfer to his bank account, the details of which the BENEFICIARY shall inform the BOARD in writing. However, at the request of the BENEFICIARY, the BOARD may agree to payment of the benefit in some other manner, provided that this shall not include payment in cash.

- 6.8.3 For the purposes of this Rule, the BOARD may make payment to—

- 6.8.3.1 A trustee contemplated in the Trust Property Control Act, 1988, nominated by-

6.8.3.1.1 the MEMBER;

6.8.3.1.2 a major DEPENDANT or NOMINEE, subject to Rule 6.9.7. below; or

6.8.3.1.3 a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a minor

DEPENDANT or NOMINEE, or a major DEPENDANT or NOMINEE not able to manage his or her affairs or meet his or her daily care needs;

6.8.3.2 a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a DEPENDANT or NOMINEE; or

6.8.3.3 a BENEFICIARY FUND.

6.8.4 A decision of the BOARD in terms of this Rule may be varied by the BOARD from time to time in the BOARD'S sole discretion.

6.8.5 A payment made in terms hereof shall not be made in a manner which conflicts with the provisions of the ACT or the requirements of the REVENUE SERVICE.

## 6.9 **Payment of death benefits**

6.9.1 If the FUND within twelve months of the death of the MEMBER becomes aware of or traces a DEPENDANT or DEPENDANTS of the MEMBER, the benefit shall be paid to such DEPENDANT or DEPENDANTS as may be deemed equitable by the BOARD, to one of such DEPENDANTS or in such proportions to some or all of such DEPENDANTS.

6.9.2 If the FUND does not become aware of or cannot trace any DEPENDANT of the MEMBER within twelve months of the death of the MEMBER and the MEMBER has designated in writing to the FUND a NOMINEE who is not a DEPENDANT of the MEMBER, to receive the benefit or such portion of the benefit as is specified by the MEMBER in writing to the FUND, the benefit or such portion of the benefit shall be paid to such NOMINEE: Provided that where the aggregate amount of the debts in his estate exceeds the aggregate amount of the assets in his estate,



so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the MEMBER in writing to the FUND shall be paid to the NOMINEE.

- 6.9.3 If the MEMBER has a DEPENDANT and the MEMBER has also designated in writing to the FUND a NOMINEE to receive the benefit or such portion of the benefit as is specified by the MEMBER in writing to the FUND, the FUND shall within twelve months of the death of such MEMBER pay the benefit or such portion thereof to such DEPENDANT or NOMINEE in such proportions as the BOARD may deem equitable: Provided that this Rule shall not prohibit the FUND from paying the benefit, either to a DEPENDANT or NOMINEE contemplated in this Rule or, if there is more than one such DEPENDANT or NOMINEE, in proportions to any or all of those DEPENDANTS and NOMINEES.
- 6.9.4 If the FUND does not become aware of or cannot trace any DEPENDANT of the MEMBER within twelve months of the death of the MEMBER and if the MEMBER has not designated a NOMINEE or if the MEMBER has designated a NOMINEE to receive a portion of the benefit in writing to the FUND, the benefit or the remaining portion of the benefit after payment to the designated NOMINEE, shall be paid into the estate of the MEMBER or, if no inventory in respect of the MEMBER has been received by the Master of the Supreme Court in terms of section 9 of the Estates Act, 1965, into the Guardian's Fund.
- 6.9.5 For the purposes of this Rule, the BOARD may make payment to an already established trust or establish a trust contemplated in the Trust Property Control Act, 1988 for the benefit of a DEPENDANT or NOMINEE contemplated in this section and a payment by the FUND to a trustee of such a trust for the benefit of a DEPENDANT or NOMINEE contemplated in this section

shall be deemed to be a payment to such DEPENDANT or NOMINEE.

6.9.6 Any benefit dealt with in terms of this Rule, payable to a minor DEPENDANT or minor NOMINEE, may be paid in more than one payment in such amounts as the BOARD may from time to time consider appropriate and in the best interests of such DEPENDANT or NOMINEE, provided that the BOARD shall determine the investment portfolio in which the outstanding balance of the benefit is invested and shall ensure that the appropriate returns are added to the outstanding balance at such times as the BOARD may determine, provided further that any balance owing to such a DEPENDANT or NOMINEE at the date on which he attains majority or dies, whichever occurs first, shall be paid in full.

6.9.7 Any benefit dealt with in terms of this Rule, payable to a major DEPENDANT or major NOMINEE, may be paid in more than one payment if the DEPENDANT or NOMINEE has consented thereto in writing, provided that:

6.9.7.1 the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a written agreement; and

6.9.7.2 the agreement may be cancelled by either party on written notice not exceeding ninety days.

6.9.8 If the agreement contemplated in Rule 6.9.7 is cancelled, the full balance of the benefit shall be paid to the DEPENDANT or NOMINEE.

#### 6.10 **Reduction of benefits and Insolvency**

6.10.1 Save to the extent permitted by the ACT, the INCOME TAX ACT, the Maintenance Act, 1998 and the Divorce Act, 1979, no benefit

or right thereto provided for in the RULES, or right in respect of contributions made by or on behalf of a MEMBER shall be capable of being reduced, transferred, ceded, pledged or hypothecated or be liable to attachment or subject to any form of execution under a judgment or order of court, or to the extent of not more than R3 000 per annum, be capable of being taken into account in the determination of a debtor's financial position in terms of the Magistrates' Courts Act, 1944.

6.10.2 If a BENEFICIARY attempts to transfer, cede, pledge or hypothecate a benefit or right, the benefit shall, as the BOARD may direct, be withheld or suspended; provided that the BOARD may direct that the benefit or part thereof be paid to one or more of the BENEFICIARY'S DEPENDANTS or to a guardian or trustee for the benefit of such DEPENDANT(s) during such period as they may determine.

6.10.3 If the estate of a BENEFICIARY entitled to a benefit in terms of the RULES is sequestrated or surrendered, the benefit shall, subject to the provisions of the ACT, not be deemed to form part of the assets of the insolvent estate of such person and may not in any way be attached or appropriated by the curator of such person's insolvent estate or by his creditors, notwithstanding anything to the contrary in any law relating to insolvency.

#### 6.11 **Lien over benefits**

6.11.1 Notwithstanding anything to the contrary contained elsewhere in these RULES, a benefit payable to a BENEFICIARY in terms of the RULES on a MEMBER'S retirement or termination of membership for whatever reason, shall be subject to a deduction by the BOARD in respect of the following :

6.11.1.1 an amount due by a MEMBER to his PARTICIPATING EMPLOYER on the date on which he ceases to be employed by the PARTICIPATING

EMPLOYER in respect of compensation (including any legal costs recoverable from the MEMBER) in respect of any damage caused to the PARTICIPATING EMPLOYER by reason of any theft, dishonesty, fraud or misconduct by the MEMBER and in respect of which :

6.11.1.1.1 the MEMBER has in writing admitted liability to the PARTICIPATING EMPLOYER; or

6.11.1.1.2 judgment has been obtained against the MEMBER in any court, including the Magistrate's Court,

provided that the amount so deducted shall not exceed the amount which may be taken as a lump sum by a BENEFICIARY in terms of the INCOME TAX ACT.

6.11.2 At the request of a PARTICIPATING EMPLOYER, the BOARD shall have the right to withhold payment of benefits in terms of the RULES if the termination of a MEMBER'S SERVICE with the PARTICIPATING EMPLOYER is, in the opinion of the BOARD and the PARTICIPATING EMPLOYER, due to theft, fraud or dishonesty and where the PARTICIPATING EMPLOYER has instituted legal proceedings in a court of law and/or laid a criminal charge against the MEMBER concerned for compensation in respect of damage caused to the PARTICIPATING EMPLOYER as contemplated in Section 37D of the ACT, provided that:

6.11.2.1 the BOARD is satisfied that the PARTICIPATING EMPLOYER has made out a *prima facie* case against the MEMBER concerned; and

- 6.11.2.2 the BOARD is satisfied that the PARTICIPATING EMPLOYER is not at any stage of the proceedings responsible for any undue delay in the prosecution of the proceedings; and
  - 6.11.2.3 the amount withheld may not exceed the value of the PARTICIPATING EMPLOYER'S claim against the MEMBER; and
  - 6.11.2.4 the amount withheld must be dealt with in accordance with the provisions of Rule 5.6; and
  - 6.11.2.5 once the proceedings have been determined, settled or formally withdrawn, any benefit to which the MEMBER is entitled is paid forthwith.
  - 6.11.2.6 the trustees at the express written request of a Member whose benefit is withheld, may, if applicable and practical, permit the value of the Member's as at the time of such request to be isolated, in whatever manner the Trustees believe appropriate from the possibility of a decrease therein as a result of poor investment performance.
- 6.11.3 Notwithstanding anything to the contrary contained elsewhere in these RULES and subject to the provisions of the ACT and the INCOME TAX ACT, a FUND may deduct from a SHARE OF FUND any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 or any amount assigned from his pension interest to a non-MEMBER spouse in terms of a decree granted under section 7(8)(a) of the Divorce Act, 1979 plus the tax liability, if any, in respect of such assigned amount.

## 6.12 **Unclaimed Monies**

- 6.12.1 Benefits that are defined as UNCLAIMED BENEFITS will remain in the FUND until such time as payment is made
- 6.12.2 The BOARD will be entitled, in their sole discretion, to invest the benefits referred to in Rule 6.12.1 above in an investment portfolio of its choice.
- 6.12.3 The BOARD may at any time direct that any monies that can be classified as an UNCLAIMED BENEFIT be transferred to an UNCLAIMED BENEFITS FUND.

## 7 GENERAL PROVISIONS

### 7.1 **Currency**

Contributions and benefits are payable in the currency of the Republic of South Africa.

### 7.2 **Monetary advantage**

The PARTICIPATING EMPLOYERS, REGISTERED INSURER, BOARD and the ADMINISTRATOR shall not derive a monetary advantage from monies paid into or out of the FUND and no monies of the FUND shall become the property of any of the aforementioned other than specifically provided for in the RULES.

### 7.3 **Transfers from other funds**

7.3.1 The BOARD may, after consultation with the ACTUARY and subject to conditions determined by them, approve special arrangements for the preservation of transferred retirement benefit entitlements in respect of a particular MEMBER or a category of MEMBERS. Such special arrangements and the conditions as may be determined by the BOARD in respect thereof shall, subject to the provisions of Section 14 of the ACT, have the effect of amending the provisions of the RULES not compatible therewith in respect of such person or persons, thereby making provision for, *inter alia*, the following:

7.3.1.1 the amendment of the conditions of membership of the FUND in respect of MEMBERS, having regard to the conditions that applied to MEMBERS under such PREVIOUS FUND;

7.3.1.2 the payment of a transfer value by a PREVIOUS FUND to the FUND in respect of MEMBER'S benefits.

### 7.4 **Right to obtain copies of or to inspect certain documents**

7.4.1 The FUND shall deliver to any MEMBER on request by such MEMBER and on payment of an amount to cover any photocopying, printing and related costs, a copy of the GENERAL RULES and SPECIAL RULES pertaining to such MEMBER, and the FUND'S last revenue account and balance sheet as prepared in terms of Section 15(1) of the ACT.

7.4.2 Every MEMBER shall be entitled to inspect without charge at the registered office of the FUND, a copy of any of the documents referred to in Rule 7.4.1.

## 7.5 **Amendments to the General Rules and the Special Rules**

7.5.1 The BOARD may at any time amend the GENERAL RULES by a majority of votes; provided that:

7.5.1.1 the value of a SHARE OF FUND prior to such amendment shall not be reduced;

7.5.1.2 the amendment is not inconsistent with the provisions of the ACT and of the INCOME TAX ACT;

7.5.1.3 the amendment shall not be made if the effect would be that the liabilities of one or more of the PARTICIPATING EMPLOYERS shall or in all likelihood will be increased and such PARTICIPATING EMPLOYER has not consented to the amendment.

provided further that an amendment to the RULES affecting the financial basis of the FUND is subject to the consent of the INSURER and shall be referred to the ACTUARY for his comments before being adopted.



- 7.5.2 The BOARD shall, at the request of the relevant PARTICIPATING EMPLOYER amend the SPECIAL RULES, provided that -
- 7.5.2.1 the provisions of Rule 7.5.1 above shall apply *mutatis mutandis* to such proposed amendment;
  - 7.5.2.2 the BOARD shall not be required to effect the requested amendment if the amendment will impact on the other PARTICIPATING EMPLOYERS and MEMBERS in their employ or, if effecting the amendment will or is likely to place the BOARD in conflict with their duties.
- 7.5.3 Within sixty (60) days of the passing of a resolution effecting an amendment to the RULES, the PRINCIPAL OFFICER shall submit the amendment to the RULES to the REGISTRAR in the prescribed format and with the prescribed documents.
- 7.5.4 Once registration has taken place, the BOARD shall submit the amendment to the REVENUE SERVICE in writing, for their approval.
- 7.5.5 An amendment to the RULES shall only apply from the time it is registered by the REGISTRAR; however such amendment may be effective retrospectively.
- 7.5.6 In the event that amendments are made to the ACT, the INCOME TAX ACT or any other applicable legislation, such amendments will apply to the FUND, notwithstanding anything to the contrary contained in these RULES, with effect from the effective date of such legislation. The BOARD must ensure that the RULES are amended within a reasonable time of such an amendment taking effect in order that the RULES reflect the correct legislative position.

## 7.6 **Binding power of Rules**

The provisions of the RULES shall be binding on the BENEFICIARIES, the FUND and its officials, a person who institutes a claim against the FUND and any person whose claim against the FUND is derived from that person.

## 7.7 **Termination of the Fund**

7.7.1 The FUND may be wound up if –

7.7.1.1 the BOARD resolves that it should be wound up; or

7.7.1.2 a court of competent jurisdiction determines that it be wound up; or

7.7.1.3 all the PARTICIPATING EMPLOYERS are wound up or cease to carry on business.

7.7.2 If the FUND is wound up in any of the circumstances referred to above, the BOARD shall appoint a liquidator, subject to the approval of the REGISTRAR.

7.7.3 The liquidator shall dissolve the FUND by dividing the assets of the FUND among the MEMBERS on such basis as the liquidator deems equitable, provided that –

7.7.3.1 the amount allocated by the liquidator to each MEMBER shall be transferred to an APPROVED FUND other than a provident fund approved as such in terms of section 1 of the INCOME TAX ACT or an APPROVED PENSION PRESERVATION FUND, be paid to the MEMBER as a lump sum less any applicable tax; and

7.7.3.2 if the FUND is dissolved in terms of section 28 of the ACT, all monies remaining unclaimed for a period of six months after the date on which the payment of

benefits by the liquidator commenced shall be paid into an UNCLAIMED BENEFITS FUND and thereafter there shall be no claim against the FUND in respect of such benefits. The liquidator shall include in his final liquidation and distribution account a record of the amount paid to the UNCLAIMED BENEFITS FUND and the benefits in respect of which the amount was so paid. The liquidator shall furnish to the REGISTRAR a certificate stating that he took all reasonable steps to trace the persons entitled to the benefits.

- 7.7.4 An auditor approved by the REGISTRAR shall certify that the liquidator's final liquidation and distribution account is correct.
- 7.7.5 If the FUND is dissolved in terms of section 29 of the ACT and the order for the winding up of the FUND does not make the applicable section of the Companies Act, 2008, that may be amended from time to time, applicable or make any other directions regarding unclaimed monies, the provisions of Rule 7.7.3.2 shall apply.
- 7.7.6 On the liquidation of the FUND the BENEFICIARIES in terms of the RULES are deferred creditors of the FUND and their claim in their capacity as BENEFICIARIES shall not be met until the claims of ordinary creditors have been paid.

## 7.8 **Withdrawal of a Participating Employer**

- 7.8.1 If one of the PARTICIPATING EMPLOYERS gives written notice to the BOARD of its intention to terminate its participation in the FUND or is wound up, whether voluntarily or not, or ceases to carry on business, then, unless a reconstructed company or organisation takes the place of such PARTICIPATING

EMPLOYER, the provisions of Rule 7.7 shall apply *mutatis mutandis*.

7.8.2 If the reconstructed company or organisation intends to take the place of the PARTICIPATING EMPLOYER, the SPECIAL RULES of that PARTICIPATING EMPLOYER shall be amended accordingly.

7.8.3 If a PARTICIPATING EMPLOYER has failed to pay contributions for a period of 90 days and the BOARD has undertaken the reporting and notification requirements as laid down in Section 13A of the ACT and any applicable Regulations and the PARTICIPATING EMPLOYER has still failed to pay the contributions, the BOARD may resolve to terminate the PARTICIPATING EMPLOYER'S participation in the FUND, where after the provisions of Rule 7.7 shall apply *mutatis mutandis*.

#### 7.9 **Transfer or amalgamation of a Participating Employer**

7.9.1 If the operation of a PARTICIPATING EMPLOYER is transferred to or amalgamated with that of another organisation, such other organisation may :

7.9.1.1 continue contributions to the FUND in respect of the existing MEMBERS at the time of such transfer or amalgamation, subject to such conditions imposed by the BOARD, in which case the FUND shall not be affected except that the SPECIAL RULES applicable to the PARTICIPATING EMPLOYER shall be amended accordingly; or

7.9.1.2 withdraw from the FUND in terms of Rule 7.8.

#### 7.10 **New fund or scheme**

If a PARTICIPATING EMPLOYER decides to establish a new fund or scheme for the principal purpose of providing retirement benefits for its

employees or for certain of its employees, or to participate in another fund or scheme for this purpose, the BOARD may, notwithstanding anything to the contrary in the RULES, apply each SHARE OF FUND to obtain benefits for the MEMBERS concerned under the new fund or scheme, in such manner as the BOARD, after consultation with the ACTUARY and with the approval of the REGISTRAR, may decide, subject to the provisions of section 14 of the ACT.