

**THE ELECTRICAL CONTRACTING INDUSTRY PENSION FUND  
REVISED RULES**

**REGISTRATION NUMBER: 12/8/4730/1**

## ROUND-ROBIN RESOLUTION

Round-robin resolution of the BOARD OF TRUSTEES of the ELECTRICAL CONTRACTING INDUSTRY PENSION FUND made in terms of RULE 10.4.4 on 4 February 2021.

### Resolved that:

'With effect from date of registration of these RULES by the FSCA, the RULES of the ELECTRICAL CONTRACTING INDUSTRY PENSION FUND be substituted by these revised RULES and shall replace any previously registered set of RULES for the following reasons: -

1. *to recognise and to take account of certain changes in legislation and the requirements of the FSCA and/or the South African Revenue Service in terms of the –*
  - (a) *Pension Funds Amendment Act, 2007, (Act No. 11 of 2007);*
  - (b) *Financial Services Laws General Amendment Act, 2013, (Act No. 45 of 2013;*
  - (c) *The Financial Sector Regulation Act, 2017, (Act No. 9 of 2017);*
  - (d) *Default Regulations 37, 38 and 39 to the ACT which have as their objective improvement in outcomes for retirement fund members;*
2. *to align the RULES with the updated provisions of the Income Tax Act, 1962, (Act No.52 of 1962), as amended;*
3. *to amend and make corrections to certain words, phrases, references and meanings, as the case may be;*
4. *to update DEFINITIONS in Part 2 of the RULES by making appropriate changes and to add new definitions in line with paragraph 1 above and in particular either to add or vary the following Definitions :*
  - (a) *ANNUITY STRATEGY is added for the purposes of Regulation 39 to the ACT;*
  - (b) *COMPLAINANT is added in order to assist the reader in interpreting RULE 12.7 DISPUTES, CLAIMS AND COMPLAINTS;*

- (c) *COUNCIL AGREEMENT is varied in order to clarify this Agreement;*
- (d) *DATA ERROR RESERVE ACCOUNT is added for the purposes of paragraph 11 below;*
- (e) *DEPENDANT is added in order to update this definition to take account of the updates provisions of the Pension Fund Amendment Act, 2007 (Act. No. 11 of 2007);*
- (f) *SPOUSE is added to take account of the updated provisions of the Pension Fund Amendment Act, 2007 (Act. No. 11 of 2007);*
- (g) *Electrical Council Association is deleted as the definition is redundant;*
- (h) *EMPLOYER REPRESENTATIVE is added to clarify the appointment of board members appointed by the employers;*
- (i) *EXPENSE AND RISK RESERVE ACCOUNTS are added for the purposes of paragraph 11 below;*
- (j) *FINANCIAL SECTOR CONDUCT AUTHORITY is added because of the enactment of the enactment of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);*
- (k) *FUND RETURN replaces the Definition FUND INTEREST and FUND RETURN is determined annually instead of every 3 years in the interests of sound governance;*
- (l) *INDEPENDENT TRUSTEE added in order to regulate the appointment and role of an Independent Trustee in Part 10 of the RULES in the interests of sound governance;*
- (m) *INSURED SALARY is deleted as it has become redundant;*
- (n) *MEMBER is varied to take into account of PAID-UP MEMBERS for the purposes of Regulation 38 and Part 8 of the RULES;*
- (o) *MEMBER REPRESENTATIVE to clarify the appointment of board members appointed by the MEMBERS in terms of Part 10 of the RULES;*

- (p) *MONITORING PERSON is added to comply with section 13A(6) and Regulation 33 to the ACT;*
- (q) *NOMINEE is added for the purposes of clarification and to interpret these RULES;*
- (e) *NON-MEMBER SPOUSE is added to comply with Pension Funds Amendment Act, 2007, (Act No. 11 of 2007);*
- (r) *NORMAL RETIREMENT AGE is varied to take into account of PAID-UP MEMBERS as regulated in Part 8 of the RULES;*
- (s) *PREVIOUS FUND Definition added for the purposes of PAID-UP MEMBERS that belonged to previous funds prior to commencement of FUND membership;*
- (t) *PENSION FUND AGREEMENT amended to take account of the expiry of the Agreement as per RULE 12.12;*
- (u) *PRINCIPAL OFFICER is amended to include reference deputy PRINCIPAL OFFICER to be appointed by the BOARD should the need arise;*
- (v) *PROCESS ERROR RESERVE ACCOUNT is added is added for the purposes of paragraph 11 below;*
- ;
- (w) *RETIREMENT BENEFIT COUNSELLING is added for the purposes of complying with the Default Regulations 37, 38 and 39 to the ACT;*
- (f) *SPOUSE is added to comply with the Pension Funds Amendment Act, 2007, (Act No. 11 of 2007);*
- (g) *UNCLAIMED BENEFIT added to comply with the Pension Funds Amendment Act, 2007, (Act No. 11 of 2007);*

5. *In Part 3 of the RULES, the historical provisions that no longer apply in Rule 3.1 are deleted and a new RULE 3.4 is added in order to regulate transfers in terms of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995);*

6. *In Part 4 of the RULES, RULE 4.2 has been deleted because of its redundancy and has been replaced by a provision regulating additional voluntary contributions;*
  
7. *In Part 6 of the RULES, provisions relating to non-fund business are deleted and*
  - *the multiple of salary referred to in this RULE is replaced by the amount of cover as set out in the insurance policy as the provision of insurance cover varies from time to time;*
  
  - *RULE 6.3 allowing for recoupment of expenses is added;*
  
  - *RULE 6.4 – a limitations rule as set out insurance policy is added for clarity and ease of interpretation of the underwriting provisions contained in the insurance policy;*
  
8. *In Part 7 of the RULES, RULE 7.2.1 clarifies the employer contribution in the event of disablement of member to be the amount paid by INSURER in terms of employer waiver insurance policy;*
  
9. *In Part 8 of the RULES, provision is made for withdrawing members to become PAID-UP MEMBERS and matters incidental to becoming paid-up in compliance with Default Regulation 38 to the ACT;*
  
10. *In Part 10 to the RULES, the powers, duties and accountability of the BOARD OF TRUSTEES in exercising their fiduciary duties are extended at length -*
  - *in the interests of clarity of interpretation and sound governance in the Fund in general;*
  
  - *to regulate the appointment of an independent trustee;*
  
  - *to provide for the attainment of and retention of prescribed levels of skills in compliance with the ACT;*
  
  - *to provide for the establishment of fund policies and practice notes in the interests of sound governance;*


- *to add the duty to disclose in terms of Pension Fund Amendment Act, 2007 and Financial Services Laws General Amendment Act, 2013 (Act No. 45 of 2013);*
  - *to make provision for the legal costs of TRUSTEES, PRINCIPAL OFFICER and FUND officials to be paid by the FUND;*
  - *to add confidentiality, limitation of liability provisions in RULES 10.22, 10.22 and 10.23 in the interests of sound governance;*
11. *In Part 11 to the RULES, to make provision for possible shortfalls in the PENSIONER account maintained in terms of Rule 11.3*
  12. *to make provision for the payment of tracing fees from the EXPENSE AND RISK RESERVE ACCOUNT in the event that the tracing fee is not recouped from the MEMBER (Rule 11.4)*
  13. *to update the RULES and align the functions and operations of the ACCOUNTS and various RESERVE ACCOUNTS to be compliant as contemplated in the ACT;*
  14. *RULE 12.7.12 is added to provide for another dispute resolution forum created in terms of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);*
  15. *to update the RULES to be in line with the requirements of the ACT regarding UNCLAIMED BENEFITS;*
  16. *to regulate provisions regarding the processing of claims in the interests of sound governance;*

**Certified that the above round-robin resolution has been adopted in accordance with the RULES of the FUND.**

1. **Mark Mfikoe**  
CHAIRPERSON OF THE BOARD OF TRUSTEES

  
.....  
SIGNATURE

2. **Deon van Deventer**  
TRUSTEE

  
.....  
SIGNATURE

3. **Ronel Sheehan**  
PRINCIPAL OFFICER

*R Sheehan*.....

SIGNATURE

4. **Ranti Mothapo**  
VALUATOR

*R Mothapo*.....

SIGNATURE



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**PART 1**  
**INTRODUCTION**

**1.1 PREAMBLE**

- 1.1.1 The Electrical Contracting Industry Pension Fund is a defined contribution pension fund established by The National Bargaining Council for the Electrical Contracting Industry of South Africa (“ the COUNCIL”), in terms of the LABOUR RELATIONS ACT. The FUND is a ‘Type B umbrella fund’ which has extended membership to all employees within the jurisdiction of the COUNCIL.
- 1.1.2 The object of the FUND is to provide, in terms of the provisions of these RULES, as amended from time to time, benefits at retirement or other life contingencies on behalf of persons who qualify for participation in the FUND.
- 1.1.3 The FUND is a body corporate separate from its MEMBERS, the EMPLOYERS and COUNCIL and as such the FUND is: -
- (a) the owner of assets; and
  - (b) capable of acquiring rights and liabilities in its own name; and of suing or being sued in a court of law; and
  - (c) capable of performing all acts which may reasonably be necessary or ancillary to the exercise of its powers or the performance of its functions in terms of the RULES.
- 1.1.4 With effect from 1 January 1999, all contributions made in terms of these RULES were applied on a deposit administration basis.
- 1.1.5 With effect from 1 January 2003 the FUND is became an audit non-exempt fund.

1.1.6 These revised RULES shall incorporate:-

- (a) the provisions of the registered Amendment no.1; and
- (b) the applicable provisions of the COUNCIL (National Pension and Provident Fund Collective Agreement), in accordance with the provisions of the LABOUR RELATIONS ACT; and
- (c) the applicable changes brought about by the Pension Funds Act, 1956, (Act No.24 of 1956), as amended (and in particular the Financial Services Laws General Amendment Act, 2013, (Act No.45 of 2013), as may be amended from time to time; and
- (d) the requirements of Regulations 37, 38 and 39 to the ACT as set out in Government Gazette No. 41064 dated 25 August 2017.

1.1.7 These RULES shall be binding on the FUND, the BOARD OF TRUSTEES, the FUND officers, the MEMBERS and the COUNCIL and any other person who claims under these RULES or whose claim is derived from a person so claiming.

## 1.2 **INCEPTION DATE AND NAME CHANGE**

THE ELECTRICAL CONTRACTING INDUSTRY PENSION SCHEME ('the FUND') was established on 25 February 1963. With effect from 1 April 1997 the name of the FUND changed to THE ELECTRICAL CONTRACTING INDUSTRY PENSION FUND.

## 1.3 **REGISTERED OFFICE**

The registered office of the FUND is situated at:-

The Liberty  
17 Wolmarans Street  
Braamfontein.

## **PART 2**

## DEFINITIONS

In these RULES, unless inconsistent with the context, words and expressions denoting the singular shall 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 and shall in no way be deemed to explain, modify or amplify any interpretation of these RULES.

The following words and expressions shall bear the meanings assigned to them below, cognate expressions shall have corresponding meanings and therefore now:-

**ACT** means the Pension Funds Act, 1956 ('Act 24 of 1956') as amended, the regulations framed thereunder.

**ACTUARY** means a natural person admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the FSCA by notice in the Government Gazette and appointed as valuator in terms of these RULES.

**ADJUDICATOR** means the Pension Funds Adjudicator or Deputy Pension Funds Adjudicator appointed in terms of section 30C(1) of the ACT, or any authority, forum, tribunal, organisation or arbitrator having jurisdiction over any dispute in terms of the RULES and any party thereto.

**ADMINISTRATOR** means the administrator appointed by the BOARD OF TRUSTEES and who is appointed in terms of these RULES, including a legal person, approved as a retirement fund administrator by the FCSA in terms of the provisions of section 13B of the ACT and authorised in terms of such approval to administer the disposition of the benefits payable by the FUND.

**ANNUAL WAGE** means the annual equivalent of a MEMBER'S minimum wages as prescribed in the Main Collective Agreement, on which the MEMBER'S last contribution in terms of these RULES was based.

**ANNUITY STRATEGY** shall mean the FUND Policy which sets out the FUND'S annuitisation objectives and strategy as contemplated in the Regulations to the ACT.

**APPROVED FUND** means a fund that is recognised and registered by the FSCA and has been tax approved as a Pension Fund, Provident Fund, Pension Preservation Fund, Provident Preservation Fund or Retirement Annuity Fund by the REVENUE AUTHORITIES and in respect of which a MEMBER meets the eligibility requirements for admission to membership thereof.

**AUDITOR** means a person who has been appointed by the BOARD in terms of these RULES and who shall be:-

- (a) registered as an auditor in terms of the Auditing Profession Act, 2005 (Act 26 of 2005); and
- (b) approved by the FSCA.

**BENEFICIARY** means a MEMBER, a DEPENDANT, a DORMANT MEMBER (if the context permits) and/or NOMINEE or any other person who is entitled to a benefit payable in terms of these RULES.

**BOARD MEMBER** means a member of the **BOARD OF TRUSTEES**.

**BOARD OF TRUSTEES** means the body of persons who manages, directs and controls the FUND and who are appointed in terms of these RULES. The term "BOARD" shall have a corresponding meaning.

**COMPLAINANT** means any person or group of persons who is or who claims to be:

- (a) a MEMBER or former MEMBER;
- (b) a BENEFICIARY or former BENEFICIARY;
- (c) the EMPLOYER who participates in the FUND;
- (d) the COUNCIL;
- (e) the BOARD OF TRUSTEES or a member thereof;
- (f) a person who has an interest in a COMPLAINT;
- (g) a SPOUSE or a former spouse of a MEMBER or former MEMBER of a fund.

**COMPLAINT** means an allegation made by and in respect of a COMPLAINANT relating to the administration of the FUND, the investment of its assets or the interpretation and/or application of its rules and alleging that:

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

provided that an allegation that does not relate to a specific COMPLAINANT shall not constitute a COMPLAINT.

**CONTRIBUTIONS FOR RETIREMENT BENEFITS** in regards to a MEMBER means the contribution made to the FUND by and in respect of the MEMBER, including transfers from other funds made specifically in respect of the MEMBER, net of the portion thereof earmarked by the FUND for the strengthening of the EXPENSE AND RISK RESERVE ACCOUNTS.

**CONTRIBUTING YEAR** means a continuous period of 12 months during which the contributions for that period are payable in terms of the PENSION FUND AGREEMENT.

**COUNCIL** means the National Bargaining Council for the Electrical Industry of South Africa established in terms of the LABOUR RELATIONS ACT.

**COUNCIL AGREEMENT** means the COUNCIL Main Collective Agreement concluded between the employer organisation and the trade union parties to the COUNCIL.

**DATA ERROR RESERVE ACCOUNT** means the reserve account maintained in terms of RULE 11.5 in order to protect the FUND against claims or liabilities which may arise due to data errors.

**DEPENDANT** in relation to a MEMBER:

- (a) a person in respect of whom the MEMBER is legally liable for maintenance;
- (b) a person in respect of whom the MEMBER is not legally liable for maintenance, if such person:
  - (i) was, in the opinion of the BOARD OF TRUSTEES, upon the death of the MEMBER in fact dependent on the MEMBER for maintenance;
  - (ii) is the SPOUSE of the MEMBER;
  - (iii) is a child of the MEMBER, including a posthumous child, an adopted child and a child born out of wedlock;
- (c) a person in respect of whom the MEMBER would have become legally liable for maintenance, had the MEMBER not died.

**DEMARCATED ASSETS** mean FUND assets ring-fenced by the BOARD on the advice VALUATOR with the object of backing different types of liabilities and/or reserve accounts maintained in accordance with Part 11 of the RULES.

**DORMANT MEMBER** means an ELIGIBLE EMPLOYEE that has been admitted to membership of the FUND and in respect of whom no contributions have been paid to COUNCIL for the previous six months and in respect of whom no benefit has been claimed.

**DISCLOSURE** means disclosure of information to the FSCA in terms of the ACT: -



- (a) regarding any conduct of this FUND, its ADMINISTRATOR, or a BOARD member, PRINCIPAL OFFICER, or deputy PRINCIPAL OFFICER, VALUATOR, officer or employee of the ADMINISTRATOR, any other officer and/or MEMBER of this FUND, as the case may be;
- (b) relating to the affairs of this FUND which may prejudice the FUND or its MEMBERS.

The term "Disclose" shall have a corresponding meaning.

**EFFECTIVE DATE** means the date on which these RULES were registered by the FSCA.

**ELIGIBLE EMPLOYEE** means a person –

- (a) employed in the INDUSTRY; and
- (b) in respect of whom a contribution is prescribed in terms of the PENSION FUND AGREEMENT; and
- (c) or any other category of persons which the COUNCIL has allowed to join the FUND.

**EMPLOYER** means the meaning given to such term in the PENSION FUND AGREEMENT.

**EMPLOYER REPRESENTATIVE** means a BOARD MEMBER who is appointed by the employer organisation that is party to the COUNCIL.

**EXPENSE AND RISK RESERVE ACCOUNT** means a reserve account maintained in terms of RULE 11.4 for the collection of contributions and expenses for operating the FUND.

**FINANCIAL YEAR** means the twelve months ending on 31 December, each year.

**FINANCIAL SECTOR CONDUCT AUTHORITY** shall mean the FINANCIAL SECTOR CONDUCT AUTHORITY established in terms of the Financial Sector Regulation Act, 2017, (Act. No. 9 of 2017), and shall hereinafter be referred to as the 'FSCA'.

**FUND** means The ELECTRICAL CONTRACTING INDUSTRY PENSION FUND. Where applicable a reference to the FUND must be construed as a reference to the BOARD OF TRUSTEES.

**FUND RETURN** means for each MEMBER or account referred to in RULE 11, in respect of any period determined by the BOARD, the monthly net investment gain or loss made by the Fund, as calculated by the ACTUARY, on the DEMARCATED ASSETS backing the FUND'S specific liability or sub-categories of liability in respect of the MEMBER, DORMANT MEMBER, UNPAID MEMBER, PENSIONER MEMBER, PAID-UP MEMBER or account referred to in RULE 11, taking into account any:-

- (a) interest, dividends and other investment income received by the FUND;
- (b) gains and losses made by the FUND on the disposal of investments; and
- (c) unrealised growth or depreciation in the value of investments; and
- (d) profits and losses arising during the course of a month as a result of the difference between the actual market value of assets and the market value of such assets, as advised by the manager of the relevant investment portfolio at the time when the assets are invested, or disinvested in an investment portfolio, or when investment returns earned by the FUND in a particular investment portfolio are accounted for by the ADMINISTRATOR.

which net investment gain or loss shall be allocated to the MEMBERS, DORMANT MEMBERS, UNPAID MEMBER, PENSIONER MEMBER, PAID-UP MEMBER or accounts referred to in RULE 11 on such basis as the BOARD determines from time to time, but at least annually at the end of each FINANCIAL YEAR.

**INDEPENDENT TRUSTEE** means an independent BOARD MEMBER appointed in terms of RULE 10.1.4 and who shall not be an EMPLOYER REPRESENTATIVE nor a MEMBER REPRESENTATIVE.

**INDIVIDUAL MEMBER ACCOUNT** means the individual account maintained in respect of each MEMBER in terms of RULE 11.1.

**INDUSTRY** means the Electrical Contracting Industry as defined in the certificate of registration issued by COUNCIL.

**INSURER** in regard to a particular liability of the FUND means the REGISTERED INSURER underwriting that liability, registered under the Long-term Insurance Act, 1998 (Act 52 of 1998), as amended, to transact long-term insurance business.

**LABOUR RELATIONS ACT** means the Labour Relations Act, (Act No. 66) of 1995, as amended.

**MEMBER** means any person who is an ELIGIBLE EMPLOYEE –

- (a) who has been admitted to membership of the FUND and who has not ceased to be a MEMBER in terms of these RULES and/or the provisions of the ACT; and
- (b) whose contributions in terms of these RULES are paid and are up to date.

PAID-UP MEMBER shall be included in this definition unless a contrary interpretation is evident from the relevant RULE. The term “MEMBERSHIP” shall have a corresponding meaning.

**MEMBER REPRESENTATIVE** means a BOARD MEMBER who is appointed by a trade union that is party to the COUNCIL.

**MEMBER SHARE** in regard to any MEMBER means the balance of his/her INDIVIDUAL MEMBER ACCOUNT.

**MONITORING PERSON** means a person appointed by the BOARD in terms of RULE 10.18.

**NEAR-CASH** means a pool of cash and liquid assets as well as short-term fixed interest-bearing investments kept by the ADMINISTRATOR of the FUND, and of which the returns for any period are equal to the accumulated monthly average returns earned on such assets and investments over the relevant period.

**NOMINEE** means, in respect of any MEMBER, a person, other than a DEPENDANT, designated in writing by the MEMBER to receive benefits in accordance with these RULES, upon the MEMBER'S death.

**NON-MEMBER SPOUSE** means in relation to a MEMBER, a person who is no longer the SPOUSE of a MEMBER due to the dissolution or confirmation of the dissolution of the relationship by a court order and to whom the court ordering or confirming the dissolution of the relationship has granted a share of the MEMBER'S pension interest in the FUND, provided that in the event that both parties to the relationship are MEMBERS, the NON- MEMBER SPOUSE shall for purposes of these RULES be the person to whom a portion of a MEMBER'S pension interest in the FUND has been awarded in terms of the Divorce Act, 1979 (Act No. 70 of 1979), as amended.

**NORMAL RETIREMENT AGE** means age 65 years for a MEMBER other than a PAID-UP MEMBER. In respect of a PAID-UP MEMBER, it means the age as selected by the PAID-UP MEMBER, which shall not be less than 55 years.

**NORMAL RETIREMENT DATE** means the last day of the month in which the MEMBER attains the NORMAL RETIREMENT AGE.

**PAID-UP MEMBER** means a MEMBER whose employment in the INDUSTRY is terminated before NORMAL RETIREMENT DATE and who has not selected, in the format that the FUND may prescribe, to receive or transfer his withdrawal benefit in terms of Part 8. Included in this DEFINITION is a member whose membership in a PREVIOUS or SUBSEQUENT SCHEME or any other approved retirement fund was similar to that of a PAID-UP MEMBER and has been recorded as such by the FUND.

**PENSIONER ACCOUNT** means the account maintained in terms of RULE 11. 3 to pay PENSIONER MEMBER.

**PENSIONER MEMBER** means any person in receipt of a monthly pension from the Fund, as approved by the TRUSTEES.

**PENSION FUND AGREEMENT** means the agreement between the parties to the COUNCIL governing contributions and participation in the FUND.

**PREVIOUS FUND** means an APPROVED FUND that may be referred to in an application for the approval of a transfer contemplated in section 14 of the ACT wherein a MEMBER or PAID-UP MEMBER participated prior to the commencement of membership of the FUND and where assets and liabilities in respect of such MEMBER or PAID-UP MEMBER have been or will be transferred to the FUND in terms of the ACT and the RULES.

**PRINCIPAL OFFICER** means the officer appointed by the BOARD in terms of RULE 10.17, approved by the FSCA, to fulfil the functions of PRINCIPAL OFFICER as prescribed in terms of the ACT, from time to time and may include a deputy PRINCIPAL OFFICER, where applicable.

**PROCESSING ERROR RESERVE ACCOUNT** means the reserve account maintained in terms of RULE 11.6 in order to protect the FUND against the risk of mismatches arising from timing differences between receipt of contributions and the investment thereof and between the disinvestments and their payment as benefits.

**PROVIDENT FUND** means the Electrical Contracting Industry Provident Fund.

**RETIREMENT BENEFITS COUNSELLING** shall mean retirement benefits counselling as contemplated in the Regulations to the ACT; provided that retirement benefit counselling shall not include 'advice' as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).

**RETIREMENT DATE** means in respect of a MEMBER who retires prior to or after the NORMAL RETIREMENT DATE, the last day of the month in which the MEMBER ceases to be an EMPLOYEE.

**REVENUE AUTHORITIES** means the SOUTH AFRICAN REVENUE SERVICE, whose approval of the RULES and any amendments thereto may be required from time to time.

**RULES** mean the RULES of the FUND and such alterations as may from time to time, be applicable, which are registered and approved by the FSCA in terms of the ACT and the INCOME TAX ACT.

**SPOUSE** means person who is the permanent life partner or spouse or civil union partner of a MEMBER in accordance with the Marriage Act, 1961 (Act 68 of 1961), the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998), or the Civil Union Act, 2006 (Act No.17 of 2006), or the tenets of a religion.

**SUBSEQUENT SCHEME** means an APPROVED FUND in the INDUSTRY which the MEMBER joined after joining the FUND and of which he is still a member when becoming entitled to a benefit under this FUND.

**TRUSTEES** mean persons appointed as BOARD MEMBERS in terms of these RULES.

**UNCLAIMED BENEFIT** means a benefit as may be defined as such in terms of the ACT.

**UNPAID MEMBER** means a former MEMBER who cannot be traced.

**UNPAID MEMBER ACCOUNT** means an account maintained in terms of RULE 11.2.

**VALUATOR** means an ACTUARY who is appointed by the BOARD OF TRUSTEES in terms of these RULES, from time to time.

## **PART 3**

### **MEMBERSHIP**

#### **3.1 ELIGIBILITY**

3.1.1 Every ELIGIBLE EMPLOYEE qualifies for MEMBERSHIP of the FUND and within thirty days after commencing employment in the INDUSTRY must join the FUND as a condition of his/her employment, unless the ELIGIBLE EMPLOYEE is exempted in terms of the PENSION FUND AGREEMENT.

3.1.2 Each ELIGIBLE EMPLOYEE becomes a MEMBER of the FUND from the beginning of the week in respect of which the COUNCIL credits him/her with his/her first contribution.

#### **3.2 TERMINATION**

3.2.1 A MEMBER'S MEMBERSHIP may not be terminated as long as he/she remains an ELIGIBLE EMPLOYEE.

3.2.2 A MEMBER'S MEMBERSHIP terminates: -

- (a) at the MEMBER'S death; or
- (b) as soon as the MEMBER ceases to be entitled to a benefit in terms of the RULES; or
- (c) at the termination of the FUND, or
- (d) when an exemption from MEMBERSHIP is granted by COUNCIL in terms of the PENSION FUND AGREEMENT

whichever event occurs first.

### **3.3 RE-EMPLOYMENT**

- 3.3.1 If a MEMBER referred to in RULE 3.2.2 subsequently again works in the INDUSTRY as an ELIGIBLE EMPLOYEE and qualifies for MEMBERSHIP of the FUND, he/she will, subject to RULE 3.3.2, be treated as a new MEMBER.
- 3.3.2 If a MEMBER retires at age 65, or at any age in terms of these RULES and receives a retirement benefit in terms of these RULES, and thereafter again joins the FUND as a new MEMBER after having attained 65 years, contributions will be made by and in respect of him/ her in terms of Part 4 and applied towards his/her MEMBER SHARE to purchase a retirement benefit when he/she eventually retires in addition to any retirement benefit that he/she may already be receiving.
- 3.3.3 A MEMBER referred to in RULE 3.3.2 above will not be entitled to death or disability benefits in terms of Parts 6 and 7 of the RULES respectively.

### **3.4 CONTINUED MEMBERSHIP IN THE TERMS OF SECTION 197 TRANSFER**

If the employment of a MEMBER is transferred to a new EMPLOYER in terms of section 197 of the LABOUR RELATIONS ACT or if the employment of a MEMBER is otherwise changed from one EMPLOYER to another, that MEMBER may, unless the new employer directs to the contrary, remain a MEMBER of the FUND for such period and on such terms as the BOARD may decide. For as long as the MEMBER remains a MEMBER in terms of this RULE, his new employer will become an EMPLOYER in respect of that MEMBER for the purposes of the RULES.



**PART 4  
CONTRIBUTIONS**

**4. MEMBER'S CONTRIBUTIONS**

**4.1 NORMAL CONTRIBUTIONS**

4.1.1 For each week in which a MEMBER works in the INDUSTRY for at least the number of hours specified for this purpose by the COUNCIL, his/her EMPLOYER shall remit to the FUND the MEMBER'S contributions and the EMPLOYER'S contributions in accordance with the PENSION FUND AGREEMENT, less the premiums payable for any life and/or disability insurance effected by the COUNCIL outside the FUND in accordance with the PENSION FUND AGREEMENT.

4.1.2 The EMPLOYER contribution in terms of RULE 4.1.1 shall be dealt with in the following manner: -

- (a) funding the EXPENSE AND RISK RESERVE ACCOUNT; and
- (b) the balance remaining after the deductions in terms of RULE 4.1.2(a) shall be applied towards the MEMBER'S retirement benefits.

4.1.3 The MEMBER contribution in terms of RULE 4.1.1 shall be applied towards the MEMBER'S retirement benefits.

**4.2 ADDITIONAL VOLUNTARY CONTRIBUTIONS**

The MEMBER and EMPLOYER may make contributions to enhance MEMBER'S benefits payable in terms of the RULES. Any such additional contributions shall be advised to the FUND and the ADMINISTRATOR in writing.

#### **4.3 PAYMENT OF CONTRIBUTIONS TO FUND**

- 4.3.1 (a) The EMPLOYER shall pay all contributions to COUNCIL monthly in arrear in a lump-sum in respect of a MEMBER, by no later than the fifteenth day of the following month in respect of which the contributions are payable.
- (b) The COUNCIL shall remit contributions payable to the FUND by no later than the thirtieth (30<sup>th</sup>) day of the following month in respect of which such contributions relate to, or such other period as may be allowed by the FSCA.
- 4.3.2 The FUND shall recover from the EMPLOYER, collection expenses in addition to contributions that are not paid in terms of RULE 4.3.1(a), as well as interest calculated from the first day after the expiry of the fifteen (15) day period until date of payment at a rate determined by the ACT.

## **PART 5**

### **RETIREMENT BENEFITS**

On receipt of satisfactory proof of the retirement of a MEMBER, the following shall apply:

#### **5.1 NORMAL RETIREMENT**

A MEMBER who retires on the NORMAL RETIREMENT DATE shall be entitled to purchase an annuity that can be secured his/her MEMBER SHARE at the date of such MEMBER'S retirement.

#### **5.2 EARLY RETIREMENT**

A MEMBER shall be entitled to purchase an annuity that can be secured by his/her MEMBER SHARE when such a MEMBER'S service with the EMPLOYER is terminated before his/her NORMAL RETIREMENT DATE, provided that:-

- (a) the termination amounts to retirement, and it occurs on or after the MEMBER has reached the age of 55 years; or
- (b) the termination amounts to retirement owing to ill-health;
- (c) a disability benefit becomes payable to him/her in terms of Part 7.

#### **5.3 LATE RETIREMENT**

A MEMBER shall be entitled to purchase an annuity that can be secured by his/her MEMBER SHARE when such a MEMBER'S service with the EMPLOYER is terminated after his/her NORMAL RETIREMENT DATE, provided that: -

- (a) The MEMBER will be deemed to have attained NORMAL RETIREMENT DATE on reaching the age of 70 years, and
- (b) COUNCIL may, at its sole discretion, extend the age of 70 years in respect of any MEMBER as it deems expedient in the circumstances on prior

application by the MEMBER and on giving reasonable notice to the administrator in this regard.

#### **5.4 COMMUTATION OF PENSION**

A MEMBER shall be entitled to commute up to one-third of his/her MEMBER SHARE for a lump sum benefit; provided that if the total annuity or pension that can be purchased from an INSURER, before the commutation of any portion thereof, is less than the maximum pension that may be fully commuted in terms of statutory provisions, the whole of such pension shall be commuted.

If the whole of the MEMBER SHARE is commuted for a lump sum benefit, such benefit shall be paid to the MEMBER by the FUND whereafter the former MEMBER shall have no further claim against the FUND.

#### **5.5 PURCHASE OF AN ANNUITY POLICY**

5.5.1 The purchase of a pension annuity policy referred to in RULE 5.1, RULE 5.2 and RULE 5.3 must be purchased from a REGISTERED INSURER selected by the MEMBER with the MEMBER as owner of the policy.

5.5.2 The FUND's liability in respect of a retiring MEMBER is limited to the conclusion of the annuity policy with the REGISTERED INSURER for the payment of the annuity direct to the MEMBER. Immediately after the FUND has paid the consideration on the annuity policy and, where applicable, made payment of any lump sum, the MEMBER'S MEMBERSHIP of the FUND ceases.

5.5.3 More than one annuity policy may be purchased in respect of a MEMBER subject to the terms and conditions prescribed by the REVENUE AUTHORITIES in this regard.

5.5.4 Subject to the right of conversion into a lump sum payment provided in the preceding RULE, the annuity policy must be non-commutable and non-surrenderable during the life of the retired

MEMBER. It may not be transferred, assigned, reduced, hypothecated or attached by creditors as contemplated by the provisions of sections 37A and 37B of the ACT.

- 5.5.5 The annuity may be a single-life annuity, a joint and survivorship annuity, living annuity or a flexible annuity.

## **5.6 EXISTING PENSIONERS**

Existing pensioners will continue to receive their pensions and any increases in their pensions in terms of the RULES and policies applied by the FUND over time.

## **5.7 RETIREMENT BENEFITS COUNSELLING**

The BOARD shall ensure that each MEMBER to whom Part 5 applies shall be provided with access to RETIREMENT BENEFITS COUNSELLING within 6 calendar months or such other period as may be prescribed by the FSCA, before a benefit becomes payable in terms of these RULES.

## **PART 6**

### **DEATH BENEFITS**

If a MEMBER dies in service on or before the NORMAL RETIREMENT DATE, the following shall apply; provided that satisfactory proof of the death of the MEMBER is submitted to the FUND: -

#### **6.1 Death Benefit before or on the NORMAL RETIREMENT AGE**

If a MEMBER dies on or before the NORMAL RETIREMENT AGE while he/she is an ELIGIBLE EMPLOYEE, the following benefit shall be payable to his/her DEPENDANTS and/or NOMINEES -

6.1.1 the MEMBER'S SHARE:-

plus

6.1.2 subject to RULE 6.4, a life insurance benefit equal to a multiple of the MEMBER'S ANNUAL WAGE as may from time to time be specified in the life insurance policy issued by an INSURER.

#### **6.2 Death after the NORMAL RETIREMENT DATE while an ELIGIBLE EMPLOYEE**

6.2.1 If a MEMBER dies after the NORMAL RETIREMENT DATE and while he/she is an ELIGIBLE EMPLOYEE, the MEMBER SHARE shall be payable to his/her DEPENDANTS and NOMINEES.

6.2.2 If a MEMBER to whom RULE 6.2.1 above applies and such MEMBER has not yet attained the age of 70 years, the MEMBER'S life insurance benefit referred to in RULE 6.1.2 above shall be payable to his/her DEPENDANTS and NOMINEES in addition to the MEMBER SHARE.

### **6.3 RECOUPMENT OF EXPENSES**

Any amount of reasonable costs undertaken by the FUND in finding, identifying, tracing and paying DEPENDANTS and/or NOMINEES of a late MEMBER may at the discretion of the TRUSTEES be recouped from the death benefits payable prior to payment thereof in terms of these RULES.

### **6.4 LIMITATIONS AND OTHER CONDITIONS REGARDING THE DEATH BENEFITS**

6.4.1 At the discretion of the BOARD the FUND may, insure the life insurance benefit referred to in RULES 6.1 and 6.2 in whole or in part with an INSURER of its choice on the basis and to the extent recommended by the ACTUARY. It is specifically provided that no life insurance benefit referred to in RULES 6.1 and 6.2 shall be payable unless a claim for these benefits has been accepted by the INSURER.

6.4.2 The life insurance benefit payable in terms of these RULES shall be subject to the same limitations and conditions of the policy issued by the INSURER. The policy of the INSURER must provide that in the event of the FUND'S ADMINISTRATOR not receiving payment of the contributions within the period specified by the INSURER from time to time, the life insurance cover shall cease.

6.4.3 The policy insuring the life insurance benefit must be open for inspection by any MEMBER at the personnel office of the EMPLOYER or at the registered address of the FUND at reasonable times during business hours.

6.4.4 In addition to the terms and conditions which will have general application in respect of all the MEMBERS, the INSURER may notwithstanding anything to the contrary, in terms of the policy lay down limitations and other conditions respect of any individual MEMBER. Where applicable the MEMBER concerned shall be advised thereof in writing.

**6.5 NOTIFICATION OF A CLAIM**

Claims for life insurance benefits must be submitted to the INSURER within six months after the MEMBER'S death, unless the INSURER condones later submission in special circumstances.



**PART 7**  
**DISABILITY BENEFITS**

- 7.1 If a MEMBER receives an insured disability income benefit in accordance with the disability income insurance, effected by COUNCIL on behalf of the EMPLOYERS for the benefit of MEMBERS, he/she will remain a MEMBER of the FUND until the earlier of his/her NORMAL RETIREMENT DATE or death.
- 7.2 While the MEMBER receives such a disability income benefit the following applies: -
- 7.2.1 the life insurance benefit in terms of RULE 6.1 applicable to him/her, shall be equal to the life insurance benefit which applied immediately before he/she qualified for the disability income benefit; and
  - 7.2.2 EMPLOYER contributions based on a percentage of the MEMBER'S ANNUAL WAGE will be made to the FUND by the INSURER of the disability income insurance policy, and the EMPLOYER waiver insurance policy effected by COUNCIL, in terms of RULE 7.1.

**PART 8**  
**WITHDRAWAL BENEFITS**

If a MEMBER leaves the service of the EMPLOYER before reaching NORMAL RETIREMENT DATE and is not entitled to any other benefit in terms of the RULES of the FUND or the rules of the disability income benefit, the MEMBER shall be entitled to either of the benefits available under RULES 8.1, 8.2 and 8.3, as may be elected by the MEMBER.

**8.1 Termination of service**

8.1.1 If a MEMBER'S employment in the INDUSTRY is terminated before the NORMAL RETIREMENT DATE (whether voluntarily by the MEMBER or as a result of retrenchment, redundancy, dismissal or any other reason) and he/she is not entitled to retirement benefits from the FUND he/she shall become a PAID-UP MEMBER, unless such a MEMBER instructs the FUND in writing and in a format that the FUND may prescribe, that the benefit be paid in cash lump sum or transferred to another retirement fund selected by him/her subject to RULE 8.2.

8.1.2 If a MEMBER instructs the FUND that his benefit be paid in cash or be transferred, the FUND shall provide the MEMBER with RETIREMENT BENEFITS COUNSELLING.

**8.2 Special limitations on transfers to a pension preservation fund**

For the purpose of RULE 8.1, transfer to a pension preservation fund may be effected by the FUND in terms of these RULES, provided that the pension preservation fund is duly registered in terms of the ACT and tax approved by the REVENUE AUTHORITIES.

### 8.3 Treatment of paid-up benefits in the FUND

The value of PAID-UP MEMBER'S MEMBER SHARE shall be subject to the following provisions:-

- 8.3.1 no further contributions in terms of Part 4 shall be payable by or in respect of a PAID-UP MEMBER, unless the PAID-UP MEMBER is re-employed by the EMPLOYER and thereafter again becomes a MEMBER in terms of these RULES;
- 8.3.2 the life insurance benefit payable on death in terms of Part 6 shall not be payable in respect of a PAID-UP MEMBER;
- 8.3.3 a PAID-UP MEMBER'S MEMBER SHARE shall remain invested in the FUND in the same manner as applied previously in terms of these RULES;
- 8.3.4 a PAID-UP MEMBER'S MEMBER SHARE shall remain paid-up in terms of this RULE, until:-
  - (a) the PAID-UP MEMBER instructs the FUND in writing and in a format that the FUND may prescribe, that his benefits be transferred in terms these RULES or be paid in lump sum in terms of this RULE; or
  - (b) he/she retires in terms in Part 5;
- 8.3.5 in the event of the death of a PAID-UP MEMBER prior to retirement in terms of these RULES, the PAID-UP MEMBER'S MEMBER SHARE shall be dealt with in accordance with section 37C of the ACT;
- 8.3.6 the FUND shall provide each PAID-UP MEMBER with a PAID-UP MEMBER certificate within two calendar months of leaving service of the EMPLOYER or such other period as may be prescribed by the FSCA;

- 8.3.7 each PAID-UP MEMBER must be given access to RETIREMENT BENEFITS COUNSELLING;
  
- 8.3.8 the administration cost of a paid-up benefit of a PAID-UP MEMBER will be debited to the PAID-UP MEMBER'S MEMBER SHARE.

**PART 9****BENEFITS DURING TEMPORARY ABSENCE FROM SERVICE****9.1 Absence with the EMPLOYER'S consent**

If a MEMBER is temporarily absent from employment with the consent of the EMPLOYER, the MEMBER'S membership continues subject to the following: -

- 9.1.1 a MEMBER is deemed to be absent with the EMPLOYER'S consent while he/she is engaged in a strike that is protected in terms of the LABOUR RELATIONS ACT;
- 9.1.2 should the MEMBER, with the consent of the EMPLOYER, choose to suspend contributing to the FUND, the EMPLOYER contributions in respect of such MEMBER are also suspended;
- 9.1.3 during the period of absence the MEMBER'S ANNUAL WAGE is deemed to be equal to the ANNUAL WAGE he/she received immediately before the commencement of absences;
- 9.1.4 the insured benefits in terms of RULE 6.1.2 and RULE 7 remain applicable to the MEMBER during the period of absence but not for longer than two years. The EMPLOYER shall continue to pay risk premiums to the INSURER of the risk benefits during this period and the EMPLOYER shall also advise the COUNCIL of the agreed arrangement;
- 9.1.5 periods of absence that are interrupted by periods of less than three months, are added together to determine whether the period of two years referred to in RULE 9.1.4 above has elapsed or not.

**9.2 Absence without the EMPLOYER'S consent**

If a MEMBER'S membership lapses and his/her employment in the INDUSTRY is regarded as terminated if and as soon as he/she is absent from employment in the INDUSTRY without the EMPLOYER'S consent. The EMPLOYER shall

inform the FUND of the MEMBER'S absence and of the date when it commenced as soon as such information comes to the knowledge of the EMPLOYER.

**PART 10****MANAGEMENT OF THE FUND****10.1 BOARD OF TRUSTEES**

- 10.1.1 Subject to the ACT and these RULES, the BOARD OF TRUSTEES shall be responsible for the control and management of the FUND and shall perform all necessary roles, duties and responsibilities on behalf of the FUND and its MEMBERS and/or BENEFICIARIES in accordance with the provisions of the ACT and the RULES.
- 10.1.2 The BOARD OF TRUSTEES of the FUND shall consist of 9 TRUSTEES appointed in terms of RULES 10.1.3 and 10.1.4 below.
- 10.1.3 COUNCIL shall appoint the 8 (eight) TRUSTEES, four (4) of whom shall be EMPLOYER REPRESENTATIVES and four (4) of whom shall be MEMBER REPRESENTATIVES, respectively.
- 10.1.4 The TRUSTEES referred to in RULE 10.1.3 shall appoint one (1) INDEPENDENT TRUSTEE who shall:-
- (a) not be an EMPLOYER REPRESENTATIVE nor a MEMBER REPRESENTATIVE;
  - (b) have voting rights and shall have the same powers, fiduciary duties, obligations and liabilities as any other TRUSTEE in terms of the RULES, the ACT and any other applicable legislation;
  - (c) be entitled to such remuneration as the BOARD may decide from time to time and which has been agreed to by the INDEPENDENT TRUSTEE;
  - (d) the term of office for INDEPENDENT TRUSTEE shall be stipulated in his/her contract of appointment, but such

appointment can be terminated by the TRUSTEES referred to in RULE 10.1.3, if such TRUSTEES are of the view that the INDEPENDENT TRUSTEE is unable to discharge his/her responsibilities, as envisaged by the provisions of these RULES and the ACT or if he/she failed in his/her fiduciary duty to the FUND or its MEMBERS;

- (e) the INDEPENDENT TRUSTEE shall be a person that possesses suitable retirement fund industry knowledge gained through qualification or experience as maybe required from time to time.

10.1.5 A BOARD MEMBER must meet and retain such 'fit and proper' requirements determined by the BOARD in terms of these RULES from time to time. A BOARD MEMBER must such levels of skills and training as may be prescribed by the FSCA from time to time, within a six (6) months period from date of becoming a BOARD MEMBER. The attainment of the required level of skill and training required must be continuous throughout the BOARD MEMBER'S term of office.

10.1.6 A vacancy that occurs on the BOARD OF TRUSTEES shall be filled by a substitute appointed by the representatives of the EMPLOYERS and the representative of the MEMBERS as the case may be, within such period as may be prescribed by the FSCA, from time to time, from the date on which such vacancy occurred: provided that such substitute shall cease to hold office as a TRUSTEE upon the expiry of the term of office of the person in whose stead the substitute is appointed.

## 10.2 TERM OF OFFICE

### 10.2.1 TRUSTEES

- (a) Subject to the provisions of RULE 10.3, a TRUSTEE shall hold office for a period of five years after which the



EMPLOYER and MEMBER organisations shall appoint TRUSTEES for the new term in accordance with these RULES.

- (b) A TRUSTEE may, however, on the expiry of his/her term make himself available for re-appointment, if he/she is willing and otherwise competent to hold office in terms of these RULES and the ACT. There is no limit on the number of terms of office a TRUSTEE may occupy.
- (c) TRUSTEES shall cease to be TRUSTEES when the newly appointed TRUSTEES take office.

#### 10.2.2 Chairperson

The BOARD OF TRUSTEES shall elect, biennially (every two years), one of their number as the Chairperson to preside at all meetings of the BOARD OF TRUSTEES. Similarly, the role of the Chairperson shall biennially alternate between the MEMBER REPRESENTATIVES and EMPLOYER REPRESENTATIVES.

- 10.2.3 The BOARD OF TRUSTEES shall also elect biennially, (every two years), one from their number as Deputy Chairperson to preside at all meetings of the BOARD OF TRUSTEES from which the Chairperson is absent. The provisions of RULE 10.2.2 as regards alternation between MEMBER REPRESENTATIVES and EMPLOYER REPRESENTATIVES, shall apply.

- 10.2.4 Should the position of Chairperson become vacant before the expiry of the term of office, the Deputy Chairperson shall take his/her place and the MEMBER REPRESENTATIVE or EMPLOYER REPRESENTATIVE, as the case may be, will appoint another Deputy Chairperson for the unexpired portion of the term of office.

### 10.3 TERMINATION OF OFFICE

10.3.1 A TRUSTEE may resign from office at any time on giving one month written notice to the other TRUSTEES and/or Chairperson.

10.3.2 A TRUSTEE must be a major and shall cease to hold office: -

- (a) if he/she dies; or
- (b) if he/she resigns from office in accordance with RULE 10.3.1; or
- (c) if he/she becomes contractually incapacitated, insane or otherwise incapable of acting in terms of these RULES; or
- (d) if his/her estate is sequestrated or surrendered or assigned for the benefit of his creditors; or
- (e) if he/she is unanimously removed by other BOARD MEMBERS at a duly constituted meeting of the BOARD; or
- (f) removed by the court on account of misconduct from any office of trust; or
- (g) if he/she is removed, with appropriate notice, by the representatives of the EMPLOYER and/or those of the MEMBERS, depending on the party that made the appointment; or
- (h) if he is convicted of any offence and sentenced to imprisonment without the option of a fine; or

- (i) If he fails to attend three consecutive meetings of the BOARD OF TRUSTEES without the prior permission of the Chairperson, unless an explanation that is satisfactory to the BOARD is given; or
- (j) ceasing to be a TRUSTEE in terms of the RULES, as may be prescribed by the ACT;
- (k) being found guilty by a competent court, in the Republic of South Africa or elsewhere, of theft, fraud, forgery or any other similar offence;
- (l) being dismissed from an office of trust on account of misconduct in terms of these RULES, the ACT and/or any applicable law; or
- (m) being found guilty by a competent court on any charge and sentenced to imprisonment without the option of a fine;
- (n) when becoming unfit to be a director of a company in terms of the Companies Act, 2008 (Act No. 71) of 2008;
- (o) if, after hearing representations on the matter, the BOARD resolves that a TRUSTEE is not fit and proper to hold a position of trust;
- (p) if the FUND is dissolved and/or liquidated in terms of these RULES, on the appointment of a liquidator.

10.3.3 A Chairperson or Deputy Chairperson may be removed from office by the TRUSTEES in the event of a majority vote to this effect.

10.3.4 A TRUSTEE'S performance of his/her duties and responsibilities as a TRUSTEE, will be assessed on an ongoing basis according to processes and procedures determined by the BOARD, and any

guideline or directive issued by the FSCA, as set out in the TRUSTEES' performance and assessment policy. If, on the basis of these assessments, the majority of the BOARD OF TRUSTEES finds the performance of any TRUSTEE to be unsatisfactory, if and after all reasonable steps and efforts have been exhausted in providing the necessary educational and training assistance required to maintaining the "fit and proper" status of that TRUSTEE to relevant and acceptable standards, such TRUSTEE may be removed from office.

The BOARD OF TRUSTEES may at any time remove from office by unanimous resolution, a TRUSTEE that has been appointed. This is extended to include the FSCA'S right and power to dismiss any TRUSTEE that ceases to be "fit and proper" to hold office, as envisaged by the provisions of the ACT.

The BOARD shall hear representations in the matter from the TRUSTEE concerned or his representative.

#### **10.4 MEETINGS OF THE BOARD OF TRUSTEES**

##### **10.4.1 NUMBER AND FREQUENCY**

- (a) The BOARD OF TRUSTEES shall meet at least once a year or as may be required, from time to time, to conduct the business of the FUND.
- (b) Meetings of the BOARD OF TRUSTEES may take place as often as shall be agreed by the TRUSTEES, as may be necessary to conduct FUND'S business in each FINANCIAL YEAR of the FUND.
- (c) If at least two-thirds of the TRUSTEES make a reasonable request to the Chairperson to convene a meeting of the BOARD OF TRUSTEES, he shall do so within fourteen days.

- (d) The Chairperson shall attend and preside over all meetings. In the absence of the Chairperson, the Deputy Chairperson shall preside over all meetings.
- (e) The PRINCIPAL OFFICER and where applicable the deputy PRINCIPAL OFFICER must attend all meetings of the BOARD OF TRUSTEES.
- (f) The BOARD OF TRUSTEES may conduct a meeting by using a conference telephone or any equipment (including a video link) that allows everybody participating in the meeting to speak to and hear each other. A meeting conducted in terms of this RULE shall be regarded as a meeting of the BOARD provided that the quorum requirements as set out in RULE 10.4.3 and other requirements for a meeting of the BOARD OF TRUSTEES are met.

#### 10.4.2 NOTICE OF MEETINGS

Fourteen days' written notice of meetings must be given to the TRUSTEES, alternates and the PRINCIPAL OFFICER of the FUND.

#### 10.4.3 VOTING RIGHTS

- (a) Five (5) BOARD MEMBERS comprising of two (2) appointees from the EMPLOYERS' REPRESENTATIVES, two (2) appointees from the MEMBERS' REPRESENTATIVES and the INDEPENDENT TRUSTEE, shall constitute a quorum: Provided there is a quorum, the TRUSTEES shall be entitled to act notwithstanding any temporary vacancy in their number.
- (b) Should the quorum not be available at a meeting, the Chairperson shall reconvene the meeting within 14 days, after at least two (2) working days' notice to each BOARD

MEMBER (or, in his/her absence, to his/her alternate and the quorum requirements as set out in paragraph (a) hereof shall continue to apply.

- (c) Each TRUSTEE present at a meeting of the BOARD OF TRUSTEES shall have one vote.
- (d) Subject to the provisions of RULE 10.4.4, the BOARD OF TRUSTEES must make a reasonable effort to obtain a clear majority decision, as may be determined by the BOARD, from time to time. Where no clear majority can be obtained on any matter, the BOARD OF TRUSTEES must decide whether to defer the decision to the next meeting. If at that meeting the matter remains in dispute, it shall be referred to a mediator, whose appointment has the unanimous agreement of the BOARD. If no clear majority decision can be reached after referral to the mediator, the matter shall be referred to an arbitrator as appointed in terms of RULE 10.4.4. The arbitrator's decision shall be regarded as a decision made by the BOARD OF TRUSTEES and shall be binding on all parties.
- (e) The PRINCIPAL OFFICER or deputy PRINCIPAL OFFICER shall not have a vote.

#### 10.4.4 ADOPTION OF RESOLUTIONS

- (a) At a meeting of the BOARD OF TRUSTEES motions shall be proposed and voted upon in accordance with RULE 10.4.3. In the event of a clear majority, such decision shall constitute a resolution of the FUND.
- (b) If sufficient to constitute a quorum in terms of RULE 10.4.3(a), a resolution taken on a round-robin basis, shall be of the same force and effect as a resolution adopted at a meeting of the BOARD OF TRUSTEES, at a duly

constituted meeting of the BOARD. Any resolution adopted in terms of this RULE by signed telefacsimile, email or sms or any other electronic means, shall be noted at the first meeting of the BOARD OF TRUSTEES held after the resolution was adopted.

- (c) A resolution, in writing, shall be signed by the Chairperson, PRINCIPAL OFFICER and another BOARD MEMBER and recorded in the minute-book, and will be numbered consecutively.
- (d) For the purposes of this RULE, a TRUSTEE shall be deemed present if by prior arrangement with the Chairperson or the PRINCIPAL OFFICER he/she is able to participate in the meeting of the BOARD by telephone, video conference or any other electronic means referred to in RULE 10.4.1(f) for the duration of the meeting.
- (e) In the event that a deadlock arises between the BOARD MEMBERS, the matter or issue giving rise to the deadlock will be resolved in terms of this RULE, with the Chairperson at the time of the deadlock arising acting on behalf of the BOARD for that purpose. The Chairperson in consultation with other TRUSTEES may seek expert advice as it may be reasonably considered necessary for the purposes of its functions in respect of the FUND and the BOARD may then appoint an arbitrator who is a member of the Arbitration Foundation of South Africa. The identity of the arbitrator shall be agreed by the BOARD by sufficient consensus failing which it shall be determined by the head for the time being of the Arbitration Foundation of South Africa.
- (f) The BOARD shall have the right to amend the RULES of the FUND. The BOARD shall however not have the right

to make decisions regarding any of the following without the prior written consent of COUNCIL-

- (i) the contribution rates in terms of RULE 4;
- (ii) a MEMBER'S retirement age;
- (iii) increasing future benefits; or
- (iv) discontinuing the FUND.

#### 10.4.5 SECRETARY

The BOARD shall appoint a FUND Secretary to carry secretarial functions including but not limited to the taking of minutes, recording duties, the counting of votes and the collection and recording of resolutions.

#### 10.4.6 MINUTES

- (a) Minutes of all meetings of the BOARD OF TRUSTEES shall be taken and recorded in writing. These minutes shall be kept in accordance with the ACT. At each BOARD meeting the minutes of the previous meeting shall be tabled for approval.
- (b) The minutes of each meeting shall be distributed to all TRUSTEES, INDEPENDENT TRUSTEE and PRINCIPAL OFFICER of the FUND.

#### 10.4.7 FUND POLICIES AND PRACTICE NOTES

The BOARD OF TRUSTEES may decide on general FUND policies to govern any aspect of the FUND and may record such in a procedure manual or practice note. The TRUSTEES shall review any such FUND policies and practice notes from time to time.



## 10.5 DUTIES OF THE BOARD OF TRUSTEES

Without derogating from or adding to the COUNCIL duties in terms of the RULES, duties of the BOARD OF TRUSTEES shall inter alia include but not limited to the duty to: -

- 10.5.1 act independently and impartially;
- 10.5.2 act with due care, diligence and in the best interests of the FUND;
- 10.5.3 avoid conflicts of interest;
- 10.5.4 ensure that adequate and appropriate information is communicated to the MEMBERS and BENEFICIARIES of the FUND, informing them of their rights, benefits and duties in terms of the RULES of the FUND;
- 10.5.5 ensure that only persons who have the authority in terms of a resolution passed by the BOARD sign cheques, contracts or other documents on behalf of the FUND;
- 10.5.6 ensure the proper registers, books and records of the operations of the FUND are kept, inclusive of proper minutes of all resolutions adopted by the BOARD OF TRUSTEES;
- 10.5.7 ensure that proper control systems are employed by or on behalf of the BOARD OF TRUSTEES;
- 10.5.8 ensure that proper controls are employed by the FUND to protect the assets of the FUND and the confidentiality of FUND information in respect of each MEMBER;
- 10.5.9 take all reasonable steps to ensure that contributions are paid timeously to the FUND, in accordance with the provisions of the

ACT and shall ensure that the monitoring and reporting in this regard comply with Section 13A(6) of the ACT;

- 10.5.10 obtain expert advice on matters where the BOARD OF TRUSTEES may lack sufficient expertise;
- 10.5.11 ensure that the assets of the FUND are properly invested in terms of the RULES of the FUND;
- 10.5.12 ensure that the RULES and the operation and administration of the FUND comply with the provisions of the various Acts mentioned in RULE 10 and any other relevant legislation and with any directive or ruling laid down by the FSCA and the REVENUE AUTHORITIES;
- 10.5.13 approve all prior claims;
- 10.5.14 vet all divorce orders in terms of these RULES and ensure that all enforceable divorce orders are recorded against the FUND;
- 10.5.15 reach agreement in advance on a panel of arbitrators to be used, should the need arise in terms of RULE 10.4.4 (e);
- 10.5.16 develop an ANNUITY STRATEGY for the FUND in compliance with the Regulations to the ACT;
- 10.5.17 declare and disclose any direct or indirect personal financial interest, (other than his/her interest as MEMBER), in any decision to be taken by the BOARD in any matter in which the BOARD, prior to the taking of such decision and the TRUSTEE shall not vote on the matter;
- 10.5.18 establish, at its discretion, a FUND policy in terms of RULE 10.5 in order to write-off any amount, which in the opinion of the BOARD OF TRUSTEES, is irrecoverable or not profitable to recover;

10.5.19 appoint and maintain in accordance with the ACT, keep at the FUND'S registered office, an up to date register or registers containing the following information: -

- (a) each TRUSTEE'S full names and surname, identity number, date of birth, nationality, occupation, residential address, business address, postal address and the date of his appointment to the BOARD OF TRUSTEES, which information may be made available to them and the ADMINISTRATOR on request, subject to RULE 10.21;
- (b) any changes occurring from time to time in respect of the above details;
- (c) a minute book recording all resolutions adopted at meetings of the BOARD OF TRUSTEES. (The minute book is to be bound in such a way as to render the withdrawal or insertion of a page impossible and the pages shall be numbered consecutively);
- (d) the names of the MEMBERS of the FUND; and
- (e) particulars regarding-
  - (i) the postal address and registered office of the FUND;
  - (ii) the ADMINISTRATOR;
  - (iii) the consultants;
  - (iv) COUNCIL;
  - (v) the investment managers;
  - (vi) the AUDITOR;
  - (vii) the ACTUARY and/or VALUATOR; and
  - (viii) the PRINCIPAL OFFICER.

## **10.6 DUTY TO DISCLOSE**

- 10.6.1 On becoming aware of any matter, conduct or misconduct, or omission to perform, as the case may be, by the BOARD, that may prejudice the FUND, its MEMBERS and/or BENEFICIARIES, it is incumbent on each TRUSTEE to exercise his/her fiduciary duty and responsibility, to inform the FSCA at the earliest possible convenience thereof, as envisaged by the provisions of the definition of "DISCLOSURE" in Part 2 of these RULES; and those of the ACT, as the case may be;
- 10.6.2 On being removed as BOARD MEMBER in terms of these RULES, a BOARD MEMBER submit a written report to the FSCA, detailing the BOARD MEMBER'S perceived reasons for the termination within twenty-one days of removal as BOARD MEMBER for reasons other than the expiration of his/her term of office/appointment or voluntary resignation;

## **10.7 MEMBER'S RIGHT TO DOCUMENTS**

Subject to the payment of such fee as may be decided upon by the BOARD OF TRUSTEES, the BOARD shall deliver on request to a MEMBER a copy of the current registered RULES of the FUND and the most recent Revenue Account and Balance Sheet of the FUND, in terms of the ACT.

Any MEMBER shall be entitled to inspect, without charge at the registered office of the FUND, any or all of the following:

- (a) a copy of the RULES;
- (b) a copy of the financial statements ; and
- (c) a copy of the latest valuation report by the ACTUARY.

A MEMBER shall be entitled to make extracts from the above documents at his own expense.

## **10.8 DISCRETION OF THE BOARD OF TRUSTEES**

The BOARD OF TRUSTEES shall be entitled to make any arrangements and regulations for the administration of the FUND and to do anything not inconsistent with these RULES or any applicable legislation that, in its opinion, is in the benefit and protection of the MEMBERS and their BENEFICIARIES.

## **10.9 REMUNERATION OF TRUSTEES**

TRUSTEES shall, be remunerated for services performed in the execution of their duties as TRUSTEES, in terms of the expenses and remuneration policy of the BOARD or any other limitations that the BOARD may set.

## **10.10 EXPENSES**

10.10.1 All costs, fees, taxes, levies and other expenses incurred by the FUND shall be borne by the FUND. The costs, fees and expenses of the FUND (including statutory taxes and levies, actuarial and audit fees, registration fees payable to the FSCA, costs relating to electronic tax directives and the costs relating to tracing MEMBERS or their BENEFICIARIES), that are additional to the administration and consulting fees that may have been agreed, in writing, by the BOARD, from time to time, shall be discharged against the EXPENSE RESERVE ACCOUNT and the various other accounts held in respect of the FUND, in accordance with the provisions set out in RULE 11.

10.10.2 Expenses that are to be discharged against MEMBER'S, DORMANT MEMBERS, UNPAID MEMBERS and PENSIONERS shall be discharged in such manner as the BOARD, in consultation with the ACTUARY, may deem equitable, having due regard to whether such expense was incurred in respect of an individual only, in which case, the charge will be levied against the relevant ACCOUNT in terms of RULE 11 only, or whether the charge was incurred in respect of a group of MEMBERS or all MEMBERS, in which case, the charge shall be levied proportionately against the ACCOUNTS per RULE 11 of all the MEMBERS, DORMANT

MEMBERS, UNPAID MEMBERS and PENSIONER MEMBERS, in respect of which the expense was incurred.

- 10.10.3 Any expenses incurred by one or more of the TRUSTEES may only be recouped from the FUND, in terms of the expenses and remuneration policy, applicable at the time of incurring the expense.

## **10.11 SIGNING OF DOCUMENTS**

All documents or contracts effected by the FUND (other than resolution referred to in RULE 10.4.4. or a policy of insurance issued to the FUND) shall be binding upon the FUND, provided that they have been signed by the Chairperson, PRINCIPAL OFFICER and any another TRUSTEE:

- (a) at a duly constituted meeting, or
- (b) after such a meeting, provided that authorisation for the signing of these documents or contracts was granted at such meeting.

Where, however, the ACT prescribes specific formalities for the signature of the documents, such documents shall only be binding upon the FUND subject to compliance with these requirements.

## **10.12 REGISTRATION AND SAFE CUSTODY OF DOCUMENTS**

All title deeds and securities belonging to the FUND shall be registered in the name of the FUND or in the name of a nominee company approved by the FSCA. No security shall be transferred, varied, disposed of, or otherwise alienated, except with the written approval of the BOARD OF TRUSTEES. The documents of title in connection with any investment or asset of the FUND shall be kept in safe custody in terms of the ACT: -

- (a) at the registered office of the FUND, or

- (b) at the registered office of the ADMINISTRATOR, if the ADMINISTRATOR is a legal person, or
- (c) at the registered office of a nominee company which holds assets on behalf of the FUND, or
- (d) at a registered financial institution approved by the FSCA, or
- (e) at a registered bank or deposit-taking institution.

### **10.13 INDEMNIFICATION**

- 10.13.1 The BOARD OF TRUSTEES, the PRINCIPAL OFFICER, the deputy PRINCIPAL OFFICER and all other officers of the FUND shall be indemnified by the FUND against all proceedings, costs and expenses howsoever and when so ever arising, incurred by reason of any claim in connection with the FUND, the BOARD OF TRUSTEES or any TRUSTEE, the PRINCIPAL OFFICER, the deputy PRINCIPAL OFFICER and all other officers of the FUND, not arising from their negligence, recklessness, intentional unlawful acts, dishonesty or fraud.
- 10.13.2 The BOARD must insure the FUND against losses resulting from dishonesty or fraud.
- 10.13.3 The BOARD must insure the FUND against losses arising when the FUND sells an asset in accordance with a resolution of the BOARD or when the FUND receives a lower than expected return on its investments or as a result of paying a benefit in terms of these RULES.
- 10.13.4 The cost of indemnifying the FUND in terms of this RULE must be borne by the FUND and the FUND shall bear all costs, including legal costs on the attorney-and-own client scale incurred by the BOARD or TRUSTEE, PRINCIPAL OFFICER, deputy PRINCIPAL OFFICER or all other officers of the FUND in defending or settling any such claim. It is specifically provided

that that FUND may recover all such costs and expenses from the BOARD, a TRUSTEE, a PRINCIPAL OFFICER, a deputy PRINCIPAL OFFICER or all other officers of the FUND or if it transpires that the BOARD, a TRUSTEE, PRINCIPAL OFFICER, deputy PRINCIPAL OFFICER or all other officers of the FUND were guilty of gross negligence, dishonesty or fraud.

#### **10.14 FIDELITY GUARANTEE**

The BOARD OF TRUSTEES shall obtain such security as it deems sufficient in respect of the FUND'S officers (including TRUSTEES, the PRINCIPAL OFFICER, the deputy PRINCIPAL OFFICER) who handle the money and assets of the FUND. The BOARD must for this purpose arrange fidelity insurance for the FUND against any loss resulting from the theft or fraud of the BOARD, the PRINCIPAL OFFICER, the deputy PRINCIPAL OFFICER) and other FUND officers.

#### **10.15 APPOINTMENT OF SUB-COMMITTEES**

The BOARD OF TRUSTEES may, subject to Section 7D(2) of the ACT and at its discretion appoint one or more sub-committees in terms of and subject to RULE 10.16.12.

#### **10.16 POWERS OF THE BOARD OF TRUSTEES**

The BOARD OF TRUSTEES are to give effect to the objectives of the FUND in terms of these RULES. Without in any way detracting from the generality of this section, the BOARD may, subject to section 7D(2) of the ACT, delegate the following to its officers, agent and/or service providers, as the case may be:

10.16.1 to receive, administer and apply money of the FUND;

10.16.2 distribute death benefits in terms of RULE 6, subject to these RULES and the ACT;



- 10.16.3 to transfer money to a beneficiary fund, registered as such in terms of the ACT, and where appropriate in terms these RULES;
- 10.16.4 to raise or borrow money at interest or otherwise for purposes of the FUND; provided that borrowing shall be limited to temporary loans necessitated by short term cash shortages;
- 10.16.5 to purchase, sell, let, borrow, lend or otherwise acquire or dispose of movable or immovable property for purposes of the FUND;
- 10.16.6 to make, amend and rescind practice notes, guidelines or regulations in respect of a matter concerning the FUND, provided that these do not conflict with the RULES, the ACT and the REVENUE AUTHORITIES (where applicable);
- 10.16.7 to amend these RULES, subject to RULE 10.4.4(f);
- 10.16.8 to invest in an investment policy issued by an INSURER or to invest with or delegate their powers to make investments to a financial institution as defined in the Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001) or an Investment Manager, place on deposit, advance or otherwise deal with any money not immediately required for running expenses of the FUND, against such securities and in such manner as the BOARD may determine, and to realise, change, reinvest or otherwise deal with such securities as the BOARD may determine;
- 10.16.9 to recover such amounts from a MEMBER'S benefits as are described in terms of these RULES;
- 10.16.10 to prescribe and rescind regulations as to how a claim should be submitted to and dealt with by the FUND;

- 10.16.11 to institute legal action or process for the FUND and to conduct, abandon or settle such action or process and to defend or settle legal action or process instituted against the FUND, and to use the FUND'S money to pay for any legal costs in doing so;
- 10.16.12 to appoint, at its discretion, exercise its powers and delegate one or more sub-committee(s) or any person(s). The composition of the sub-committees, their powers, term of reference policies and quorum and the election of office bearers shall be determined by the BOARD OF TRUSTEES and stipulated in respective mandates, and subject to such conditions as the BOARD may determine, mandate in writing as adopted by the BOARD, that such delegation is lawful and consistent with the exercise of their fiduciary obligations, to perform its functions in taking decisions on specific issues on behalf of the BOARD OF TRUSTEES. The decision taken by the sub-committee or person(s), shall be referred to the BOARD, by way of being noted or, for ratification, as the case may be. Once the decision is ratified, the BOARD OF TRUSTEES retains full responsibility for any decision made or taken by the sub-committee or person(s), as if such decision was taken by the BOARD itself, from the onset. A sub-committee shall consist of any number of TRUSTEES provided that the TRUSTEES nominated or appointed shall be authorised to exercise the powers delegated to it by the BOARD OF TRUSTEES and shall, *mutatis mutandis*, be subject to the provisions of these RULES and the ACT;
- 10.16.13 to take such other steps as are necessary for achieving the FUND'S objectives.

**10.17 PRINCIPAL OFFICER**

- 10.17.1 Subject to the approval of the FSCA, the BOARD OF TRUSTEES shall appoint a PRINCIPAL OFFICER for the FUND. The BOARD OF TRUSTEES shall inform the FSCA of the name of the PRINCIPAL OFFICER. Should the FSCA not approve the appointment of a PRINCIPAL OFFICER, the BOARD OF TRUSTEES may not confirm the appointment to the proposed person. Should the PRINCIPAL OFFICER be absent from the Republic of South Africa or be otherwise unable to perform the duties of a PRINCIPAL OFFICER, the BOARD OF TRUSTEES shall appoint a new PRINCIPAL OFFICER, as the case may be. The provisions of Sections 8(4) and (5) of the ACT, apply with the necessary changes to the appointment of a PRINCIPAL OFFICER.
- 10.17.2 The PRINCIPAL OFFICER shall be an individual resident in the Republic of South Africa, and if the PRINCIPAL OFFICER is absent from the Republic or unable for any reason to discharge any duty imposed on him/her, the BOARD in a manner directed by its RULES, must appoint PRINCIPAL OFFICER, within such period as may be prescribed by the FSCA, after the commencement of a continuing absence or inability to discharge any duty by the current PRINCIPAL OFFICER. The same procedure of notification and approval mentioned in RULE 10.17.1, shall be applicable hereto, as is required in law.
- 10.17.3 The PRINCIPAL OFFICER shall fulfil and perform all the duties and functions required of him/her in terms of the ACT, the RULES of the FUND and any directions of the BOARD OF TRUSTEES.
- 10.17.4 The duties, functions and responsibilities of the PRINCIPAL OFFICER, in terms these RULES and the ACT, shall include but not limited to:

- (a) countersign documents as required by the ACT and these RULES;
- (b) ensure that any rule amendment is timeously submitted to the FSCA for registration and for approval, if required;
- (c) within 6 (six) months of each FINANCIAL YEAR, ensure that all MEMBERS are provided with a written summary of all the registered RULES, and its amendments, and audited financials within that FINANCIAL YEAR, unless the FUND is exempted from this requirement;
- (d) ensure that the FUND'S annual financial statements and other documents referred to in the ACT, are submitted to the FSCA, as required by the ACT;
- (e) sign all FUND documents that must be submitted to the FSCA; and
- (f) perform all other duties and functions which he/she is required by law, to perform. This shall include the duties envisaged in terms of RULE 10.5 and the ACT.

10.17.5 The PRINCIPAL OFFICER shall be entitled to remuneration for his/her services.

10.17.6 The duties, functions and responsibilities of the PRINCIPAL OFFICER including his/her remuneration package as may be agreed with the BOARD OF TRUSTEES, from time to time, shall form the basis of the terms and conditions of the appointment. Such terms and conditions shall be reduced to writing in a separate document.

10.17.7 The performance of the PRINCIPAL OFFICER'S duties, functions and responsibilities, will be assessed on an annual basis in

accordance with the processes and procedures determined by the BOARD, from time to time. If, on the basis of these assessments, the majority of the BOARD finds the performance of the PRINCIPAL OFFICER unsatisfactory, may be removed as PRINCIPAL OFFICER, and a new appointment will be made, in terms of these RULES and the ACT, as the case may be.

10.17.8 The duty envisaged by the provisions of the Definition of "DISCLOSURE" in Part 2 of these RULES and Section 8(6) of the ACT, shall apply to the PRINCIPAL OFFICER. The PRINCIPAL OFFICER must within 21 (twenty-one days) of removal from office for reasons other than the expiration of his/her term of office/appointment or voluntary resignation, submit a written report to the FSCA, detailing the PRINCIPAL OFFICER'S perceived reasons for the termination.

10.17.9 The BOARD may appoint a deputy PRINCIPAL OFFICER to assume the duties, functions and responsibilities delegated by the PRINCIPAL OFFICER, in any circumstances that it deems necessary, but must notify the FSCA of such appointment. The provisions of RULE 10.6.1 shall apply *mutatis mutandis* to a deputy PRINCIPAL OFFICER.

## **10.18 APPOINTMENT OF MONITORING PERSON**

The BOARD may, subject to the provisions of Section 13A(6) of the ACT, appoint a MONITORING PERSON to perform such monitoring and compliance functions as contemplated in Section 13A of and Regulation 33 to the ACT, and may withdraw such appointment and make a new appointment in terms of this RULE. Such person may be deemed by the BOARD to be the PRINCIPAL OFFICER appointed in terms of RULE 10.17.

**10.19 ACCOUNTS**

The BOARD shall cause such accounts, registers and records to be kept as are necessary for the proper management of the FUND. The books of account shall be made up at the end of each FINANCIAL YEAR and be audited by the AUDITOR of the FUND.

**10.20 BANK ACCOUNT**

The BOARD OF TRUSTEES shall arrange for accounts, as may be deemed necessary in the name of the FUND at any registered banking institution approved by the FSCA. All money received by or on behalf of the FUND shall be deposited in such account.

**10.21 CONFIDENTIALITY OF INFORMATION**

The BOARD and all TRUSTEES shall be entitled to only such information from an EMPLOYER as the BOARD MEMBERS may reasonably require for the exercise of their duties in terms of these RULES. Such information shall be used only for the purpose of the BOARD OF TRUSTEES 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, or the ADMINISTRATOR or a service provider to the FUND whose province it is to have such information.

**10.22 LIMITATION OF A BOARD MEMBER'S LIABILITY**

Notwithstanding anything to the contrary in these RULES, a BOARD MEMBER may, in any proceedings against him/her be relieved by a court from any liability either in whole or in part and on terms that such court may consider just, if it appears to the court that the BOARD MEMBER has acted independently, honestly and reasonably and that in the circumstances of the case, having regard to the appointment of the BOARD MEMBER, it would be fair to excuse such a BOARD MEMBER.

### **10.23 CHANGE IN LEGISLATION**

If any legislation referred to in the RULES is amended or substituted then such amended or substituted legislation shall apply where applicable in these RULES from the effective date of such amendment or substitution.

**PART 11**  
**ACCOUNTS AND RESERVES**

**11.1 INDIVIDUAL MEMBER ACCOUNT**

11.1.1 The FUND keeps an INDIVIDUAL MEMBER ACCOUNT for each MEMBER, which is credited with:-

- (a) the CONTRIBUTIONS FOR RETIREMENT BENEFITS in respect of the MEMBER, including additional voluntary contributions referred to in terms of RULE 4.2; plus
- (b) FUND RETURN on DEMARCATED ASSETS; plus
- (c) any amount transferred from other reserve accounts as shall be determined by the BOARD from time to time, in consultation with the ACTUARY , and as permitted by the ACT; plus
- (d) any amount recovered in terms of RULE 4.3.2, excluding expenses of recovery.

11.1.2 The INDIVIDUAL MEMBER ACCOUNT is debited with:-

- (a) the portion of the MEMBER SHARE which is payable to BENEFICIARIES in terms of the RULES; plus
- (b) negative FUND RETURN on DEMARCATED ASSETS; plus
- (c) any amount referred to under RULE 11.1.1(c) above; plus
- (d) an amount (if any) deducted in terms of section 37D of the ACT.



11.1.3 In respect of each DORMANT MEMBER, an INDIVIDUAL MEMBER ACCOUNT shall be credited with: -

- (a) that part of the contributions made by the EMPLOYER and the MEMBER, in terms of the RULES, towards the INDIVIDUAL MEMBER ACCOUNT, and any other contributions paid in terms of the RULES; plus
- (b) transfer amounts (if any) received by the FUND in terms of the RULES; plus
- (c) FUND RETURN on DEMARCATED ASSETS; plus
- (d) any amount transferred from other reserve accounts as shall be determined by the BOARD from time to time, in consultation with the ACTUARY , and as permitted by the ACT.

11.1.4 In respect of each DORMANT MEMBER, an INDIVIDUAL MEMBER ACCOUNT shall be debited with:-

- (a) the proportionate amount to be credited to the EXPENSE AND RISK RESERVE ACCOUNT for payment of the administration, tracing and payment costs in respect of DORMANT MEMBERS; plus
- (b) payment or transfer of the MEMBER'S SHARE in terms of the RULES; plus
- (c) negative FUND RETURN on DEMARCATED ASSETS; plus
- (d) any other adjustment as shall be agreed to, from time to time, by the BOARD in consultation with the ACTUARY; plus

- (e) any amount referred to under RULE 11.1.3(d) above.

## **11.2 UNPAID MEMBER ACCOUNT**

11.2.1 The FUND keeps an UNPAID MEMBER ACCOUNT to which is credited:-

- (a) the benefits in respect of UNPAID MEMBERS; plus
- (b) FUND RETURN on DEMARCATED ASSETS; plus
- (c) any amount transferred from other reserve accounts as shall be determined by the BOARD from time to time, in consultation with the ACTUARY , and as permitted by the ACT.

11.2.2 The UNPAID MEMBER ACCOUNT is debited with:-

- (a) the portion of benefits which is payable in respect of UNPAID MEMBERS who have been successfully identified and traced; plus
- (b) the amount for payment of the administration, tracing and payment cost in respect of UNPAID MEMBERS; plus
- (c) an amount referred to in RULE 11.2.1(c) above; plus
- (d) negative FUND RETURN on DEMARCATED ASSETS

## **11.3 PENSIONER ACCOUNT**

11.3.1 The FUND keeps a PENSIONER ACCOUNT to which is credited:-

- (a) the amounts transferred from the INDIVIDUAL MEMBER ACCOUNT for an existing PENSIONER MEMBER who is

in receipt of a monthly pension from the FUND, as approved by the TRUSTEES, or in respect of a PAID-UP MEMBER; plus

- (b) FUND RETURN on DEMARCATED ASSETS;
- (c) a portion of the FUND assets as determined by the BOARD in consultation with the ACTUARY in order to maintain the solvency reserves within the PENSIONER ACCOUNT to cushion against adverse experience that result in possible shortfalls in assets in the PENSIONER ACCOUNT that are backing the PENSIONER ACCOUNT liabilities;

11.3.2 The PENSIONER ACCOUNT is debited with:-

- (a) the portion of monthly pensions which are payable in respect of PENSIONER MEMBERS; plus
- (b) payment of a benefit in respect of a PAID-UP MEMBER;
- (c) the amount for payment of the administration and payment cost in respect of PENSIONER MEMBERS and/or PAID-UP MEMBERS; plus
- (d) negative FUND RETURN on DEMARCATED ASSETS.

#### **11.4 EXPENSE AND RISK RESERVE ACCOUNT**

11.4.1 The FUND keeps an EXPENSE AND RISK RESERVE ACCOUNT which is credited with:-

- (a) an opening balance consisting of a portion of the FUND assets as determined by the BOARD in consultation with

the ACTUARY at the date of each statutory actuarial valuation; plus

- (b) the amount the EMPLOYER'S contributions made in terms of RULE 4.1.2(a) to meet the administration and management costs with regards to the FUND; plus
- (c) any amounts transferred from other accounts as the BOARD shall determine in consultation with the ACTUARY, and as permitted by the ACT; plus
- (d) the EMPLOYER'S contributions made in terms of RULE 4.1.2(a) to meet the cost of the risk insurance effected by the FUND in respect of the MEMBERS; plus
- (e) benefits payable by the INSURER; plus
- (f) accumulated profits transferred from the INSURER; plus
- (g) FUND RETURN on DEMARCATED ASSETS.

11.4.2 The EXPENSE AND RISK RESERVE ACCOUNT may be debited with:-

- (a) fees and reimbursements payable to the front office and the COUNCIL ; plus
- (b) any taxes and levies not taken into account in the costs of the administration of the FUND or the investment of its assets; plus
- (c) premiums for fidelity and professional indemnity insurance taken out by the FUND; plus
- (d) fees and reimbursement payable to the BOARD MEMBERS; plus

- (e) fees and reimbursements payable to consultants, the ACTUARY and other service providers appointed by the FUND; plus
- (f) the costs of audits of the FUND; plus
- (g) fees and reimbursements payable to the PRINCIPAL OFFICER appointed by the FUND; plus
- (h) amounts paid in respect of disbursement accounts; plus
- (i) reasonable travelling, accommodation and related expenses incurred by the BOARD MEMBERS in directing, controlling and overseeing the operations of the FUND; plus
- (j) costs of training of BOARD MEMBERS; plus
- (k) fees payable to the ADMINISTRATOR of the FUND for administration of the FUND (excluding investment administration); plus
- (l) cost of tracing and payment of benefits to BENEFICIARIES insofar as it is not recovered directly from MEMBERS; plus;
- (m) any amounts transferred to other accounts as the BOARD shall determine in consultation with the ACTUARY, and as permitted by the ACT; plus
- (n) the premiums paid to the INSURER underwriting the risk insurance provided by the FUND; plus
- (o) accumulated losses payable to the INSURER in terms of the insurance policy; plus

- (p) negative FUND RETURN on DEMARCATED ASSETS;  
plus
- (q) any other cost incurred by the FUND including expenses as defined in RULE 10.9, other than those not provided for above, relating to the management and administration of the FUND, as determined by the BOARD, from time to time.

11.4.3 On liquidation of the FUND, any balance in this account shall be applied by the liquidator in accordance with Section 15I of the ACT.

## 11.5 DATA ERROR RESERVE ACCOUNT

11.5.1 The FUND keeps a DATA ERROR RESERVE ACCOUNT to which is credited: -

- (a) such amount as the BOARD MEMBERS may decide from time to time, on the advice of the ACTUARY, provide for data discrepancies as well as for any benefits in respect of MEMBERS whose benefits have not been paid by the FUND but in respect of whom the ADMINISTRATOR has no records; plus
- (b) an opening balance consisting of a portion of the FUND'S assets as determined by the BOARD in consultation with the ACTUARY, at the date of each statutory actuarial valuation; plus
- (c) FUND RETURN on DEMARCATED ASSETS.

11.5.2 The DATA ERROR RESERVE ACCOUNT is debited with:-

- (a) any amount payable arising from data errors; plus

- (b) any amount payable in respect of MEMBERS whose benefits have not been paid by the FUND but in respect of whom the ADMINISTRATOR has no records; plus
- (c) any cost incurred by the FUND in calculating and setting claims arising from these data discrepancies; plus
- (d) allocation to INDIVIDUAL MEMBER ACCOUNT as determined by the BOARD MEMBERS, in consultation with the ACTUARY, in terms of Section 15C of the ACT; plus
- (e) any amount payable in terms of Section 15G of the ACT; plus
- (f) negative FUND RETURN on DEMARCATED ASSETS.

11.5.3 On liquidation of the FUND, any balance in this account shall be applied by the liquidator in accordance with Section 15I of the ACT.

## **11.6 PROCESSING ERROR RESERVE ACCOUNT**

11.6.1 The FUND keeps a PROCESSING ERROR RESERVE ACCOUNT to which is credited:-

- (a) an opening balance consisting of a portion of the FUND'S assets as determined by the BOARD, in consultation with the ACTUARY, at the date of each statutory actuarial valuation; plus
- (b) any amount transferred from other accounts as the BOARD may determine in consultation with the ACTUARY, and permitted by the ACT; plus

(c) FUND RETURN on DEMARCATED ASSETS.

11.6.2 The PROCESSING ERROR RESERVE ACCOUNT is debited with:-

(a) any proportionate amount of any expenses levied in respect of processing errors; plus

(b) any amount transferred to other accounts as the BOARD shall determine, in consultation with the ACTUARY, and as permitted by the ACT; plus

(c) allocation to MEMBER INDIVIDUAL ACCOUNT as determined by the BOARD, in consultation with the ACTUARY, in terms of Section 15C of the ACT; plus

(d) any amount payable in terms of Section 15G of the ACT; plus

(e) negative FUND RETURN on DEMARCATED ASSETS.

11.6.3 On liquidation of the FUND, any balance in this account shall be applied by the liquidator in accordance with Section 15I of the ACT.



**PART 12**  
**GENERAL**

**12.1 INVESTMENT OF ASSETS AND MONEYS WHILE CLAIM PENDING**

- 12.1.1 For the purposes of the RULES, NEAR-CASH means a pool of cash and liquid assets as well as short-term fixed interest-bearing investments kept by the ADMINISTRATOR of the FUND, and of which the returns for any period are equal to the accumulated monthly average returns earned on such assets and investments over the relevant period.
- 12.1.2 The FUND will cause the benefit arising from a MEMBER'S termination of service, retirement or death to be invested in NEAR-CASH from not later than the first day of the month following the earlier of-
- (a) the date of termination of service, retirement or death as notified by the EMPLOYER to the ADMINISTRATOR; and
  - (b) the date that the ADMINISTRATOR receives the full particulars required to process the claim for payment of the benefit; and
  - (c) the date on which the last contribution that is due to the FUND in respect of the MEMBER is paid to the FUND in full or, if the last contribution in respect of the MEMBER is included in the contributions of a group of MEMBERS, the date on which the contributions of the group are received by the ADMINISTRATOR of the FUND plus the time reasonably required by the ADMINISTRATOR to verify the correctness of the contributions of the group.

- 12.1.3 The NEAR-CASH shall apply to the MEMBER from the date per RULE 12.1.2 until the date of payment of the benefit.
- 12.1.4 The proceeds of insurance forming part of benefits payable to or in respect of a MEMBER must be invested in NEAR-CASH from the date of receipt from the INSURER. The net income on the investment of those proceeds will be added to the benefits payable.
- 12.1.5 In the case of a transfer to another retirement fund following termination of service, the benefit transferred is subject to RULE 8.

## **12.2 NON-ASSIGNABILITY OF BENEFITS**

- 12.2.1 Save to the extent permitted by the Income Tax Act, the Maintenance Act 1998 (Act 99 of 1998) the Divorce Act 1979 (Act 70 of 1979), as amended, and these RULES, no benefit or right thereto provided for in these RULES (including an annuity purchased or to be purchased by the FUND from an INSURER for a BENEFICIARY) or right in respect of contributions made by or on behalf of a MEMBER, shall be capable of being reduced, transferred, ceded, pledged, hypothecated, attached or subjected to any form of execution under a judgement or order of a court of law.
- 12.2.2 If a BENEFICIARY attempts to transfer, cede, pledge or hypothecate a benefit or right thereto, the BOARD OF TRUSTEES may direct that payment of such benefit be withheld or suspended or that payment of such benefit be effected in accordance with RULE 12.4 or 12.5, as the case may be.
- 12.2.3 A benefit payable in respect of a deceased MEMBER shall not be regarded as an asset in such MEMBER'S deceased estate.

## 12.3 TRANSFERS TO OR FROM OTHER FUNDS

12.3.1 The FUND is empowered to receive transfers of monies and business from other APPROVED FUNDS or to effect transfers of monies and business to other APPROVED FUNDS subject to the relevant provisions of the Income Tax Act and Section 14 of the ACT and on such terms and conditions as the BOARD OF TRUSTEES in consultation with the ACTUARY may decide; provided that any such transfer to or from an APPROVED FUND that has been approved by the REVENUE AUTHORITIES as a pension preservation fund will be conducted in compliance with the Income Tax Act. The FUND is also empowered to receive transfers of monies and business from any other retirement funding arrangement being operated in a country other than the Republic of South Africa and approved as such by that country's relevant authorised regulators.

12.3.2 Notwithstanding any other contrary provisions in the RULES of the FUND, the following provisions will be applicable to a MEMBER who is transferred to another APPROVED FUND, from the effective date of the transfer until the actual date of payment of the MEMBER'S assets in the FUND to the said APPROVED FUND:

- (a) No further contributions are payable to the FUND after the effective date of the transfer.
- (b) If such MEMBER retires prior to the completion of the transfer, the MEMBER will become entitled to a pension that can be secured by the MEMBER'S SHARE as at the date of retirement and the provisions of RULE 5 will *mutatis mutandis* apply.
- (b) If such MEMBER dies prior to the completion of the transfer, the MEMBER'S SHARE as at the date of

death, adjusted with the rate of interest as determined by the BOARD OF TRUSTEES from time to time, taking into account the investment vehicle in which and the period during which the assets representing the benefit are invested and all other relevant facts, until the actual date of payment of the benefit and the cost, as approved by the BOARD OF TRUSTEES, that was necessary to trace the BENEFICIARIES in terms of RULE 12.4 will be paid in terms of the provisions of RULE 12.4.

- (c) If such MEMBER'S service is terminated prior to the completion of the transfer, the MEMBER'S SHARE as at the date of leaving service will be paid to the MEMBER, and the provisions of RULE 8 will *mutatis mutandis* apply.
- (d) Any amount already paid to the MEMBER by the FUND prior to the completion of the transfer will be deducted from the amount allocated towards the MEMBER in the transfer.
- (e) A MEMBER'S benefit in terms of this section may be increased by such proportionate share of any reserve account and/or surplus account, as determined by the BOARD OF TRUSTEES, in consultation with the ACTUARY, from time to time.

## **12.4 PAYMENT OF BENEFITS**

- 12.4.1 In the event that a benefit becomes payable, the BOARD OF TRUSTEES shall, within 30 (thirty) days from the date of benefit accrual or the date of receipt of the notification of the benefit accrual, whichever the later, cause that the amount representing the benefit be invested in a product or investment vehicle, as

determined by them from time to time, until the actual date of payment of the benefit.

12.4.2 Subject to the provisions of RULE 12.5, the FUND shall pay any benefits that are payable in terms of these RULES in respect of any person who is still living, to such person, or to a third party, as the case may be .

12.4.3 Subject to the provisions of RULE 6, a benefit which becomes payable upon a MEMBER'S death shall be dealt with by the BOARD OF TRUSTEES as follows:

(a) Should the existence of a DEPENDANT or DEPENDANTS of the MEMBER become known to the FUND and such DEPENDANT or DEPENDANTS' whereabouts determined within 12 (twelve) months of the death of the MEMBER, the benefit shall be paid to such DEPENDANT or if there is more than one DEPENDANT, to any one such DEPENDANT or in proportions to some or all of such DEPENDANTS, as may be deemed equitable by the BOARD OF TRUSTEES.

(b) Should the existence of a DEPENDANT of the MEMBER not become known to the FUND, or should the FUND be unable to trace any such DEPENDANT within 12 (twelve) months of the death of the MEMBER and the MEMBER has designated to the FUND a NOMINEE to receive the benefit, or such portion of the benefit as is specified by the MEMBER, the benefit or such portion of the benefit shall be paid to such NOMINEE as decided by the Trustees.

- (c) If a MEMBER has a DEPENDANT and the MEMBER has also designated to the FUND a NOMINEE to receive the benefit or such portion of the benefit as is specified by the MEMBER, the FUND shall within 12 (twelve) months of the death of such MEMBER pay the benefit or such portion thereof to such DEPENDANT or NOMINEE in such portions as the BOARD OF TRUSTEES may deem equitable; It is a proviso that the BOARD OF TRUSTEES may pay the benefit to a DEPENDANT or NOMINEE contemplated in this paragraph or if there is more than one such DEPENDANT or NOMINEE, in proportions to any or all of such DEPENDANTS and NOMINEES.
- (d) Should the existence of a DEPENDANT of the MEMBER not become known to the FUND or should the FUND be unable to trace any such DEPENDANT within 12 (twelve) months of the death of the MEMBER, and if the MEMBER has not designated a NOMINEE, or if the MEMBER has designated to the FUND a NOMINEE to receive a portion of the benefit to the FUND, the benefit or the remaining portion of the benefit after payment to the 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 High Court in terms of the Administration of Estates Act 1965 (Act No. 66 of 1965) into the Guardian's Fund.

- 12.4.4 Notwithstanding the provisions of RULE 6, the FUND shall pay a lump sum benefit payable to a DEPENDANT or NOMINEE who is a minor, to such minor's guardian in a lump sum or to such minor's guardian or caregiver as defined in the Children's Act, 2005 (Act 38 of 2005) in such instalments as the BOARD OF TRUSTEES may, from time to time, consider appropriate and in the best interests of such BENEFICIARY. It is a proviso that

where a benefit is paid in instalments, the following conditions shall apply:

- (a) Interest at a rate determined by the BOARD OF TRUSTEES, having regard to the FUND RETURN or FUND RETURN, shall be added to the outstanding balance from time to time.
- (b) Any balance owing to such BENEFCIARY as at the date on which the BENEFCIARY attains majority or dies, whichever occurs first, shall be paid in full to such BENEFCIARY or to such BENEFCIARY'S estate, as the case may be.

12.4.5 Should the BOARD OF TRUSTEES decide that there are sound and adequate reasons why a benefit should not be paid to a MEMBER, they may notwithstanding the provisions of RULE 12.4.2, pay the benefit in accordance with section 37C(2)(a)(i) of the ACT:

- (a) wholly or partially to the MEMBER'S DEPENDANT(S) or to a legal guardian or care-giver, as defined in the Children's Act, 2005 (Act 38 of 2005) ; or
- (b) to the MEMBER'S curator for the benefit of the MEMBER.

12.4.6 Should the BOARD OF TRUSTEES decide that there are sound and adequate reasons why a benefit which has arisen as a result of a MEMBER'S death should not be paid to a BENEFCIARY, they may, notwithstanding the provisions of RULES 12.4.2, 12.4.3, 12.4.4 and 12.4.7, pay the benefit pay the benefit in accordance with section 37C(2)(a)(i) of the ACT:

12.4.7 Notwithstanding any contrary provision contained in this RULE 6, the BOARD OF TRUSTEES may pay a lump sum benefit payable to a DEPENDANT or NOMINEE who is not a minor in instalments if such BENEFICIARY has consented thereto in writing; provided that:

- (a) the amount and frequency of the instalments, the rate at which interest is to be added and any other terms and conditions shall be disclosed in a written agreement between the FUND and the BENEFICIARY concerned;
- (b) the agreement may be cancelled by the FUND or the BENEFICIARY on written notice not exceeding 90 (ninety) days;
- (c) if the agreement is cancelled, the balance of the benefit shall be paid to the BENEFICIARY in full.

12.4.8 A decision of the BOARD OF TRUSTEES in accordance with these RULES (other than a decision to make payment to a beneficiary fund, trust or a decision to pay a lump sum benefit in instalments) may be amended from time to time.

## **12.5 LATE PAYMENT OF BENEFITS**

The BOARD OF TRUSTEES may, in consultation with the ACTUARY, 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, if this is different to the FUND RETURN on NEAR CASH ASSETS.

## **12.6 CURRENCY**

Contributions and benefits in terms of these rules are payable in the legal currency of the Republic of South Africa. However, in special circumstances



the BOARD OF TRUSTEES may authorise payments outside South Africa on such conditions as they may determine.

## **12.7 DISPUTES, CLAIMS AND COMPLAINTS**

12.7.1 Any dispute arising which relates to the interpretation, application or enforcement of the rules of the FUND shall be processed in terms of this section, notwithstanding the provisions of the LABOUR RELATIONS ACT. Any dispute involving the employment relationship with the EMPLOYER may still be dealt with in terms of the LABOUR RELATIONS ACT.

A decision of the BOARD OF TRUSTEES as to the meaning of or interpretation of the RULES or of any particular rule or part of a rule, will be final and binding on the EMPLOYERS and any MEMBER or BENEFICIARY, subject to the provisions of Section 30A of the ACT.

12.7.2 No person shall have any claim against the FUND or the BOARD, other than a claim that the RULES have not been complied with. No person shall have a claim against the FUND in respect of any investments made by the BOARD in good faith and in terms of these RULES.

12.7.3 In the event of a COMPLAINT arising, other than a COMPLAINT by the BOARD OF TRUSTEES against another person, the COMPLAINANT may lodge a written complaint with the BOARD OF TRUSTEES at the registered office of the FUND or such other address as designated by the BOARD OF TRUSTEES for this purpose.

12.7.4 The BOARD OF TRUSTEES will deal with all COMPLAINTS lodged with it. For this purpose, the BOARD OF TRUSTEES may request the COMPLAINANT or any other person for such

additional information relating to the COMPLAINT as it may deem necessary to enable it to properly deal therewith.

- 12.7.5 The BOARD OF TRUSTEES shall furnish the COMPLAINANT with its written decision regarding the COMPLAINT within 30 (thirty) days, or such other period as mutually agreed in writing with the COMPLAINANT, of receipt of the COMPLAINT.
- 12.7.6 If the COMPLAINANT is not satisfied with the decision of the BOARD OF TRUSTEES, the COMPLAINANT shall have the right to appeal against such decision within a period of 30 (thirty) days of receipt thereof. In this event, the BOARD OF TRUSTEES may revise or uphold its initial decision.
- 12.7.7 If the BOARD OF TRUSTEES fails to respond to the COMPLAINT within the period stipulated in RULE 12.7.5 or if the COMPLAINANT is not satisfied with the outcome of the appeal in terms of RULE 12.7.6, the COMPLAINANT will have the right to submit the COMPLAINT to the ADJUDICATOR.
- 12.7.8 Any determination of the ADJUDICATOR regarding a COMPLAINT will be deemed to be a civil judgment of any court of law had the COMPLAINT been heard by such court and will be legally binding on the parties thereto.
- 12.7.9 If either the BOARD OF TRUSTEES or the COMPLAINANT are aggrieved by the determination of the ADJUDICATOR, the aggrieved party will have the right, within a period of 6 (six) weeks following the date of the ADJUDICATOR'S determination, to apply to the division of the High Court which has jurisdiction, for relief. The aggrieved party will give simultaneous written notice to the other party of its intention to lodge such application.

- 12.7.10 For purposes of the foregoing provisions, all written notifications as contemplated therein will be transmitted to the BOARD OF TRUSTEES or the COMPLAINANT, as the case may be, by pre-paid registered post, facsimile transmission or physical delivery. Receipt thereof will be deemed to have taken place on the 10th (tenth) working day following the date of posting, if sent by post, or the day following the date of physical delivery or facsimile transmission.
- 12.7.11 The foregoing provisions will, *mutatis mutandis*, be applicable if the BOARD OF TRUSTEES lodge a COMPLAINT on behalf of the FUND; provided that nothing herein contained will limit the rights of the BOARD OF TRUSTEES to resort to such other remedies as it may deem appropriate in order to protect the interests of the FUND and its MEMBERS and BENEFICIARIES.
- 12.7.12 Notwithstanding the provisions of RULE 12.7.9, an aggrieved party may within 60 days of the issuing of a determination by the ADJUDICATOR or within such longer period as may be allowed on good cause shown, apply in terms of section 230 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) to the Financial Services Tribunal for a reconsideration of a decision of the ADJUDICATOR. The aggrieved party will give simultaneous written notice to the other party of its intention to lodge such application.

## **12.8 AMENDMENTS TO THE RULES**

The BOARD OF TRUSTEES will have the right to amend the RULES at any time; provided that such amendments are not inconsistent with the provisions of the Income Tax Act, the ACT and all other applicable legislation, and are registered by the FSCA and approved by the REVENUE AUTHORITIES; provided that any amendment to the RULES which, in the opinion of the ACTUARY, changes the EMPLOYER'S financial obligation and liability in terms of the RULES, will be subject to the prior approval of

the EMPLOYERS and/or COUNCIL. Any amendment to the RULES submitted for registration and/or approval, must be of exact format and wording as the currently registered RULES or amendment, as the case may be.

## **12.9 BENEFICIARIES ARE DEFERRED CREDITORS**

The BENEFICIARIES of the FUND shall be regarded as deferred creditors and their claims against the FUND in their capacity as BENEFICIARIES shall not be settled until the claims of ordinary creditors have been settled.

## **12.10 CONDITIONS OF SERVICE NOT OTHERWISE AFFECTED**

Nothing contained in these rules shall limit the right of the EMPLOYER to dismiss any EMPLOYEE from service, or the right of an EMPLOYEE to terminate service with the EMPLOYER, subject to the EMPLOYEE'S conditions of service.

## **12.11 MONIES DUE TO THE EMPLOYER AND/OR THE FUND**

The ADMINISTRATOR shall, at the request of the EMPLOYER, the FUND or the BENEFICIARY, as the case may be, recover the following amounts from benefits payable in terms of these rules and where necessary, pay such amounts to the person or body to whom the amounts are due:

12.11.1 debts owing to the FUND or the EMPLOYER as a result of:

(a) a loan granted to the MEMBER by the FUND or the EMPLOYER to enable the MEMBER to:

(i) redeem a loan which was granted to the MEMBER by a person other than the FUND or the EMPLOYER as security over immovable property that belongs to the MEMBER or the MEMBER'S

spouse upon which a dwelling has been erected or is to be erected and is occupied or is to be occupied as the case may be by the MEMBER or a DEPENDANT of the MEMBER; or

- (ii) purchase a dwelling, or to purchase land and erect a dwelling on it, for occupation by the MEMBER or a DEPENDANT of the MEMBER; or
- (iii) make additions or alterations to or maintain or repair a dwelling which belongs to the MEMBER or to the MEMBER'S spouse and that is occupied or will be occupied by the MEMBER or a DEPENDANT of the MEMBER;

- (b) an amount for which the FUND or the EMPLOYER is liable under a guarantee furnished in respect of a loan granted by some other person to a MEMBER for a purpose as intended in paragraph (a) above;

12.11.2 compensation for any loss suffered by the EMPLOYER as a result of theft, misconduct, fraud or dishonesty by the MEMBER and in respect of which the MEMBER has admitted liability in writing or in respect of which a court judgement against the MEMBER has been obtained;

12.11.3 any amount that the FUND, by arrangement with and on behalf of a BENEFCIARY, has paid or shall pay in respect of:

- (a) such BENEFCIARY'S contributions to a medical scheme, registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act No.131 of 1998); or

- (b) an insurance premium payable by a BENEFICIARY to an INSURER; or
  - (c) any purpose approved by the FSCA, on the terms and conditions determined by him, upon a written request from the FUND;
- 12.11.4 any part of the MEMBER'S pension interest in the FUND as defined in Section 7(8) of the Divorce Act, 1979 (Act 70 of 1979) as amended, allocated to a NON-MEMBER SPOUSE in terms of a valid court order issued by a competent court; provided that the MEMBER'S SHARE will be reduced by such allocated portion and paid to such NON-MEMBER SPOUSE or transferred to another APPROVED FUND on behalf of the NON-MEMBER SPOUSE, as elected by the NON-MEMBER SPOUSE; or in terms of any order made by a court in respect of the division of assets of a marriage under Islamic law pursuant to Fund's dissolution, from a MEMBER'S or deferred pensioner's benefit, MEMBER'S interest or minimum individual reserve or the capital value of a pensioner's pension after retirement;
- 12.11.5 any payable amount of the MEMBER'S SHARE allocated to a person in terms of Section 37D(1)(d) of the ACT; provided that such allocated amount will be deemed to have accrued to the MEMBER and the MEMBER'S SHARE will be reduced by such allocated amount and paid to such person;
- 12.11.6 It is a proviso that the amounts in terms of RULES 12.11.1 and 12.11.2 shall be limited to a sum not exceeding that which may be taken by a BENEFICIARY as a lump sum benefit in terms of the Income Tax Act.

## **12.12 EXPIRY OF PENSION FUND AGREEMENT**

If the PENSION FUND AGREEMENT expires and is not renewed by COUNCIL or becomes inoperative in respect of any EMPLOYER and /or any MEMBER in its employ, all the provisions of the PENSION FUND AGREEMENT for active participation in the FUND will continue to apply in terms of the RULES and the applicable laws as if agreed between such EMPLOYER and each of its employees individually until varied or terminated by express agreement between them and subject to any subsequent collective agreement between the parties to COUNCIL.

## **12.13 DISSOLUTION OF THE FUND**

### **12.13.1 PARTIAL DISSOLUTION**

- (a) An EMPLOYER may only discontinue participation in the FUND with the approval of the COUNCIL; provided that 2 (two) months written notice of such intention is given to the BOARD OF TRUSTEES. Benefits which are in the process of being paid in terms of these RULES at the time of such partial dissolution shall not be affected by such partial dissolution.
  
- (b) Should an EMPLOYER discontinue participation in the FUND with the approval of the COUNCIL and the MEMBERS employed by such EMPLOYER are admitted to another APPROVED FUND, the BOARD OF TRUSTEES shall make such arrangements and enter into such agreements as they may deem necessary for the transfer to such APPROVED FUND of the MEMBERS' SHARES of such MEMBERS who acquire membership of such fund, in accordance with the recommendations of the ACTUARY. Such transaction is, however, subject to the prior obtainment

of certificates issued by the FSCA to the relevant funds to authorise the transaction.

Any such payments to another APPROVED FUND may be made in a lump sum or in equal instalments over such period as the BOARD OF TRUSTEES shall decide upon subject to the provisions of the relevant investment vehicle. Payment of the relevant instalments concerned shall commence on a date not later than 1 (one) year after the EMPLOYER'S participation has ceased. The balance owing at any time to the other fund shall earn interest in each FUND YEAR during which instalments are paid, at a rate that, according to the ACTUARY, is equal to the percentage interim FUND RETURN or FUND RETURN. Notwithstanding anything to the contrary contained in this paragraph, the BOARD OF TRUSTEES reserve the right to pay the balance of any outstanding amount or part thereof in a lump sum at any time during the period in which instalments are payable to the other fund.

- (c) Should an EMPLOYER discontinue participation in the FUND and the MEMBERS concerned do not immediately qualify for membership of another APPROVED FUND the liquidation provisions as set out in RULE 12.13.2 shall *mutatis mutandis*, be applicable in respect of the assets and liabilities of the FUND attributable to such MEMBERS.

#### 12.13.2 TOTAL DISSOLUTION

- (a) The FUND shall be dissolved in the event that the sole remaining EMPLOYER decides to terminate the



payment of contributions to the FUND or such EMPLOYER discontinue business operations, provided that should such EMPLOYER be liquidated and reconstituted in a similar or altered form, the FUND shall not be dissolved, unless the reconstituted EMPLOYER decides not to become a participating EMPLOYER in the FUND.

- (b) Upon dissolution of the FUND, the TRUSTEES shall retain their duties and powers for the purpose of attending to matters relating to the dissolution of the FUND. The BOARD OF TRUSTEES shall appoint a liquidator whose appointment shall be subject to the approval of the FSCA. After the appointment of the liquidator, the BOARD OF TRUSTEES shall cease to hold office and the powers, duties and functions conferred upon them in terms of these rules shall devolve upon the liquidator.
- (c) The liquidator shall consult the ACTUARY as to the value of each BENEFICIARY'S entitlement in the FUND and shall apply the assets of the FUND in an equitable manner to ensure that:
  - (i) benefits are purchased from an INSURER or other APPROVED FUND in respect of BENEFICIARIES in respect of whom benefits became payable prior to the date of dissolution but who have not yet received payment thereof and MEMBERS who have already attained the NORMAL RETIREMENT AGE on the date of dissolution but have not yet retired. Such benefits are subject to a maximum amount equal to the value of the assets of the FUND immediately prior to the date of dissolution. The

benefits provided in terms hereof and the provisions in accordance with which the benefits shall be paid to BENEFICIARIES by the INSURER or other APPROVED FUND shall correspond as closely as possible with those that would have applied had the FUND not been dissolved;

- (ii) the balance of the assets of the FUND after payment of benefits envisaged in paragraph (c)(i), is utilised to purchase deferred retirement benefits for the remaining MEMBERS from an INSURER or another APPROVED FUND. Such deferred retirement benefits shall be purchased with the amount equal to each MEMBER'S SHARE. At the request of any such MEMBER, the liquidator may pay such MEMBER'S SHARE to him in a lump sum.

The liquidator may regard EMPLOYEES who left the EMPLOYER'S service during the immediately preceding 12 (twelve) months as MEMBERS of the FUND as at the date of dissolution; provided that any benefits already paid to them shall be taken into account in calculating the benefits to which they may become entitled.

- (d) If the FUND is terminated or dissolved under Section 28 of the ACT, monies remaining unclaimed for a reasonable period as determined by the liquidator from the date on which payment of benefits by the liquidator commenced after completion of all necessary formalities, will be paid into an APPROVED FUND that has been approved by the REVENUE AUTHORITIES to accept unclaimed benefits for the account

of the MEMBER or BENEFICIARY concerned and thereafter there will be no claim against the FUND in respect of such monies. The liquidator will indicate in the final liquidation and distribution account the amount thus paid and simultaneously furnish the FSCA with a certificate to the effect that all reasonable steps were taken to trace the MEMBERS or BENEFICIARIES in question.

- (e) If the FUND is wound-up under Section 29 of the ACT and the winding-up order does not specifically make Section 410 of the Companies Act 2008 (Act No. 71 of 2008), applicable or direct otherwise regarding unclaimed monies, the provisions of this paragraph (e) will apply to unclaimed monies.

## **12.14 UNCLAIMED BENEFITS**

- 12.14.1 If a BENEFICIARY, excluding a MEMBER, DORMANT MEMBER or PENSIONER MEMBER, does not claim monies payable to such BENEFICIARY in terms of the RULES, such monies will be taxed in accordance with the relevant provisions of the Income Tax Act and retained in the FUND or be transferred after expiry of a period of 24 (twenty-four) months to an APPROVED FUND that has been approved by the REVENUE AUTHORITIES to accept unclaimed benefits, whereafter the BENEFICIARY will have no further claim against the FUND.
- 12.14.2 For the first 24 (twenty-four) months from the date that the benefit becomes payable in terms of these RULES. Such benefit will remain in the investment portfolio(s) it was invested in immediately prior to the benefit becoming unclaimed, and at the expiry of the said 24 (twenty-four) month-period, an unclaimed benefit that is retained in the FUND will be disinvested and be invested in another product or investment

vehicle, as determined by the BOARD OF TRUSTEES from time to time, in terms of the provisions of the ACT: including but not limited to benefits payable as a consequence of:

- (a) a benefit (other than the benefits mentioned below) not paid to a BENEFICIARY excluding a MEMBER, PENSIONER MEMBER or DORMANT MEMBER of the date on which in terms of these RULES, became legally due and payable;
- (b) a death of a MEMBER in terms of Section 37C of the ACT;
- (c) being a pension or annuity not paid to a BENEFICIARY;
- (d) being payable to former member who is not be traced in accordance with Section 15B of the ACT, in relation to "Apportionment of existing surplus";
- (e) a benefit remaining unclaimed or unpaid to a MEMBER, former member or BENEFICIARY when the FUND voluntarily applies cancellation of registration in terms of Section 27 of the ACT, or where the liquidator is satisfied that the benefits will remain unclaimed and/or unpaid at the completion of the liquidation exercise in terms of Sections 28 or 29 of the ACT;
- (f) an amount that remains unclaimed or unpaid to a NON-MEMBER SPOUSE after the election (the expiry of 120 days of being requested to advise, in writing, where and how of the accrued "pension interest" should be paid) as contemplated in terms of Section 37D(4)(a)(ii) and 37D(4)(b)(ii) of the ACT, but does not include a benefit due to be transferred as part of a transfer of business in terms of Section 14, where any annuity is purchased in respect of a pensioner or otherwise in terms of the ACT.

12.14.3 The benefit payable in terms of RULES 5, 6,7or 8, as the case may be, that remains unclaimed in the FUND, will be adjusted with the following, as approved by the BOARD OF TRUSTEES:

- (a) the rate of interest as determined by the BOARD OF TRUSTEES from time to time, taking into account the investment vehicle in which and the period during which the assets representing the benefit are invested and all other relevant facts, until the date of payment of the benefit;
- (b) the reasonable cost that was incurred to trace or endeavour to trace the MEMBER or BENEFICIARY; and
- (c) the proportionate share of the cost of management of unclaimed benefits.

12.14.4 Notwithstanding the provisions of RULE 12.14.1, the BOARD OF TRUSTEES will make payment of monies referred to in RULE 12.14.1, that have not yet been transferred to an APPROVED FUND that has been approved by the REVENUE AUTHORITIES to accept unclaimed benefits, to a MEMBER or BENEFICIARY if such person satisfies the BOARD OF TRUSTEES of his or her right to claim such monies.