

# FINANCIAL SERVICES BOARD

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**CASE NUMBER: 195776**

Dear Madam

## REVISED RULES: UNICOVER PROVIDENT FUND

Your letter of 06 November 2008 refers. I have enclosed a copy of the Revised Rules duly registered in terms of section 12(4) of the Pension Funds Act, No. 24 of 1956.

Yours faithfully

for: REGISTRAR OF PENSION FUNDS

Board Members Dr CDR Rustomjee (Chairperson) Mr AM Sithole (Deputy Chairperson) Mr BM Hawksworth  
Ms H Wilton Prof PJ Sutherland Ms JV Mogadime Ms T Mokgabudi Prof M Ncube Ms Z Bassa Ms M Phetla-Lekhetha  
Executive Officer Mr DP Tshidi





Revised Rules

Uncover Provident Fund

Extract from the minutes of a meeting of the Board of Trustees of the Uncover Provident Fund held at ~~Alberton~~ on ~~5th November 2008~~

Resolved

That the set of the above rules of the above fund be substituted with effect ~~1st November 2008~~ by the set of rules attached hereto and initialed for identification purposes in which amendments, omissions and / or additions to the following rules have been affected.

The reasons for the substitution are to update the Rules in light of recent legislative changes and developments in the industry. The changes are set out in the attached note.

Certified that the above resolution has been adopted in accordance with the provisions of the rules of the fund.


  
PRINCIPAL OFFICER

  
CHAIRMAN BOARD OF TRUSTEES

  
TRUSTEE

DEUR MY GEREGISTREER OP HEDER DIE  
REGISTERED BY ME ON THIS THE

10  
DAG VAN DECEMBER 2008  
DAY OF

  
REGISTRAR OF PENSION FUNDS

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## **PART 1: INTRODUCTION**

### **1.1. ESTABLISHMENT OF FUND**

The Unicover Provident Fund was established with effect from 1 November 1989.

These are the revised RULES of the FUND, which are effective from 1 November 2008

### **1.2. OBJECT OF THE FUND**

The object of the FUND is to provide retirement and ancillary benefits for BENEFICIARIES as described in the RULES.

### **1.3. LEGAL STATUS**

The FUND is a separate legal entity, distinct from its MEMBERS and capable in law, in its own name, of suing and of being sued, and of acquiring, holding and alienating property, movable and immovable.

### **1.4. REGISTERED ADDRESS**

The address of the FUND is 21 Firgrove Road, Milnerton, Cape Town, 7441 or such other address as the BOARD may from time to time decide.

### **1.5. BINDING NATURE OF RULES**

The RULES of the FUND are binding on the FUND, the MEMBERS and EMPLOYERS. The RULES comprise these GENERAL RULES, which are applicable to all EMPLOYERS and their EMPLOYEES, and such SPECIAL RULES as may apply to individual EMPLOYERS and their EMPLOYEES. In the event of a conflict between the GENERAL RULES and the SPECIAL RULES, the SPECIAL RULES shall prevail.

### **1.6. DEFINITIONS**

In these RULES, words defined in the ACT and not in these RULES bear the meanings assigned to them in the ACT. Unless inconsistent with the context, the following words and expressions bear the meanings assigned to them below.

Expressions denoting the singular include the plural and vice versa. Headings and subheadings are solely for ease of reference and are not to be taken into account in the interpretation of the RULES.

**ACT:** The Pension Funds Act of 1956 as amended, and the regulations framed thereunder.

**ACTUARY:** A person admitted as a member of the Actuarial Society of South Africa or any other institution approved by the Minister by notice in Government Gazette, who has been appointed by the BOARD in terms of these RULES from time to time.

**ADJUDICATOR:** The Pension Funds Adjudicator, appointed in terms of Section 30C(1) of the ACT.

**ADMINISTRATOR:** The administrator appointed in terms of these RULES by the BOARD to administer the FUND and approved by the appropriate REGULATOR..

**AUDITOR:** An auditor registered in terms of the Auditing Professions Act 26 of 2005 who is appointed by the BOARD in terms of these RULES and approved by the REGULATOR.

**APPROVED PENSION FUND:** A fund approved as a pension fund by the REGULATOR and the COMMISSIONER.

**APPROVED PRESERVATION PROVIDENT FUND:** A preservation provident fund as contemplated in SARS Practice Note RF1/98, or other relevant legislation, approved as such by the REGULATOR and the COMMISSIONER.

**APPROVED PROVIDENT FUND:** A fund approved as a provident fund by the REGULATOR and the COMMISSIONER.



**APPROVED RETIREMENT ANNUITY FUND:** A fund approved as a retirement annuity fund by the REGULATOR and the COMMISSIONER.

**BENEFICIARY:** Any person who is entitled to a benefit in terms of these RULES.

**BOARD:** The BOARD of TRUSTEES appointed in terms of these RULES, who oversee and manage the operations of the FUND. The term "BOARD of TRUSTEES" bears a corresponding meaning.

**COMMENCEMENT DATE:** 1 November 1989.

**COMMISSIONER:** The Commissioner for the South African Revenue Services.

**DEPENDANT:** Any person –

- (1) in respect of whom a MEMBER is legally liable for maintenance;
- (2) in respect of whom the MEMBER is not legally liable for maintenance, if such person-
  - (a) was, in the opinion of the BOARD, dependent on the MEMBER for maintenance at the time of the MEMBER'S death; or
  - (b) is the SPOUSE of the MEMBER; or
  - (c) is a child of the MEMBER, including a posthumous child, an adopted child and a child born out of wedlock;

- (3) a person in respect of whom the MEMBER would have become legally liable for maintenance, had the MEMBER not died.

**ELIGIBLE EMPLOYEE:** An employee who is eligible for membership of the FUND in terms of the SPECIAL RULES.

**EMPLOYER:** An EMPLOYER which employs ELIGIBLE EMPLOYEES who have been admitted to membership and in respect of whom SPECIAL RULES have been registered.

**FREE COVER LIMIT:** The amount of life or disability insurance cover which, subject to compliance with the provisions relating to compulsory membership, may be accepted by the INSURER without calling for evidence of health.

**FUND:** The Unicover Provident Fund.

**FUND YEAR:** A period of (12) twelve calendar months commencing on 1 March and ending on the last day of February of the following year.

**FUND YEAR END:** The last day of February of each year.

**GENERAL RULES:** The RULES excluding the SPECIAL RULES.

**INDEPENDENT TRUSTEE:** A TRUSTEE who is independent of, and not employed by, the SPONSOR or ADMINISTRATOR and who complies with any requirements of an independent trustee as determined by the BOARD and REGULATOR from time to time.

**INSURED BENEFIT:** That portion of the death benefit and disability benefit that may be underwritten by an INSURER.

**INSURER:** An insurer registered under the Long Term Insurance Act of 1998 which underwrites the benefits provided in terms of the SPECIAL RULES.

**INVESTMENT MANAGER:** A person or institution approved by the REGULATOR as a manager of the investments of retirement funds, who or which complies with any applicable legislative requirements, and that is appointed by the BOARD to invest and manage the assets of the FUND in terms of the ACT.

**MEMBER:** An ELIGIBLE EMPLOYEE, who has been admitted as a member in terms of these RULES and who has not ceased to be a member of the FUND in terms of the RULES.

**MEMBER ACCOUNT:** An account maintained in respect of each MEMBER which reflects the MEMBER'S SHARE.

**MEMBER'S SHARE:** The amount held in respect of a MEMBER in his/her MEMBER ACCOUNT under the Employer Account on any particular date, calculated in terms of the RULES, provided that this is not less than the MEMBER'S MINIMUM BENEFIT.

**MINIMUM BENEFIT:** The minimum benefit as defined and determined in terms of the ACT.

**NOMINEE:** In respect of any MEMBER, a person, other than a DEPENDANT, who is designated in writing by the MEMBER as a person to whom he or she wishes benefits to be paid upon the death of the MEMBER.

**NORMAL RETIREMENT AGE:** Age 65 (sixty-five) or such age as set out in the SPECIAL RULES.

**NORMAL RETIREMENT DATE:** The first day of any calendar month following

the MEMBER'S attainment of the NORMAL RETIREMENT AGE.

**PARTICIPATION DATE:** In relation to an EMPLOYER, the date on which the relevant SPECIAL RULES become effective.

**PENSIONABLE SALARY:** The basic annual salary or wages of a MEMBER, plus such other payments and allowances actually received by the MEMBER (or, in the case of fluctuating remuneration, an average thereof agreed to between the BOARD and the EMPLOYER), as agreed between the EMPLOYER and the BOARD. PENSIONABLE SALARY is calculated as at the commencement of a MEMBER'S membership of the FUND, and thereafter at the first day of the calendar month coinciding with, or immediately following, any change in the MEMBER'S remuneration.

**PRINCIPAL OFFICER:** The principal officer of the FUND, appointed in terms of the RULES.

**REGULATOR:** The principal regulator of retirement funds appointed in the applicable statute.

**RULES:** The GENERAL RULES and the applicable SPECIAL RULES, as amended from time to time, in respect of each EMPLOYER of the FUND as registered by the REGULATOR and approved by the COMMISSIONER.

**SERVICE:** A MEMBER'S permanent employment with the EMPLOYER, or as set out in the SPECIAL RULES applicable to each EMPLOYER, including any period during which the MEMBER is deemed to remain in employment in terms of these RULES.

**SPECIAL RULES:** The rules applicable in respect of an EMPLOYER and its employees at any given time which are registered by the REGULATOR and approved by the COMMISSIONER, and which may be amended from time to

time. The SPECIAL RULES take precedence in the event of any discrepancy between the GENERAL RULES and the SPECIAL RULES.

**SPONSOR:** Evolution Corporate Benefits (Pty) Ltd, whose working relationship with the FUND may be regulated by written agreement.

**SPOUSE:** A person who is the permanent life partner or spouse or civil union partner of a member in accordance with the Marriage Act of 1961, the Recognition of Customary Marriages Act of 1998, the Civil Union Act of 2006, or the tenets of a religion.

**SURPLUS APPORTIONMENT DATE:** The surplus apportionment date as defined in the ACT for each EMPLOYER.

**TRANSFER BENEFIT:** The total amount that is transferred to the FUND from another fund or scheme on behalf of a MEMBER.

**TRUSTEES:** The trustees of the FUND, appointed to the BOARD in terms of these RULES or their alternates if serving the function of TRUSTEE at the time.

## PART 2: MEMBERSHIP

### 2.1. ELIGIBILITY AND ADMISSION

2.1.1. FUND membership is compulsory for all ELIGIBLE EMPLOYEES. Every ELIGIBLE EMPLOYEE entering SERVICE on or after the PARTICIPATION DATE must, save as provided for in Rule 2.2.2 below, become a MEMBER of the FUND as from the first day of the month in which he/she becomes an ELIGIBLE EMPLOYEE in terms of the SPECIAL RULES.

2.1.2. An ELIGIBLE EMPLOYEE who is in SERVICE on the PARTICIPATION DATE but who is not yet a MEMBER of the FUND shall have the non-recurrent and irrevocable option:

- (a) to become a MEMBER of the FUND on that date, or
- (b) to become a MEMBER of the FUND within 12 (twelve) months after the PARTICIPATION DATE, or
- (c) to waive his/her right to become a MEMBER of the FUND.

Provided that such an ELIGIBLE EMPLOYEE who fails to join the FUND within 12 (twelve) months of the PARTICIPATION DATE or who waives his/her right to join the FUND will not be entitled to join the FUND at a later date. The EMPLOYER may stipulate that a shorter period than 12 (twelve) months will apply, as set out in the SPECIAL RULES.

2.1.3. No MEMBER may terminate his/her membership of the FUND while he/she remains in SERVICE. Membership must cease upon termination of SERVICE, unless otherwise provided for in these

## RULES.

- 2.1.4. Should a MEMBER cease to be an ELIGIBLE EMPLOYEE while remaining in SERVICE, all contributions in respect of his/her benefits must cease, and if the MEMBER becomes eligible for membership of another APPROVED PENSION FUND or APPROVED PROVIDENT FUND of the EMPLOYER, a sum equal to his/her MEMBER'S SHARE must be transferred to such fund.
- 2.1.5. Should any former MEMBER re-enter the FUND, any special provisions that were in force in respect of the MEMBER'S life assurance cover (if any) at the date of cessation of previous membership, may be resumed.

## 2.2. TEMPORARY ABSENCE

- 2.2.1. During a period of temporary absence from SERVICE, not exceeding 12 (twelve) months, by reason of ill-health or injury, or leave of absence authorised by the EMPLOYER and accepted by the BOARD and (where applicable), by the INSURER, membership of the FUND does not cease and the MEMBER must be regarded as being in SERVICE.
- 2.2.2. The EMPLOYER and/or MEMBER may elect to continue paying contributions in respect of the MEMBER in terms of Rule 3.1.2, including contributions due in respect of any INSURED BENEFITS.
- 2.2.3. On expiry of the period of temporary absence, a MEMBER who does not return to active SERVICE shall be deemed to have withdrawn from SERVICE or have retired, as the case may be with effect from the date on which the period of absence expires.

2.3. **CONDITIONS OF EMPLOYMENT UNAFFECTED**

Nothing in the RULES or any amendments thereto shall restrict the right of the EMPLOYER or the MEMBER to terminate the MEMBER'S SERVICE at any time.



## **PART 3: CONTRIBUTIONS**

### **3.1. MEMBER CONTRIBUTIONS**

- 3.1.1. MEMBERS pay contributions to the FUND as set out in the SPECIAL RULES.
- 3.1.2. A MEMBER may, at any time, advise the EMPLOYER in writing, that he/she wishes to pay additional voluntary contributions to the FUND at a rate not exceeding that permitted by law. The EMPLOYER must give the FUND one month's written notice of the commencement and termination of such additional voluntary contributions.
- 3.1.3. A MEMBER may request transfer into the FUND at the commencement of membership, of his/her TRANSFER BENEFIT.
- 3.1.4. Upon receipt, MEMBER contributions are allocated to the MEMBER ACCOUNT.

### **3.2. EMPLOYER CONTRIBUTIONS**

- 3.2.1. Each EMPLOYER must contribute to the FUND at the rate(s), set out in the SPECIAL RULES, or as agreed with the BOARD from time to time: Provided that the EMPLOYER shall not contribute less than the following:
  - (a) the fixed amount determined by the BOARD from time to time to meet the cost of INSURED BENEFITS as required in terms of the SPECIAL RULES; and
  - (b) the minimum amount determined by the BOARD that must be applied toward the retirement benefit for each MEMBER; and

(c) the amount determined by the BOARD for each EMPLOYER to meet its pro rata share of all administrative charges, and other expenses and costs of the FUND as a whole, as well as any other costs and expenses in relation to the benefits to be provided in terms of the SPECIAL RULES.

3.2.2. In addition to the contributions set out in Rule 3.2.1 above, the EMPLOYER may make additional contributions as may be set out in the SPECIAL RULES applicable to it, and as may be necessary to meet special circumstances from time to time, as agreed upon between the BOARD and the EMPLOYER and subject to the approval of the COMMISSIONER.

3.2.3. If an EMPLOYER'S participation in the FUND commences after the COMMENCEMENT DATE, the BOARD, in consultation with the ACTUARY, may make such arrangements or impose such conditions as they deem fit, to ensure that the admission of the ELIGIBLE EMPLOYEES of such EMPLOYER is not to the disadvantage of the existing MEMBERS; and in particular they may require such EMPLOYER to pay such additional contributions or initial contributions to the FUND as the ACTUARY certifies are necessary.

### 3.3. PAYMENT OF CONTRIBUTIONS

3.3.1. Contributions in terms of these RULES are due on the last day of each calendar month and are payable by the EMPLOYER to the FUND not later than 7 (seven) days thereafter. The first contribution is due and payable on the PARTICIPATION DATE.

3.3.2. The last contribution in respect of a MEMBER'S life assurance cover is due on the last day of the month in which membership of the FUND terminates.

- 3.3.3. The FUND must recover interest from the EMPLOYER on contributions that are paid late or that are not paid in full at the rate and in the manner prescribed in the ACT.

## **PART 4: RETIREMENT BENEFITS**

### **4.1. NORMAL RETIREMENT**

Subject to Rule 4.2, 4.3, and 4.4, below, a MEMBER must retire on the NORMAL RETIREMENT DATE, in which case the MEMBER is entitled to the MEMBER'S SHARE, or such other benefits specified in the SPECIAL RULES, payable in accordance with the provisions of Rule 4.5 provided that such benefit is not less than the MEMBER'S MINIMUM BENEFIT, if any.

### **4.2. EARLY RETIREMENT**

4.2.1. A MEMBER may retire prior to the NORMAL RETIREMENT DATE within such period as may be specified in the SPECIAL RULES, but not earlier than age 55 (fifty-five), by giving at least 30 (thirty) days written notice.

4.2.2. A MEMBER taking early retirement is entitled to his/her MEMBER'S SHARE, or such other benefits specified in the SPECIAL RULES, payable in accordance with the provisions of Rule 4.5 provided that such benefit is not less than the MEMBER'S MINIMUM BENEFIT.

### **4.3. EARLY ILL-HEALTH RETIREMENT**

A MEMBER may with the consent of the BOARD on submission of satisfactory proof that meets the requirements of the INSURER, retire at any time prior to the NORMAL RETIREMENT DATE on grounds of ill-health on the basis that he/she is permanently incapable of performing his/her duties as a result of ill-health. An ill-health retirement is only available to a MEMBER who has not received a disability benefit in terms of Rule 6.

### **4.4. LATE RETIREMENT**

A MEMBER may remain in SERVICE after the NORMAL RETIREMENT DATE,

and retire on the first day of any subsequent calendar month prior to the attainment of the age of 70 years, in which case he/she is entitled to his/her MEMBER'S SHARE, or such other benefits specified in the SPECIAL RULES, payable in accordance with the provisions of Rule 4.5 .

**4.5. MANNER OF PAYMENT OF RETIREMENT BENEFITS**

- 4.5.1. Upon the retirement of a MEMBER in terms of Rules 4.1 to 4.4 above, the MEMBER'S SHARE, or such other benefit specified in the SPECIAL RULES, may be taken as a lump sum benefit: Provided that the MEMBER may elect in writing, no later than 30 (thirty) days prior to retirement, to apply part of all of the lump sum benefit to purchase an annuity from an INSURER.
- 4.5.2. Where the MEMBER elects the purchase of an annuity in lieu of part or all of the lump sum benefit payable, the annuity must be purchased from an INSURER in the name of the MEMBER. It must be compulsory, non-commutable, payable for and based on the lifetime of the retiring MEMBER and may not be transferred, assigned, reduced, hypothecated or attached by creditors.
- 4.5.3. Once the annuity has been purchased in the MEMBER'S name and the full value of the MEMBER'S benefit available for such purchase has been transferred to the relevant INSURER, the FUND has no further liability in respect of such former MEMBER or his/her DEPENDANTS and/or NOMINEES.
- 4.5.4. The MEMBER is deemed to have appointed the FUND as his/her duly authorised agent to do all things necessary to procure the purchase of the annuity or annuities in compliance with applicable legislation and practice of the COMMISSIONER.

## **PART 5: DEATH BENEFITS**

### **5.1. DEATH BENEFITS**

5.1.1 If a MEMBER dies while in SERVICE, or while entitled to disability income benefits as referred to in Rule 6, a lump sum cash death benefit is payable in respect of the MEMBER.

5.1.2 The amount of the death benefit payable is that specified in the SPECIAL RULES less the reasonable costs incurred to traced a BENEFICIARY and is payable subject to the provisions of Rules 5.2, 5.3 and 10.3.

### **5.2. PAYMENT OF DEATH BENEFITS**

Benefits payable on the death of a MEMBER do not form part of the estate of the MEMBER, but must be distributed in accordance with the provisions of Section 37C of the ACT or any other applicable legislation.

### **5.3. RESTRICTIONS ON INSURED BENEFITS**

5.3.1. The BOARD may procure the underwriting of the FUND'S liabilities in respect of the death benefits payable in respect of a MEMBER, wholly or partly, by an INSURER of its choice on the basis and to the extent recommended by the ACTUARY.

5.3.2. If the INSURER requires that a MEMBER undergo a medical examination as a condition of cover, the BOARD will require the MEMBER to be examined by a medical practitioner appointed by the INSURER at the expense of the INSURER.

5.3.3. Where the insured portion of the MEMBER'S death benefit is subject to any restriction imposed by the INSURER, the BOARD must notify the MEMBER in writing of such restriction within a reasonable period of it being imposed and the BOARD having been informed of the same by the INSURER.

- 5.3.4. If the benefit is wholly underwritten, the INSURER pays that portion of the death benefit that exceeds the MEMBER'S available SHARE OF FUND. The amount payable by the INSURER is subject to such restrictions that may be imposed by the INSURER as a result of the medical examination.

## **PART 6: DISABILITY BENEFITS**

### **6.1. DISABILITY BENEFITS**

- 6.1.1. A MEMBER may be entitled to a lump sum disability benefit if, prior to his/her NORMAL RETIREMENT DATE, the MEMBER produces satisfactory medical and/or other evidence which satisfies the BOARD and the INSURER that the MEMBER is permanently and totally disabled.
- 6.1.2. A MEMBER may be entitled to an income disability benefit if, prior to his/her NORMAL RETIREMENT DATE, the MEMBER produces satisfactory medical and/or other evidence which satisfies the BOARD and the INSURER as to the required nature of the disability.
- 6.1.3. The amount of the disability benefit payable is that specified in the SPECIAL RULES.

### **6.2. RESTRICTIONS ON DISABILITY BENEFITS**

- 6.2.1. The FUND may procure the underwriting of the disability benefits payable by the FUND wholly or partly by an INSURER of its choice.
- 6.2.2. If the INSURER requires that a MEMBER undergo a medical examination as a condition of cover, the BOARD will require the MEMBER to be examined by a medical practitioner appointed by the INSURER at the expense of the INSURER. If the INSURER requires further medical evidence to that which has been produced by the MEMBER, it can require the MEMBER to consult with a medical practitioner that the INSURER chooses. The costs of obtaining such further medical evidence must be borne by the INSURER.
- 6.2.3. If the insured portion of the MEMBER'S disability benefit is subject to any restriction imposed by the INSURER, the BOARD must notify the



MEMBER in writing of such restriction within a reasonable period of time after it has been informed of the same by the INSURER.

- 6.2.4. If the benefit is wholly underwritten the INSURER pays that portion of the disability benefit that exceeds the MEMBER'S available SHARE OF FUND. The amount payable by the INSURER is subject to such restrictions that may be imposed by the INSURER as a result of the medical examination.

## PART 7: WITHDRAWAL BENEFITS

### 7.1. BENEFITS UPON WITHDRAWAL FROM SERVICE

Should a MEMBER'S SERVICE be terminated prior to the NORMAL RETIREMENT DATE as a result of the MEMBER'S resignation, dismissal, or retrenchment, a cash withdrawal benefit, calculated in terms of the SPECIAL RULES but no less than the MEMBER'S MINIMUM BENEFIT, is payable to the MEMBER.

### 7.2. PRESERVATION OPTIONS

7.2.1. Should the MEMBER elect not to take the benefit payable in terms of Rule 7.1 above in cash, he/she must inform the Fund in writing, no less than 30 (thirty) days after <sup>1</sup> to the date on which his/her SERVICE terminates, as to which payment option set out below she/he has elected for the payment of his/her withdrawal benefit:

- (a) the whole or a portion of the benefit may be transferred to an APPROVED PENSION FUND or APPROVED PROVIDENT FUND of which the MEMBER is then a member;
- (b) the whole or a portion of the benefit may be transferred to an APPROVED RETIREMENT ANNUITY FUND to provide an annuity for the MEMBER on retirement; and/or
- (c) the whole or a portion of the benefit may be transferred to an APPROVED PRESERVATION PROVIDENT FUND, which transfer must be conducted in compliance

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<sup>1</sup> Please confirm if correct. I have changed this because with withdrawals people don't always know 30 days before hand that their employment is going to end so I have changed it to say that they must provide the notice within 30 days of the date that service terminates.

with the requirements of Practice Note RF1/98 and any relevant legislation or statutory practice. If part of the benefit is transferred to an APPROVED RETIREMENT ANNUITY FUND, this will not count as a single withdrawal for purposes of RF1/98 or any legislation that refers to a single withdrawal.

### 7.3. SECTION 197 TRANSFERS

7.3.1. Should the employment contracts of one or more MEMBERS be assigned in terms of section 197 of the Labour Relations Act of 1995 to another employer, whether participating in the FUND or not, the SERVICE of such MEMBERS is not deemed to have terminated and the MEMBERS are not entitled to withdrawal benefits in terms of these RULES.

7.3.2. If the MEMBER'S new employer does not participate in the FUND and is not admitted as a participating EMPLOYER then the MEMBER'S SHARE in the FUND must be transferred to another APPROVED PENSION FUND or APPROVED PROVIDENT FUND in which the MEMBER'S new employer participates or the MEMBER SHARE may be transferred to an APPROVED PRESERVATION PROVIDENT FUND.

## PART 8: FINANCIAL STRUCTURE

### 8.1. EMPLOYER ACCOUNT

8.1.1. All moneys received from an EMPLOYER participating in the FUND, together with increases accruing thereto in terms of the RULES, or of any group policy issued by the INSURER, must be credited to an Employer Account maintained in respect of each EMPLOYER, together with such other amounts as may be agreed between the EMPLOYER and the BOARD or between the BOARD and the INSURER, as the case may be.

### 8.2. EMPLOYER RESERVE ACCOUNT

8.2.1. An Employer Reserve Account must be maintained for each EMPLOYER within its Employer Account and to which Employer Reserve Account shall be credited:

- (a) any contributions in excess of those required to meet the costs of the MEMBERS' benefits;
- (b) amounts (excluding any allocation of surplus) determined by the BOARD that are allocated to the Employer Reserve Account for subsequent allocation to the MEMBERS who are employed, or were formerly employed, by the EMPLOYER, and
- (c) a share of the INVESTMENT RETURN earned by the FUND in the ratio that the amount standing to the credit of the Employer Reserve Account bears to the sum of all amounts standing to the credit of the FUND.

8.2.2. The Employer Reserve Account may be debited with the following amounts:

- (a) the EMPLOYER'S share of the FUND'S expenses;
- (b) the cost of the INSURED BENEFITS applicable to MEMBERS employed by it should the EMPLOYER'S contribution in that regard be insufficient for that purpose at any time, if so directed by the BOARD;
- (c) amounts (excluding any surplus) determined by the BOARD that are to be allocated to MEMBERS who are employed, or were formerly employed, by the EMPLOYER; and
- (d) a share of the return earned on the investment of the FUND'S assets, if negative, at a rate determined by the BOARD.

### 8.3. EMPLOYER SURPLUS ACCOUNT

8.3.1. An Employer Surplus Account must be maintained in respect of each EMPLOYER. The Employer Surplus Account must be credited with:

- (a) any amount allocated by the BOARD to the EMPLOYER in terms of section 15B, 15C and 15F of the ACT;
- (b) any amount transferred in terms of section 15E(1)(e) of the ACT from an employer surplus account in another APPROVED PENSION FUND or APPROVED PROVIDENT FUND in which the EMPLOYER participates;
- (c) any additional amounts payable by the EMPLOYER for allocation to the Employer Surplus Account, as specified by the ACTUARY from time to time; and
- (d) any other amounts permitted in law and these RULES.

8.3.2. Notwithstanding anything to the contrary in the RULES an EMPLOYER may request the BOARD to use actuarial surplus allocated to the Employer Surplus Account for use by the EMPLOYER for any of the following purposes, namely—

- (a) funding a contribution holiday;
- (b) payment of pensions, or an increase in pensions in the course of payment, in order to compensate MEMBERS for the loss of any subsidy from the EMPLOYER of their medical costs after retirement;
- (c) meeting, in full or in part, expenses which the EMPLOYER is obliged to pay in terms of the RULES;
- (d) improving the benefits payable to all MEMBERS or a category of MEMBERS, as defined in the RULES and as determined by the EMPLOYER;
- (e) transferring part, or all, of the Employer Surplus Account in terms of the ACT to the Member Surplus Account in the FUND or to an employer surplus account in another APPROVED PENSION FUND or APPROVED PROVIDENT FUND in which the EMPLOYER participates;
- (f) payment in cash to the EMPLOYER in terms of the ACT on liquidation of the FUND in terms of sections 28 or 29 of the ACT;
- (g) payment in cash to the EMPLOYER in terms of the ACT in order to avoid retrenchment of a significant proportion of the workforce;
- (h) in the event of a deficit arising in the FUND after the SURPLUS APPORTIONMENT DATE, an amount calculated by the ACTUARY, as provided for in terms of section 15H(1) of the ACT; and

(i) any other purpose permitted in law.

8.3.3. Assets held in the Employer Surplus Account must be invested in the investment portfolio(s) determined by the BOARD and the balances in the Employer Surplus Account must be adjusted in line with the investment performance of the relevant portfolio(s) after investment expenses are taken into account.

#### 8.4. MEMBER ACCOUNTS

8.4.1. Each MEMBER'S SHARE must be held in an individual account, to be known as his/her MEMBER ACCOUNT.

8.4.2. The MEMBER'S SHARE shall be calculated as follows:

(a) All contributions made to the FUND in respect of a MEMBER'S retirement benefits in terms of Rules 3.1 and 3.2, less any premiums due to the INSURER, must be credited to the MEMBER'S ACCOUNT upon receipt thereof.

(b) Any TRANSFER BENEFIT received by the FUND in respect of a MEMBER in terms of Rule 3.1.3 must be credited to the MEMBER'S ACCOUNT upon receipt thereof.

(c) Any amount which may become payable upon a MEMBER'S permanent and total disability in terms of the SPECIAL RULES, must be credited to the MEMBER'S ACCOUNT upon receipt thereof from an INSURER.

(d) Positive and negative investment return on underlying investment portfolios in which the assets are invested must be credited or

debited to the MEMBER ACCOUNT as applicable.

**8.5. EXPENSE RESERVE ACCOUNT**

The Expense Reserve Account must be credited with the fixed management fee determined by the BOARD and payable by each EMPLOYER as a pro-rata contribution toward the general costs and expenses of the FUND as a whole. Such general costs and expenses do not include the administration fee payable by each EMPLOYER in terms of rule 3.2.1(c).

**8.6. UNCLAIMED BENEFITS ACCOUNT**

An Unclaimed Benefits Account must be maintained to house all the unclaimed benefits referred to in Rule 10.6.

8.6.1. The Unclaimed Benefits Account must be credited with:

8.6.1.1. an opening balance as decided by the BOARD acting on the advice of the ACTUARY;

8.6.1.2. any unclaimed benefits in terms of Rule 10.6;

8.6.1.3. a share of the INVESTMENT RETURN earned by the FUND in the ratio that the amount standing to the credit of the Unclaimed Benefits Account bears to the sum of all amounts standing to the credit of the FUND; and

8.6.1.4. any amounts due to former MEMBERS that have not been claimed.

8.6.2. The Unclaimed Benefits Account must be debited with:



- 8.6.2.1. any amount validly claimed by any MEMBER or BENEFICIARY or other person entitled to make any claim in respect of any unclaimed benefit;
- 8.6.2.2. any unclaimed benefit and the interest thereon payable to the Guardian's Fund or another fund as referred to in Rule 10.6;
- 8.6.2.3. a proportionate share of the return earned on the investment of the FUND'S assets, if negative, at a rate determined by the BOARD;
- 8.6.2.4. the reasonable costs incurred in the FUND'S efforts to trace a BENEFICIARY which are debited to the amount held for that BENEFICIARY; and
- 8.6.2.5. any other reasonable cost associated with the administration of this account.

## **PART 9: FUND MANAGEMENT**

### **9.1. CONSTITUTION OF BOARD OF TRUSTEES**

9.1.1. The management of the FUND shall vest in a BOARD, consisting of no less than 4 (four) TRUSTEES, appointed by the BOARD at least 50% of whom must be INDEPENDENT TRUSTEES.

9.1.2. The BOARD has the right to appoint alternates to any or all of the TRUSTEES.

### **9.2. DURATION AND TERMINATION OF TRUSTEESHIP**

9.2.1. The TRUSTEES hold office for a period of 3 (three) years but each TRUSTEE is thereafter eligible for re-appointment.

9.2.2. A TRUSTEE ceases to hold office if:

(a) the BOARD resolves to remove the TRUSTEE from office at any time on the grounds that she/he is not a fit and proper person to occupy a position of trust;

(b) the TRUSTEE gives one month's written notice of resignation, which notice must be delivered or sent by registered post to the registered office of the FUND;

(c) the TRUSTEE fails to attend 3 (three) consecutive BOARD meetings without the leave of the BOARD'S Chairperson; or

(d) he/she, as INDEPENDENT TRUSTEE no longer satisfies the criteria for independence as set out in the definition of the RULES.

9.2.3. The BOARD has the right to replace any TRUSTEE or fill any permanent vacancy that arises and must give the new TRUSTEE one month's notice in writing of such appointment.

9.2.4. When a TRUSTEE ceases to hold office for any reason, he/she must return all documents requested by the BOARD and assist in the handover to the new TRUSTEE as required by the BOARD.

### 9.3. DISQUALIFICATION FROM HOLDING OFFICE AS A TRUSTEE

No person in the following categories is eligible to hold office as a TRUSTEE and if a TRUSTEE at any time falls into any such category, he/she must immediately cease to hold office:

- (a) a minor or a person that is certified as mentally ill, or who is physically or otherwise incapable of acting;
- (b) a person whose estate is sequestrated, surrendered or assigned in favour of his/her creditors and has not been rehabilitated by a court;
- (c) a person who is removed by a court of law from any office of trust as a result of misconduct;
- (d) a person who is convicted by a court of law of theft, forgery or fraud or a similar offence involving dishonesty;  
or

- (e) he/she is convicted of any offence by a court of law and sentenced to prison without the option of a fine.

#### 9.4. OBJECT AND DUTIES OF THE BOARD OF TRUSTEES

9.4.1. The object of the BOARD is to direct, control and oversee the operations of the FUND in accordance with the provisions of the ACT, the RULES and all applicable laws. In so doing the BOARD must:

- (a) act with due care and diligence and in the best interest of the FUND and its MEMBERS;
- (b) take all reasonable steps to protect the interests of the BENEFICIARIES;
- (c) act in good faith towards the EMPLOYERS and MEMBERS;
- (d) avoid conflicts of interest and where such conflicts cannot be avoided, manage them such that they do not negatively affect the proper governance of the FUND; and
- (e) act with impartiality in respect of all BENEFICIARIES and EMPLOYERS.

9.4.2. The duties of the BOARD are to –

- (a) ensure that proper registers, books and records of the operations of the FUND are kept, inclusive of proper minutes of all resolutions passed by the BOARD;
- (b) ensure that proper control systems are employed by and on behalf of the BOARD to protect the FUND'S assets, taking into account the advice of the AUDITOR;

- (c) ensure that adequate and appropriate information is communicated to the MEMBERS of the FUND, informing them of their rights, benefits and duties in terms of the RULES of the FUND;
- (d) take all reasonable steps to ensure that contributions are paid timeously to the FUND in accordance with the provisions of the ACT;
- (e) obtain expert advice on matters where the TRUSTEES may lack sufficient expertise;
- (f) ensure that the RULES and the operation and administration of the FUND comply with the provisions of the ACT and all other applicable laws;
- (g) ensure that true and full accounts of the FUND are kept in accordance with generally accepted accounting practice and any guidelines issued by the AUDITOR from time to time. These accounts must be made out at the FUND YEAR and must fairly represent the FUND'S financial state of affairs and position and must be audited by the AUDITOR; and
- (h) ensure that only persons who have the authority, in terms of a resolution passed by the BOARD, to sign cheques, contracts or other documents on its behalf.

## 9.5. MEETING OF THE BOARD

- 9.5.1. The BOARD shall meet from time to time as is necessary to conduct the business of the FUND but not less than 4 (four) times in any FUND YEAR. Nothing contained in these RULES must be construed

as obliging the BOARD to meet in person or preventing the holding of BOARD meetings by way of a telephone or video conference or any other means.

- 9.5.2. Notice of at least 15 (fifteen) days for ordinary meetings must be given to the TRUSTEES unless they agree to waive this notice period. A majority of TRUSTEES may request the Chairperson to arrange a meeting of the BOARD to deal with matters set out in the request. If the Chairperson fails to arrange such a meeting within 15 (fifteen) days, the TRUSTEES may arrange the meeting themselves after notifying the Chairperson. Minutes must be kept of all meetings.
- 9.5.3. The alternate for any TRUSTEE may attend BOARD meeting at the invitation of the BOARD but is not entitled to vote at such meetings if the principal TRUSTEE is present. If a TRUSTEE is unable to attend a meeting, or is for any reason unable to act, his/her alternate has the full power to act in his/her place.
- 9.5.4. A quorum at any meeting is constituted by 3 (three) TRUSTEES provided at least 1 (one) is an INDEPENDENT TRUSTEE.
- 9.5.5. At all meetings, the decision of a majority is binding. The Chairperson has a deliberative vote only.
- 9.5.6. A resolution in writing is binding 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 voted upon and confirmed at the first meeting of the BOARD held after the passing of such resolution.
- 9.5.7. A TRUSTEE who has any direct or indirect personal financial or other interest (other than his/her interest as a member of the FUND) in a decision to be taken by the BOARD must disclose that interest before the decision is taken and may be required to abstain from voting.

9.5.8. A vacancy on the BOARD when a decision is taken by it will not render that decision invalid provided a quorum is present.

9.6. **POWERS OF THE TRUSTEES**

9.6.1. The BOARD must generally take all steps required to give effect to the objects of the FUND and to fulfil its duties in terms of the RULES and the ACT. Without detracting from the generality of this rule, the BOARD has the following powers:

- (a) to contract on behalf of the FUND;
- (b) to institute, conduct, settle, abandon or defend, at their discretion, any legal action or process on behalf of the FUND;
- (c) to obtain an overdraft from an authorised financial institution on such terms as it thinks fit for such sums as they approve for the purpose of bridging temporary or unforeseen cash shortages, provided that the total amount of such temporary loan shall not exceed 50% of the gross income of the FUND from all sources in the immediately preceding FUND YEAR;
- (d) to lend, invest, put out at interest, place on deposit, and make advances, or otherwise deal with all moneys of the FUND upon such securities and in such manner as it may from time to time determine;
- (e) to effect and maintain contracts with INSURERS;
- (f) to acquire, hold, alienate or otherwise deal with any immovable

property of the FUND, subject to the provisions of Section 19 of the ACT, and further to acquire, hold, alienate or otherwise deal with any movable property of the FUND;

- (g) to provide guarantees in respect of housing loans to MEMBERS, in accordance with the provisions of Section 19(5)(a) of the ACT and subject to such terms and conditions as it may determine;
- (h) to negotiate and reinsure with an INSURER any benefits provided by the FUND;
- (i) to delegate the exercise of any of their powers or the performance of any of its functions to the ADMINISTRATOR, a sub-committee or any other person or persons, or to delegate its powers to make investments to a financial institution as defined in the Financial Institutions (Investment of Funds) Act of 1984, or to a person approved in terms of Section 4(1)(f) of the Stock Exchanges Control Act of 1985, subject to such conditions as the BOARD may determine, provided such delegation is lawful and consistent with the exercise of their fiduciary obligations. The BOARD is entitled to defray expenses incurred as a result of such delegation out of the monies of the FUND;
- (j) to appoint an actuary and other consultants to the FUND;
- (k) to determine the remuneration, if any, to be paid to TRUSTEES and/or any official, or consultant to the FUND, and to pay them; and
- (l) authorise a person or persons from time to time to sign such contracts or other documents that bind the FUND or any document that authorises any action on behalf of the FUND; provided that any document to be submitted to the REGULATOR, must be signed in such manner as prescribed by the ACT.



**9.7. REMUNERATION OF TRUSTEES**

- 9.7.1. The TRUSTEES will receive from the FUND a refund of all expenses reasonable incurred by them on behalf of the FUND in accordance with policies and limitations set by the BOARD from time to time.
- 9.7.2. The TRUSTEES will receive from the FUND such remuneration and allowances as the TRUSTEES may from time to time determine.

**9.8. CHAIRPERSON**

- 9.8.1. The BOARD must appoint a Chairperson and may appoint an acting Chairperson if the Chairperson is unable to perform his/her duties as such.
- 9.8.2. The Chairperson shall serve for a maximum period of 3 (three) years with the option of renewal, unless otherwise agreed by the BOARD, and may resign on one month's written notice to the other TRUSTEES unless a shorter period is agreed to by the BOARD or the requirement of notice is waived entirely by the BOARD.
- 9.8.3. Should the position of Chairperson become vacant before the expiry of the term of office, the BOARD may appoint another Chairperson for the unexpired portion of the term of office, or may appoint another Chairperson who will then begin a new term of office.
- 9.8.4. The Chairperson must, amongst other functions:
  - 9.8.4.1. oversee the convening of BOARD meetings, the preparation and dissemination of appropriate materials for the meetings and the preparation of minutes of the meetings;
  - 9.8.4.2. preside over and maintain order at meetings, and ensure that meetings are conducted in a proper

manner. The Chairperson may exclude from the meeting any TRUSTEE or other person who deliberately ignores instructions from the Chairperson regarding the way that the meeting is to proceed or who makes it difficult for the BOARD to function in an orderly fashion;

9.8.4.3. monitor the performance of other TRUSTEES and the PRINCIPAL OFFICER;

9.8.4.4. co-ordinate and drive the governance processes within the FUND; and

9.8.4.5. manage relationships and contracts with the PRINCIPAL OFFICER and other service providers as necessary.

## 9.9. PRINCIPAL OFFICER

9.9.1. The BOARD must appoint a PRINCIPAL OFFICER who will serve for a period of 5 (five) years, subject to renewal, and who may be replaced by the BOARD at its sole discretion. The BOARD must notify the REGULATOR of the name and address of the PRINCIPAL OFFICER and any other information requirement in terms of the ACT.

9.9.2. The BOARD must conclude a contract with the PRINCIPAL OFFICER to regulate, amongst others, the terms of his or her appointment, duties and remuneration. The PRINCIPAL OFFICER'S appointment is subject to the ACT.

9.9.3. The PRINCIPAL OFFICER must be an individual resident in the Republic of South Africa. Should the PRINCIPAL OFFICER be absent from the Republic of South Africa or for any reason be unable to discharge any of his/her duties, the BOARD shall within 30 (thirty) days appoint another person to be PRINCIPAL OFFICER, whose

appointment is subject to the ACT. The BOARD must within 30 (thirty) days of such appointment notify the REGULATOR of such appointment and provide any other information required in terms of the ACT.

9.9.4. The PRINCIPAL OFFICER must fulfil all the duties required of him/her in terms of the ACT, these RULES and any directions given by the BOARD.

9.9.5. In particular, the PRINCIPAL OFFICER must :

(a) countersign, with such TRUSTEES, as required by the ACT, these RULES and any amendments thereto. The PRINCIPAL OFFICER must ensure that any rule amendment is timeously submitted to the REGULATOR for his/her approval and registration and to the COMMISSIONER for his/her approval;

(b) within 6 (six) months of each FUND YEAR ensure that all MEMBERS are sent a written summary of all rule amendments which were registered within that FUND YEAR;

(c) ensure that the FUND'S annual financial statements and other documents referred to in the ACT are submitted to the REGULATOR as required by the ACT;

(d) sign all FUND documents that must be submitted to the REGULATOR; and

(e) perform all other functions which statutes require him/her to perform.

#### 9.10. ADMINISTRATOR

9.10.1. The BOARD, in consultation with the SPONSOR, must appoint an ADMINISTRATOR to administer the FUND. The BOARD, in consultation with the SPONSOR, may withdraw the appointment of the

ADMINISTRATOR and appoint a new administrator. The ADMINISTRATOR'S appointment shall remain in force for a period as agreed between the BOARD and the ADMINISTRATOR, unless the ADMINISTRATOR is discharged by the BOARD or itself relinquishes the appointment prior to the expiry of the said period. Only persons that have been approved by the REGULATOR to act as administrators may be appointed as ADMINISTRATOR of the FUND.

9.10.2. The ADMINISTRATOR must administer the FUND in accordance with and subject to the RULES, the provisions of the ACT and the Service Level Agreement concluded between the FUND and the ADMINISTRATOR.

9.11. **AUDITOR**

9.11.1. The BOARD must appoint an AUDITOR for such period as determined by the BOARD and subject to the provisions of the ACT.

9.11.2. The appointment remains in force for the specified period, unless the AUDITOR is discharged by the BOARD or the AUDITOR withdraws, prior to the expiry of the said period. The BOARD must inform the REGULATOR of any new appointment within 30 (thirty) days.

9.11.3. The AUDITOR has:

(a) the right, at all reasonable times, to see and make copies of the accounting records and all books, vouchers, documents and other property of the FUND;

(b) the right to obtain from the TRUSTEES all information and explanations that s/he thinks are necessary; and

(c) the right to investigate whether there are adequate measures and procedures to ensure that the FUND operates in a sound,

cost effective and cost efficient way for the benefit of MEMBERS and their DEPENDANTS or NOMINEES;

- (d) the right to investigate any aspect of the management of the FUND, which has a bearing on the control, use, and expenditure of FUND assets.

9.11.4. Within 6 (six) months after each FUND YEAR, the AUDITOR must prepare and submit to the TRUSTEES statements of the FUND'S financial affairs in accordance with the ACT, the report must state whether, in the opinion of the AUDITOR:

- (a) the statements in all material respects fairly present the financial position of the FUND in accordance with generally accepted accounting practice; and

- (b) all transactions during the financial year in question of which the AUDITOR is aware, took place in accordance with the RULES, all applicable laws, and guidelines previously recommended by the AUDITOR for the proper management of the FUND'S assets.

9.11.5. The AUDITOR shall certify the result of each audit in writing.

## 9.12. APPOINTMENT OF ACTUARY AND ACTUARIAL VALUATIONS

9.12.1. The BOARD may appoint an ACTUARY in terms of the ACT as and when required. The BOARD may withdraw that appointment and appoint a new ACTUARY in terms of these RULES.

9.12.2. The ACTUARY must perform the functions and fulfil the duties of a valuator in terms of the ACT, unless these functions and duties are not applicable to the FUND. The BOARD must let the ACTUARY have all the information that he/she requires in order to fulfil his/ her functions and duties. The ACTUARY must be allowed to see and make copies of the written documents that the FUND has and that are

needed for this purpose.

9.12.3. Unless the REGULATOR has certified that the FUND is not required to do this, the FUND must have its financial position investigated, valued and reported on by the ACTUARY as often as is required in terms of the ACT. The ACTUARY must submit his/her report to the BOARD and the BOARD must submit a copy of the report to the REGULATOR.

9.12.4. If the BOARD so requests, the ACTUARY must investigate whether the FUND will comply with the conditions established by the REGULATOR for exemption of the FUND from actuarial valuation in terms of Section 16 of the ACT, in which case the ACTUARY must complete the required certification to accompany an application by the FUND for exemption from actuarial valuation, or renewal of such exemption.

9.13. **INVESTMENT MANAGER**

The BOARD may appoint INVESTMENT MANAGERS to perform whatever functions may be necessary with regard to investments on behalf of the FUND, in line with the FUND'S Investment Policy Statement. The EMPLOYER, subject to the approval of the BOARD, will be able to select which INVESTMENT MANAGERS will manage the FUND'S assets set aside for the MEMBERS of the particular EMPLOYER in line with any Investment Policy Statement applicable to that EMPLOYER.

9.14. **DISPUTES**

9.14.1. In the event of a deadlock arising at any meeting of the BOARD, the BOARD must defer the matter in question to the following meeting of the BOARD or to a special meeting of the BOARD to be convened within 10 (ten) working days for the specific purpose of reconsidering the matter under dispute.

9.14.2. If no agreement is reached in terms of Rule 9.14.1 above the issue must be referred by the BOARD to an expert, the identity of whom must be agreed by the BOARD or, failing such agreement, will be decided by -

9.14.2.1. the head of the Cape Bar Council in the case of a dispute of law or equity,

9.14.2.2. the head of the Actuarial Society of South Africa, in the case of a dispute relating to actuarial matter, or

9.14.2.3. the head of the South African Institute of Chartered Accountants, in the case of a dispute relating to an accounting matter

who will, at the cost of the FUND, submit a written recommendation on the matter to the BOARD at a meeting at which the issue will be considered. If the dispute is not resolved at this meeting, the BOARD will be obliged to accept the recommendation of the expert.

9.14.3. Any dispute which arises between any EMPLOYER and the BOARD and any dispute arising between the BOARD and the ADMINISTRATORS or the INSURER, arising out of the administration of the FUND or arising in connection with the interpretation of the RULES or any benefits receivable by any MEMBER, must be decided by agreement between the parties to the dispute. Should the parties to the dispute not reach agreement the dispute must be decided in terms of the procedure set out in Rule 9.14.2 above.

## 9.15. COMPLAINTS AND THE ADJUDICATOR

9.15.1. For the purposes of this rule, "COMPLAINANT" shall mean-

- (a) any MEMBER or former MEMBER;
- (b) any BENEFICIARY or former BENEFICIARY;

- (c) any EMPLOYER;
- (d) any group of persons referred to in (a), (b) or (c) above;
- (e) the BOARD or any TRUSTEE or the PRINCIPAL OFFICER;
- (f) any person who has an interest in a complaint.

9.15.2. Notwithstanding the provisions of Rule 9.14 any COMPLAINANT has the right to lodge a written complaint as defined in the ACT, and relating to the administration of the FUND, or the investment of its funds or the interpretation and application of the RULES, with the BOARD or the EMPLOYER.

9.15.3. The FUND or the EMPLOYER must properly consider and reply to such complaint in writing within 30 (thirty) days after receipt thereof or such other period as mutually agreed in writing between the BOARD and the COMPLAINANT.

9.15.4. Should the COMPLAINANT not be satisfied with the reply, or should the BOARD or EMPLOYER fail to reply within the 30 (thirty) day period, or such other period as was mutually agreed to, referred to in Rule 9.14.3, the COMPLAINANT may lodge the complaint with the ADJUDICATOR in accordance with the provisions of the ACT.

## 9.16. FIDELITY INSURANCE

9.16.1. The BOARD must ensure that fidelity cover is obtained and maintained for such an amount as it regards as sufficient protection against any loss resulting from the negligence, dishonesty or fraud of any of its TRUSTEES, officers or any other person to whom they have delegated their powers or functions, having receipt or charge of moneys belonging to the FUND.

9.16.2. The BOARD must require that the ADMINISTRATOR and INVESTMENT MANAGER effect and maintain insurance to



adequately indemnify the FUND against losses which may arise as a result of the negligence, dishonesty or fraud of any person employed by such ADMINISTRATOR or INVESTMENT MANAGER, as the case may be.

## PART 10: MISCELLANEOUS PROVISIONS REGARDING BENEFITS

### 10.1. PAYMENT OF BENEFITS

10.1.1. Benefits payable to a BENEFICIARY in terms of the RULES are payable:

10.1.1.1. by cheque in favour of the BENEFICIARY at the registered office of the FUND upon positive proof of the BENEFICIARY'S identity; or

10.1.1.2. if requested by the BENEFICIARY by postage of the cheque through ordinary mail, provided that if such a request is made it must be explained to the BENEFICIARY in writing that in so doing he/she carries the risk of the cheque being lost in the post or stolen; or

10.1.1.3. at the BENEFICIARY'S request, paid by electronic transfer into a bank account of the BENEFICIARY with a bank registered in terms of the Banks Act of 1990. The BENEFICIARY must provide, in writing, the details of the bank account to which the benefit must be transferred and such written documentation must bear the signature of the BENEFICIARY.

10.1.2. Any payment in terms of the RULES is made only after the deduction of such tax as may be enforced by law from time to time.

10.2. LATE PAYMENT OF BENEFITS

Subject to Rule 10.8.2, and the provisions of the ACT, the BOARD may determine from time to time the period in which the different benefits payable by the FUND must be paid as well as the interest to be added to the benefit if the benefit is paid after the expiry of the said period.

10.3. BENEFICIARY INCAPABLE OF ACTING

10.3.1. In any case where, in the opinion of the BOARD, it would not be appropriate to pay or to continue to pay any benefit due in terms of the RULES to any person entitled thereto in terms of the RULES, the BOARD has the right to pay such benefit as follows.

10.3.1.1. if the BENEFICIARY is a minor child, and payments are being made to the legal guardian or other person referred to in section 37C(2) of the ACT, the BOARD may terminate payments to that person and instead make payment into trust or to a fund to which the law permits such payments;

10.3.1.2. to the curator of a BENEFICIARY, where a court of law has appointed a *curator bonis* for such BENEFICIARY, or to a trustee contemplated in the Trust Property Control Act 57 of 1988 if the BENEFICIARY is subject to a legal disability.

10.3.2. A receipt signed by any of the abovementioned recipients of payments is a complete discharge to the BOARD for such benefit.

10.4. DEDUCTIONS FROM BENEFITS

10.4.1. The EMPLOYER has no charge or lien on, or right to, any benefit or monies payable to a BENEFICIARY in terms of the RULES, except that the following amounts due to the EMPLOYER may be deducted from such benefits:

(a) any amount for which the FUND has granted a guarantee in respect of a housing loan in terms of Section 19(5)(a) of the ACT;

(b) any amount due as compensation in respect of the following-

(i) damage caused to the EMPLOYER by any theft, dishonesty, fraud or misconduct of the MEMBER and in respect of which-

(ii) the MEMBER has in writing admitted liability to the EMPLOYER; or

(iii) judgment has been obtained against the MEMBER in any court, including a magistrate's court.

10.4.2. Notwithstanding any other provisions of these RULES, the BOARD may, where an 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 EMPLOYER as contemplated in Section 37D of the ACT, withhold payment of the benefit until such time as the matter has been finally determined by a competent court of law or has been settled or formally withdrawn, provided that:

10.4.2.1. the amount withheld must not exceed the amount of the

loss being claimed by the EMPLOYER that may be deducted in terms of Section 37D(b)(ii) of the ACT;

10.4.2.2. the EMPLOYER has made a written request to the FUND motivating as to why the benefit should be withheld and the BOARD is satisfied that the EMPLOYER has made out a prima facie case against the MEMBER concerned;

10.4.2.3. the BOARD is satisfied that the EMPLOYER is not, at any stage of the proceedings, responsible for any undue delay in the prosecution of the proceedings;

10.4.2.4. once the proceedings have been determined, settled or withdrawn, any benefit to which the MEMBER is entitled is paid forthwith; and

10.4.2.5. the BOARD, at the express written request of a MEMBER whose benefit is withheld, may, if applicable and practical, permit the value of the MEMBER'S benefit, as at the time of such request, to be invested in an interest bearing cash instrument, as the BOARD considers appropriate, that is not subject to currency fluctuations, in order to protect the MEMBER'S benefit from the possibility of a decrease therein as a result of poor investment performance.

**10.5. DISPOSITION OF BENEFITS UPON DIVORCE**

In the event of the FUND being furnished with a valid court order issued in terms of any applicable law in which the FUND is cited or is clearly identifiable, the BOARD must comply with the order and make payment as required by any applicable law at the time of any amount due.

**10.6. UNCLAIMED BENEFITS**

10.6.1. Any benefit that remains unclaimed for a period of 24 (twenty four) months from when it became due and payable to a BENEFICIARY will be allocated to the Unclaimed Benefits Account referred to in Rule 8.6. The unclaimed benefits shall be held in the Unclaimed Benefits Account:

(a) until that BENEFICIARY has been traced, or until it is confirmed that the BENEFICIARY has died, in which case it must be paid to the BENEFICIARY'S estate , or until the FUND is totally or partially dissolved in which case it will be paid to the Guardian's Fund. Where the FUND is partially dissolved following the termination of a PARTICIPATING EMPLOYER'S participation in the FUND, it is only the unclaimed benefits payable to, or in respect of, the former MEMBERS who were employed by that PARTICIPATING EMPLOYER that may be paid to the Guardian's Fund; or

(b) until legislation provides for the payment of such unclaimed benefits into any other fund or a national fund established with the support of the REGULATOR for the purpose of holding unclaimed benefits,

after which the BENEFICIARY will have no further claim on the FUND. The FUND will for 30 (thirty) years keep records of all amounts due to the BENEFICIARIES which have not been paid unless the amounts and records have been transferred to another fund. Any unclaimed benefit will be subject to tax at the rate as may be determined by the COMMISSIONER from time to time.

10.6.2. Notwithstanding the provisions of Rule 10.6.1, the BOARD may pay the moneys referred to in that rule to a BENEFICIARY if such BENEFICIARY produces sufficient evidence to the BOARD of his/her right to such monies. For the purpose of this rule, "BENEFICIARY" includes a BENEFICIARY'S deceased estate if the executor satisfies the BOARD of the right of the deceased to claim such monies immediately prior to his/her death.

**10.7. ALIENATION OF BENEFITS: SECTION 37A OF THE ACT**

The prohibition on the alienation of benefits is regulated by section 37A of the ACT.

**10.8. TRANSFERS BETWEEN FUNDS**

10.8.1. The FUND is empowered to receive transfers of monies and business from other APPROVED PENSION, PROVIDENT, and RETIREMENT ANNUITY FUNDS, or to effect transfers of monies and business to other APPROVED PENSION, PROVIDENT, and RETIREMENT ANNUITY FUNDS or APPROVED PRESERVATION FUNDS, subject to the relevant provisions of the Income Tax Act 58 of 1962 and the ACT, and on such terms and conditions as the BOARD in consultation with the ACTUARY may decide: Provided that any such transfer to or from an APPROVED PRESERVATION FUND shall be conducted in compliance with the requirements of Practice Note RF1/98 or any subsequent practice notes and any relevant legislation

10.8.2. Any amount to be transferred by the FUND to another APPROVED PENSION, PROVIDENT, and RETIREMENT ANNUITY FUNDS or APPROVED PRESERVATION FUNDS on the MEMBER'S request in terms of these RULES must be transferred to such other fund within 60 (sixty) days of receipt by the FUND of the MEMBER'S written instruction, provided that such transfer is permissible in terms of the

ACT and the Income Tax Act 58 of 1962. Interest, at a rate prescribed by the Minister of Finance from time to time, compounded daily, shall be paid to such other fund on any benefit transferred after the aforementioned 60 (sixty) day period and shall be calculated from the expiry of the 60 (sixty) day period until date of payment to such other fund. No interest will be payable if the failure to pay the benefit within the prescribed 60 days period is due to no fault of the BOARD.

- 10.8.3. The BOARD may allow a MEMBER to transfer into the FUND his/her TRANSFER BENEFIT, from another APPROVED PENSION FUND or APPROVED PROVIDENT FUND or APPROVED PRESERVATION FUND.



## **PART 11: GENERAL**

### **11.1. COMMUNICATION**

11.1.1. Within 3 (three) months of admission to the FUND, a MEMBER must be furnished with a Certificate of Membership and an explanatory booklet which contains a descriptive summary of the RULES and includes information relating to the name, address and registration number of the FUND.

11.1.2. MEMBERS must also receive an annual personal benefit statement and an annual summary of all rule amendments registered in that FUND YEAR.

### **11.2. INSPECTION OF DOCUMENTS**

11.2.1. Every MEMBER is entitled to inspect a copy of the RULES at the office of the EMPLOYER or, on written application to the BOARD, to receive a copy of the RULES.

11.2.2. Every MEMBER is entitled, on request to the BOARD, to inspect the financial statements and the RULES of the FUND, as well as the latest valuation report by the ACTUARY if required for the FUND at any reasonable time at the registered office of the FUND or, on written application to the BOARD, to receive a copy of such documents upon payment of any reasonable fee determined by the BOARD.

### **11.3. PRODUCTION OF EVIDENCE AND PARTICULARS**

11.3.1. Each EMPLOYER must from time to time furnish the BOARD, in respect of those of its EMPLOYEES who are MEMBERS, all necessary particulars affecting their benefits or their entitlement thereto under the FUND. The BOARD is entitled to act upon such particulars without further enquiry and is not responsible to a MEMBER, the MEMBER'S DEPENDANTS or NOMINEES or the executor of the MEMBER'S estate, or to the EMPLOYER or to any other person or body whatsoever, for any misstatements or errors or omissions which may be contained in such particulars.

11.3.2. Any person entitled to benefit under the FUND is bound to produce at any time such evidence and information as may be required by the EMPLOYER or INSURER for the purposes of the FUND, including evidence of date of birth satisfactory to the ADMINISTRATOR and/or INSURER, before any benefit may be paid.

### **11.4. BOOKS OF ACCOUNT**

The ADMINISTRATOR must ensure that full and true accounts of the FUND are kept, to be closed off as at each FUND YEAR END, and to be audited by the AUDITOR. Such audited accounts must be presented to and approved by the BOARD forthwith.

### **11.5. SIGNING OF DOCUMENTS**

All cheques, contracts and other documents pertaining to the FUND must be signed by the TRUSTEES or the PRINCIPAL OFFICER or any other person authorised by the BOARD, provided that any document to be deposited with the REGULATOR, must be signed as prescribed in the ACT.

### **11.6. BANK ACCOUNT**

The ADMINISTRATOR must open, maintain and conduct a banking account in

the name of the FUND at a registered banking institution. All moneys received by or on behalf of the FUND must be deposited into such account and separate records must be maintained under the account in respect of each EMPLOYER.

#### **11.7. CURRENCY**

All benefits and contributions payable in terms of the RULES must be payable in the currency of the Republic of South Africa.

#### **11.8. INDEMNIFICATION**

11.8.1. The TRUSTEES, the ADMINISTRATOR and all officers of the FUND are indemnified by the FUND against all proceedings, costs and expenses incurred by reason of any claims in connection with the FUND, not arising from their gross negligence, dishonesty or fraud.

11.8.2. The ADMINISTRATOR indemnifies the FUND against any loss resulting from the dishonesty, negligence or fraud on the part of the ADMINISTRATOR or any person employed or authorised by the ADMINISTRATOR to handle the monies of the FUND.

11.8.3. Each EMPLOYER must make good to the FUND any loss resulting from the dishonesty, negligence or fraud on the part of the EMPLOYER or any person employed or authorised by the EMPLOYER to handle the moneys of the FUND.

#### **11.9. INSURANCE CONTRACTS**

11.9.1. Where monies are invested with an INSURER, the BOARD must obtain from the INSURER such group policies of insurance as are required for the purpose of securing the benefits required.

11.9.2. All life assurance and disability cover not secured by the MEMBERS'

SHARES must be secured by means of group life or disability policies of insurance.

**11.10. MONIES NOT TO REVERT TO EMPLOYER**

Other than as permitted in terms of these RULES or the ACT, the EMPLOYER may not derive any financial advantage from monies payable into or out of the FUND and no such monies may become the property of the EMPLOYER.

**11.11. RULE AMENDMENTS**

11.11.1. The BOARD has the right to amend the RULES at any time, provided that-

11.11.1.1. any amendment to the RULES must not be inconsistent with the provisions of the ACT and the Income Tax Act 58 of 1962;

11.11.1.2. any amendment having a financial impact on the EMPLOYERS, must first be approved by the EMPLOYERS;

11.11.1.3. no amendment may deprive a BENEFICIARY of a benefit to which he/she has already become entitled, or reduce such benefit;

11.11.1.4. any amendment to the GENERAL RULES must be communicated to the EMPLOYER in writing;

11.11.1.5. every amendment to the SPECIAL RULES must be

agreed upon in writing between the BOARD and the relevant EMPLOYER.

**PART 12: TERMINATION OF PARTICIPATION, AMALGAMATION AND DISSOLUTION OF  
THE FUND**

**12.1. TERMINATION OF PARTICIPATION**

12.1.1. The participation of a EMPLOYER may be terminated by either the EMPLOYER or the BOARD, in accordance with the following provisions:

(a) An EMPLOYER has the right to terminate its contributions to the FUND and its participation in the FUND at any time, by giving 3 (three) months' written notice to the BOARD to this effect, provided that the BOARD may, at its discretion, waive the said period of notice.

(b) The BOARD has the right to give 3 (three) months' written notice to an EMPLOYER, that it declines to accept any further contributions from an EMPLOYER who fails to pay any contribution due or to fulfil any of its other obligations in terms of the RULES or any group policy.

(c) An EMPLOYER'S participation in the FUND terminates automatically-

(i) in the event of the EMPLOYER going into liquidation (other than in the event of reconstruction, as contemplated in Rule 12.2 below); or

(ii) when the FUND has no further assets or liabilities in terms of the SPECIAL RULES in respect of the EMPLOYER.

(d) As at the date of termination of an EMPLOYER'S participation in the FUND, the following provisions apply to the contributions and benefits in respect of MEMBERS employed by it in terms of the SPECIAL RULES applicable to the EMPLOYER:

(i) the provisions of Rule 12.3 apply *mutatis mutandis* in respect of the calculation of the MEMBERS' entitlement under the FUND;

(ii) all life assurance and disability cover (if any) ceases;

(iii) all amounts that are still due to be credited or debited to the EMPLOYER ACCOUNT, of that EMPLOYER must be so credited or debited, and the credit balance in the account so determined;

(iv) the liability of the FUND to the MEMBERS is limited to the credit balance in the EMPLOYER ACCOUNT, of that EMPLOYER available only as set out below; and

(v) the date on which contributions cease to be payable in terms of any notice served in terms of Rule 12.1.1(a) is deemed to be the date of termination of participation.

12.1.2. In the event that the EMPLOYER wishes to terminate participation in the FUND and to establish a new retirement fund for the benefit of its

employees, the BOARD may,<sup>2</sup> agree that the amounts standing to the credit of the MEMBER ACCOUNTS of its employees be transferred to such APPROVED PENSION FUND, APPROVED PROVIDENT FUND or APPROVED RETIREMENT ANNUITY FUND, subject to the provisions of section 14 of the ACT.

12.1.3. In any circumstances not covered under Rules 12.1.1 and 12.1.2, each MEMBER'S SHARE must be determined as if the date were the FUND YEAR END, and must be utilised to secure for the MEMBER an individual annuity from an APPROVED RETIREMENT ANNUITY FUND, provided that-

(a) the MEMBER'S SHARE of a MEMBER in SERVICE after the NORMAL RETIREMENT DATE, must be utilised to secure an immediate life annuity for the MEMBER; or

(b) where an annuity would not exceed such amount as may be fixed by law from time to time, an immediate cash sum is payable to the MEMBER in lieu of any other benefits.

## 12.2. RECONSTRUCTION, RECONSTITUTION OR AMALGAMATION

12.2.1. In the event of a EMPLOYER merging with, becoming affiliated to, or taking over or being taken over another body, or going into liquidation for the purposes of reconstitution, reconstruction or amalgamation, whether partial or total, with any other body, the following applies, as the EMPLOYER may elect as follows in writing as from a date specified by the BOARD:

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<sup>2</sup> You will see that I have deleted the words "provided it is satisfied that the rights and benefits of MEMBERS are sufficiently protected". This is because these words impose an obligation on the board that I am not sure it need necessarily take on. It is quite an onerous task for the board to have to be satisfied that a transfer to another fund is in the members' interests. I think that legally this is an employment decision and not a pension fund law decision. If the board wants to assume this responsibility, it can but it is not necessary and I would not recommend it.



- (a) the EMPLOYER and the BOARD may make such arrangements or enter into such agreements, not in conflict with the RULES, as they think fit for the continuance of participation of such reconstructed, reconstituted or amalgamated business, provided that no such arrangement may operate in such a manner that any BENEFICIARY benefits to any lesser extent than if the EMPLOYER'S participation had been terminated on the date of such liquidation; or
- (b) the FUND'S liability in respect of MEMBERS in the SERVICE of such EMPLOYER may be transferred to another APPROVED PENSION FUND, APPROVED PROVIDENT FUND or APPROVED RETIREMENT ANNUITY FUND, in accordance with the provisions of Rule 12.1.2.

### 12.3. TERMINATION OF FUND

#### 12.3.1. The FUND may be terminated-

- (a) by the BOARD at any time, provided that the FUND has no further assets or liabilities; or
- (b) by order of court, as contemplated in section 29 of the ACT.

12.3.2. Should the FUND be terminated in terms of Rule 12.1 above, the BOARD must appoint a liquidator, subject to the approval of the REGULATOR, who must liquidate the FUND in accordance with the provisions of the ACT. Once the liquidator has been appointed the TRUSTEES will cease to hold office and the powers, duties and functions conferred on them in terms of these RULES devolves upon the liquidator.

12.3.3. The liquidator must determine the assets in the FUND, consult the ACTUARY as to the value of each BENEFICIARY'S entitlement in the FUND and divide such assets in an equitable manner amongst the MEMBERS of the FUND, subject to the provisions of the ACT and according full recognition to-

(a) the rights and reasonable benefit expectations of the MEMBERS in the FUND; and

(b) any additional benefits the payment of which has become established practice.

12.3.4. The amount allocated to a MEMBER must be invested in an APPROVED PRESERVATION PROVIDENT FUND or an APPROVED RETIREMENT ANNUITY FUND of the MEMBER'S choice, for the benefit of such MEMBER.

12.3.5. All former MEMBERS of the FUND who left SERVICE either voluntarily or due to a reduction in or re-organisation of staff, or following the transfer of his/her employment in terms of section 197 of the Labour Relations Act of 1995 during the immediately preceding 12 (twelve) month period, must for the purposes of this Rule be regarded as if they are MEMBERS of the FUND on the date of termination, provided that the benefits already paid to such former MEMBERS must be taken into account in determining the amount payable to such former MEMBER.

12.3.6. All moneys remaining unclaimed for a period of 24 (twenty four) months from the date on which payment of benefits commenced, must be paid into the Guardian's Fund, or such other national fund as may be established with the approval of the REGULATOR for such purpose, or such other fund to which the payment of unclaimed

moneys is permitted in law, by the liquidator for the benefit of the BENEFICIARIES concerned, whereafter such BENEFICIARIES have no further claim against the FUND or the EMPLOYER.

12.3.7. The liquidator must indicate in his/her final liquidation account the amount thus paid and must simultaneously furnish the REGULATOR with a certificate to the effect that all reasonable steps were taken to trace persons entitled to the amount. An auditor approved by the REGULATOR must certify the account as correct.

12.3.8. In the event that the FUND is terminated by an order of court, as contemplated in section 29 of the ACT, the provisions of such order regarding unclaimed monies prevails but if the order does not specifically make section 410 of the Companies Act of 1973, applicable or direct otherwise regarding unclaimed monies, the provisions of Rules 12.3.6 and 12.3.7 above apply.

## **PART 13 - THE SPONSOR**

### **13.1. ROLE OF THE SPONSOR**

As one of the founding parties to the establishment of the FUND and because it has certain rights and obligations in relation to the FUND, the SPONSOR has an interest in the FUND. The nature of the SPONSOR'S rights and obligations in respect of the FUND are set out in a Sponsorship Agreement concluded between the FUND and the SPONSOR.

### **13.2. CHANGE OR WITHDRAWAL OF THE SPONSOR**

The FUND may exist without the SPONSOR but only if the SPONSOR agrees to this. The FUND has no power to require the SPONSOR to withdraw from it.