

**RULES OF THE  
COLUMBUS RETIREMENT FUND  
(PENSION SECTION)**

**(Registration Number 12/8/33170/1)**

**Effective 1 January 2013**

**COLUMBUS RETIREMENT FUND  
(PENSION SECTION)**

**Certified that these are the revised RULES of the COLUMBUS RETIREMENT FUND  
(PENSION SECTION) which will be effective from 1 JANUARY 2013**

*Potter*  
.....  
**ACTING Chairman**

*Adams*  
.....

**Trustee**  
*[Signature]*  
.....  
**Principal Officer**

**COLUMBUS RETIREMENT FUND (PENSION SECTION)  
CERTIFICATE OF FINANCIAL SOUNDNESS**

Certified that the revision of the RULES of the COLUMBUS RETIREMENT FUND (PENSION SECTION) ('the Fund') which is effective from 1 JANUARY 2013 will not render the Fund financially unsound.

  
.....  
Fund Valuator – Dave Steere

29 January 2013  
.....  
Date

## Table of Contents

1. NAME AND COMMENCEMENT .....	7
2. OBJECTS .....	7
3. LEGAL STATUS .....	7
4. REGISTERED OFFICE.....	7
5. DEFINITIONS AND INTERPRETATION.....	7
5.1 Interpretation.....	7
5.2 Definitions and Meanings.....	8
6. MANAGEMENT OF THE FUND .....	15
6.1 Constitution of the Board of Trustees.....	15
6.2 Appointment, Election and Removal of Board Members .....	15
6.3 Term of Office of the Board.....	17
6.4 Persons Disqualified From Being or Acting as BOARD MEMBERS .....	17
6.5 Meetings of the Board.....	18
6.6 Board to Direct and Control Fund.....	19
6.7 Duties of the Board .....	20
6.8 Powers of the Board .....	22
6.9 Delegation of Powers by the Board.....	24
6.10 Principal Officer .....	25
7. REGISTRATION AND APPROVAL OF THE FUND .....	27
8. CONFIDENTIAL INFORMATION.....	27
9. ADMINISTRATION OF THE FUND.....	28
9.1 Documents .....	28
9.2 Records and Safe Custody of Securities.....	28
10. MEMBERSHIP .....	28
10.1 Member Eligibility and Admission.....	28
10.2 Absence.....	29
10.3 Termination of Membership .....	29
11. CONTRIBUTIONS .....	30
11.1 Member Contributions.....	30
11.2 Selection of Contribution Rate .....	31
11.3 Employer Contributions.....	31
11.4 Payment of Contributions.....	32
12. FINANCIAL AND ACTUARIAL.....	33
12.1 Actuary and Actuarial Valuations .....	33

12.2 Auditor and Financial Statements ..... 33

13. EXPENSES ..... 35

13.1 Payment of expenses ..... 35

13.2 Ad Hoc Expenses ..... 35

13.3 Provider and Creditor Payments ..... 35

13.4 Tracing Costs..... 36

14. BENEFITS ..... 36

14.1 Normal Retirement..... 36

14.2 Early Retirement ..... 36

14.3 Late Retirement ..... 37

14.4 Notification of Retirement, Death or Withdrawal ..... 37

14.5 Lump Sum Benefit and Pension Options..... 38

14.6 Death In Service Prior To Retirement..... 39

14.7 Withdrawal Benefits ..... 39

15. PAYMENT OF BENEFITS ..... 40

15.1 Identification of BENEFICIARY ..... 40

15.2 Manner of Payment..... 40

15.3 Payment Recipient..... 40

15.4 Full and Final Settlement ..... 41

15.5 Payment of Death Benefits ..... 41

15.6 Benefits Inalienable..... 43

16. DEDUCTIONS FROM BENEFITS..... 44

17. UNCLAIMED BENEFITS ..... 47

18. INVESTMENTS AND DISINVESTMENTS ..... 47

18.1 Investment of Assets..... 47

18.2 Disinvestment of Monies Pending Payment ..... 48

19. RESERVE ACCOUNTS..... 49

19.1 Expense Reserve Account..... 49

19.2 Data Processing Error Reserve Account..... 49

19.3 Employer Surplus Account..... 50

19.4 Member Surplus Account..... 52

19.5 Surplus Expense Reserve Account..... 52

20. AMENDMENTS TO THE RULES..... 52

21. BINDING POWER OF THE RULES..... 53

22. TERMINATION OF THE FUND ..... 53

23. WITHDRAWAL OF AN EMPLOYER ..... 55

24. TRANSFER OR AMALGAMATION OF AN EMPLOYER, RECLASSIFICATION OF A MEMBER AND SECTION 197 TRANSFERS, AMALGAMATION OF THE FUND .....	55
25. NEW FUND OR SCHEME .....	56
26. DISPUTES.....	56
27. CLAIMS AGAINST THE FUND AND EMPLOYERS.....	57
28. INDEMNITY AND FIDELITY INSURANCE .....	57
29. TRANSFERS FROM OTHER FUNDS .....	58
30. CURRENCY .....	58
31. MONETARY Advantage.....	58
32. RIGHT to Obtain Copies of or to Inspect Documents .....	58
32.1 MEMBER Access to RULES and Documents .....	58
32.2 MEMBER Inspection of Documents .....	58

# **RULES OF THE COLUMBUS RETIREMENT FUND (PENSION SECTION)**

## **1.NAME AND COMMENCEMENT**

The Columbus Retirement Fund (Pension Section) (“the FUND”) was established with effect from 1 April 1995. With effect from 1 January 2013 the Rules of the Fund were revised. These are the revised RULES of the FUND.

## **2.OBJECTS**

The object of the FUND is to provide benefits for MEMBERS of the FUND on their retirement or, upon the death of such MEMBERS, for their BENEFICIARIES.

## **3.LEGAL STATUS**

The FUND is a juristic person with perpetual succession and as such has the legal capacity and powers which are enjoyed in law by a person of full legal capacity, including the capacity and power to sue and be sued, conclude agreements, acquire, own, hypothecate, hire, let and alienate property, movable or immovable, corporeal and incorporeal, do such things as may be necessary or desirable for the achievement of its mission and the carrying out of its functions and duties; and to exercise any powers incidental to the above powers.

## **4.REGISTERED OFFICE**

The registered office of the FUND is Room 2, Office Block D, Columbus Stainless, Off Hendrina Road, Middelburg, Mpumalanga 1050.

## **5.DEFINITIONS AND INTERPRETATION**

### **5.1 Interpretation**

In the RULES, unless inconsistent with the context or a contrary intention appears:

5.1.1 words and expressions defined in the ACT and not in the RULES will bear the meanings assigned to them in the ACT;

5.1.2 words and expressions importing one gender will include the other gender;

5.1.3 words and expressions denoting the singular number will include the plural and *vice versa*; and

5.1.4 references to a natural person will include a juristic person and *vice versa*.

5.1.5 The headings are solely for ease of reference and will not be taken into account in the interpretation of the RULES.

## **5.2 Definitions and Meanings**

The following words and expressions bear the meanings assigned to them below and cognate expressions have corresponding meanings, namely:

5.2.1 “ACT” means the Pension Funds Act, 1956, the regulations and conditions promulgated in terms of the Pension Funds Act, 1956, including any amendments effective from time to time and any directive issued in terms of Section 33A of the Pension Funds Act, 1956;

5.2.2 “ACTUARY” means the actuary appointed by the BOARD in terms of RULE 12.1 who is admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the Minister of Finance by notice in the Government Gazette;

5.2.3 “ADJUDICATOR” means the Pension Funds Adjudicator appointed in terms of Section 30C(1) of the ACT;

5.2.4 “ADMINISTRATION EXPENSES” means the cost of the management and administration of the FUND by the ADMINISTRATOR including any costs in relation to actuarial or consultancy services in respect of the FUND;

5.2.5 “ADMINISTRATOR” means the person or entity appointed by the BOARD in terms of RULE 6.8.11 to attend to the day by day administration of the FUND, provided that the ADMINISTRATOR must, if it is not the FUND itself, be registered in terms of Section 13B of the ACT;

5.2.6 “AD HOC EXPENSES” means the cost of Financial Services Board levies, audit fees, bank charges, professional indemnity and fidelity guarantee insurance for the BOARD and any other costs of the FUND which cannot be pre-determined



and/or are not payable on a regular monthly or annual basis, provided that expenses referred to in RULE 13.4 are specifically excluded;

5.2.7 “APPROVED PENSION PRESERVATION FUND” means a fund registered in terms of the ACT and approved as a pension preservation fund by the REVENUE SERVICE;

5.2.8 “APPROVED FUND” means a fund registered in terms of the ACT and approved as a pension, provident fund or retirement annuity fund by the REVENUE SERVICE;

5.2.9 “AUDITOR” means the auditor appointed by the BOARD in terms of RULE 12.2 who must be registered under the Auditing Profession Act, 2005;

5.2.10 “BENEFICIARY” means a person who is entitled to benefits in terms of the RULES;

5.2.11 “BENEFICIARY FUND” means an association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits, referred to in Section 37C of the ACT, on behalf of BENEFICIARIES, payable on the death of a MEMBER of the FUND and the members of any other APPROVED FUND;

5.2.12 “BOARD” means the BOARD of the FUND constituted in terms of RULE 6.1;

5.2.13 “BOARD MEMBER” means a person who has been appointed or elected to serve as a member of the BOARD in terms of RULE 6.2;

5.2.14 “CATEGORY ONE MEMBER” means a MEMBER who has elected in terms of RULE 11.2.1 to contribute to the FUND at the rate of five percent (5%) of PENSIONABLE EMOLUMENTS;

5.2.15 “CATEGORY TWO MEMBER” means a MEMBER who has elected in terms of RULE 11.2.1 to contribute to the FUND at the rate of six percent (6%) of PENSIONABLE EMOLUMENTS;

5.2.16 “CATEGORY THREE MEMBER” means a MEMBER who has elected in terms of RULE 11.2.1 to contribute to the FUND at the rate of seven comma five percent (7,5%) of PENSIONABLE EMOLUMENTS;

5.2.17 “DEFAULT PORTFOLIO” means an INVESTMENT PORFOLIO or INVESTMENT PORTFOLIOS chosen by the BOARD to be the investment vehicle for that portion of the FUND’S assets which is not subject to an investment choice decision by a MEMBER;

5.2.18 “DEPENDANT” in relation to a MEMBER means –

5.2.18.1 a person in respect of whom the MEMBER is legally liable for maintenance;

5.2.18.2 a person in respect of whom the MEMBER is not legally liable for maintenance, if such person –

5.2.18.2.1 was, in the opinion of the BOARD, upon the death of the MEMBER in fact dependent on the MEMBER for maintenance;

5.2.18.2.2 was the spouse of the MEMBER which includes, for the purposes of this definition, a person who was the permanent life partner or spouse or civil union partner of a member in accordance with the Marriage Act, 1961, the Recognition of Customary Marriages Act, 1998, the Civil Union Act, 2006, or the tenets of a religion;

5.2.18.2.3 was a child of the MEMBER including a posthumous child, an adopted child and a child born out of wedlock;

5.2.18.3 a person in respect of whom the MEMBER would have become legally liable for maintenance, had the MEMBER not died;

5.2.19 “ELIGIBLE EMPLOYEE” means a full time, permanent employee in SERVICE;

5.2.20 “EMPLOYER” means the PRINCIPAL EMPLOYER and those of its subsidiary companies or organisations that participate in the FUND; provided that any EMPLOYER who withdraws from the FUND in terms of RULE 23 will simultaneously cease to be an EMPLOYER for the purposes of the RULES;

5.2.21 “FINANCIAL YEAR” means the twelve (12) month period commencing on 1 January each year and ending on 31 December of the same year;

5.2.22 “FINANCIAL YEAR END” means 31 December;

5.2.23 “FORMER FUND” shall mean the CHROME-STEEL PENSION FUND;

5.2.24 “FUND” means the Columbus Retirement Fund (Pension Section);

5.2.25 “FUND CREDIT” means, in relation to a MEMBER at any particular date, the sum of:-

5.2.25.1 the realized value of the assets held in respect of the MEMBER’S FUND ACCOUNT as at the date on which those assets are disinvested; plus

5.2.25.2 the realized value of the assets held in respect of the MEMBER PERSONAL ACCOUNT (if any) as at the date on which those assets are disinvested; less

5.2.25.3 expenses incurred by the FUND in the course of administration (including statutory taxes and levies), investment management, financial management, actuarial management and any other expenses not deducted from the MEMBER contribution in terms of RULE 13, as agreed to in writing by the BOARD; plus

5.2.25.4 NET FUND RETURNS earned on the amounts so realized until date of payment, provided that the MEMBER’S FUND CREDIT shall at all times be subject to a minimum amount equal to the MEMBER’S MINIMUM INDIVIDUAL RESERVE.

5.2.26 “INCOME TAX ACT” means the Income Tax Act, 1962 including any amendments effective from time to time;

5.2.27 “INVESTMENT EARNINGS” means the investment yield, net of INVESTMENT EXPENSES, earned by the FUND from time to time which could be positive or negative, provided that in respect of a SELECTED PORTOLIO or a DEFAULT PORTFOLIO, it will be the investment earnings applicable to that INVESTMENT PORTFOLIO;

5.2.28 “INVESTMENT EXPENSES” means any taxes, levies, fees and other costs directly related to the investment of the assets of the FUND specific to each particular INVESTMENT PORFOLIO;

5.2.29 “INVESTMENT PORTOLIO” means the combined holding of various asset classes which is managed or administered by an appropriately registered investment manager or investment administrator;

5.2.30 “INVESTMENT RULES” means the conditions established by the BOARD with the agreement of the ADMINISTRATOR regarding,

5.2.30.1 The investment of the assets of the FUND;

5.2.30.2 The frequency, dates and times relating to the investment in and changes between INVESTMENT PORTFOLIOS;

5.2.30.3 The costs of investing in and changing between INVESTMENT PORTFOLIOS; and

5.2.30.4 Any constraints as agreed between the BOARD and the ADMINSTRATORS;

5.2.31 “MEMBER” means a person who has been admitted to membership of the FUND in terms of RULE 10.1.1 (admission to membership) subject to the following conditions:

5.2.31.1 A person who leaves SERVICE will remain a MEMBER until all benefits have been paid to him / her or transferred to another APPROVED FUND or REGISTERED INSURER on his / her behalf, provided that no benefits in addition to the aforementioned benefits will accrue to or in respect of

him / her and he / she will not be entitled to vote for BOARD MEMBERS,  
and

- 5.2.31.2 “EMPLOYER” in relation to a MEMBER means the EMPLOYER in whose service such MEMBER is or is deemed to be;
- 5.2.32 “NOMINEE” means a person, other than a DEPENDANT, who has been nominated in writing by a MEMBER to receive all or part of the death benefits provided by the FUND;
- 5.2.33 “NORMAL RETIREMENT AGE” means the age of sixty (60) years;
- 5.2.34 “NORMAL RETIREMENT DATE” means the last day of the month in which a MEMBER attains her NORMAL RETIREMENT AGE;
- 5.2.35 “PENSIONABLE EMOLUMENTS” means such portion of a MEMBER’S monthly remuneration as agreed between the MEMBER and his / her EMPLOYER and advised to the FUND from time to time, provided that PENSIONABLE EMOLUMENTS in the case of a MEMBER who is in receipt of a benefit payable in terms of the provisions of a disability income benefit scheme will be deemed to be his / her PENSIONABLE EMOLUMENTS as at the date of commencement of the aforementioned benefit;
- 5.2.36 “PRINCIPAL EMPLOYER” means Columbus Stainless (Pty) Limited;
- 5.2.37 “PRINCIPAL OFFICER” means the person appointed by the BOARD in terms of RULE 6.10 in accordance with Section 8 of the ACT;
- 5.2.38 “REGISTERED INSURER” means an insurer registered in terms of the Long Term Insurance Act, 1998;
- 5.2.39 “REGISTRAR” means the Registrar or Deputy Registrar of Pension Funds appointed in terms of the Financial Services Board Act, 1990;
- 5.2.40 “REVENUE SERVICE” means the Commissioner for the South African Revenue Service as defined in the INCOME TAX ACT;

- 5.2.41 “RISK EXPENSES” means the cost of the multiple of PENSIONABLE EMOLUMENTS benefit referred to in RULE 14.6;
- 5.2.42 “RULE” or “RULES” means these RULES as amended from time to time including any annexure that may apply from time to time;
- 5.2.43 “SELECTED INVESTMENT PORTFOLIO” means the specific INVESTMENT PORTFOLIO or INVESTMENT PORTFOLIOS chosen by a MEMBER into which the assets of the FUND underlying the MEMBER’S FUND CREDIT must be invested;
- 5.2.44 “SERVICE” means continuous service as an ELIGIBLE EMPLOYEE of one or more of the EMPLOYERS;
- 5.2.45 “UNCLAIMED BENEFIT” means-
- 5.2.45.1 any benefit, other than a benefit referred to in RULES 5.2.45.2 or 5.2.45.3 below, not paid by the FUND to a MEMBER, former MEMBER or BENEFICIARY within twenty-four (24) months of the date on which it, in terms of the RULES, became legally due and payable; or
  - 5.2.45.2 in relation to a benefit payable to a former MEMBER who cannot be traced in accordance with Section 15B(5)(e) of the ACT, any benefit that has become legally due and payable to the former MEMBER in terms of a surplus apportionment scheme approved in terms of this ACT not paid to that former MEMBER within twenty-four (24) months of the date on which it became legally due and payable; or
  - 5.2.45.3 any benefit that remained unclaimed or unpaid to a MEMBER, former MEMBER or BENEFICIARY in the event that the FUND applies for cancellation of registration in terms of Section 27 of the ACT or where the liquidator is satisfied that a benefit remains unclaimed or unpaid,
  - 5.2.45.4 **excluding** a benefit due to be transferred as part of a transfer of business in terms of Section 14 of the ACT, where an annuity is

purchased in terms of RULES 14.1, 14.2 or 14.3 or otherwise in terms of the ACT; or

5.2.45.5 Excluding a death benefit payable to a BENEFICIARY in terms of Section 37C of the ACT not paid within twenty-four (24) months from the date of the death of the MEMBER or such longer period as reasonably justifiable by the BOARD.

5.2.46 "UNCLAIMED BENEFITS FUND" means another approved fund established for the purpose of RECEIVING, MANAGING AND PAYING such unclaimed benefits in terms of APPLICABLE LEGISLATION.

## **6.MANAGEMENT OF THE FUND**

### **6.1 Constitution of the Board of Trustees**

6.1.1 The management, control and administration of the FUND vests in a BOARD OF TRUSTEES (the Board) comprising of ten (10) BOARD OF TRUSTEES MEMBERS (BOARD MEMBERS). Five (5) BOARD MEMBERS must be appointed by the PRINCIPAL EMPLOYER in terms of RULE 6.2.1 and will be called EMPLOYER-APPOINTED BOARD MEMBERS. Five (5) BOARD MEMBERS must be elected by the MEMBERS from the ranks of the MEMBERS of the FUND. These BOARD MEMBERS will be called MEMBER-ELECTED BOARD MEMBERS. In addition to the MEMBER-ELECTED BOARD MEMBERS, there shall be a maximum of five (5) alternate BOARD MEMBERS elected by the MEMBERS, which alternates shall be the nominated candidates who received the next highest number of votes after those of the elected BOARD MEMBERS.

6.1.2 The BOARD shall elect from their number a Chair Person. The term of office of the Chair Person will be twenty-four (24) months. The Chair Person may be re-elected on the expiry of his / her term of office.

### **6.2 Appointment, Election and Removal of Board Members**

6.2.1 The PRINCIPAL EMPLOYER shall appoint the EMPLOYER-appointed BOARD MEMBERS at the same time that the MEMBERS elect BOARD MEMBERS. The

PRINCIPAL EMPLOYER must also appoint one (1) person to act as a roving alternate to the EMPLOYER-appointed BOARD MEMBERS.

6.2.2 The PRINCIPAL EMPLOYER may remove from office an EMPLOYER-appointed BOARD MEMBER or alternate at any time and may appoint a new EMPLOYER-appointed BOARD MEMBER or alternate to take his / her place.

6.2.3 The BOARD must formulate a policy for the election of MEMBER-ELECTED BOARD MEMBERS and alternates from time to time.

6.2.4 A MEMBER-ELECTED BOARD MEMBER, will cease to hold office if he / she ceases to be in SERVICE.

6.2.5 Should a vacancy arise in the office of a BOARD MEMBER other than as a result of the expiry of the term of office of the BOARD MEMBER, such vacancy will be filled by the alternate to such BOARD MEMBER. Should a vacancy arise in the office of a BOARD MEMBER because of the expiry of the term of office of such BOARD MEMBER or should a vacancy arise because of any other reason and there is no alternate to the BOARD MEMBER, the MEMBERS must elect or the PRINCIPAL EMPLOYER must appoint, whichever is applicable, a MEMBER-ELECTED BOARD MEMBER or an EMPLOYER-appointed BOARD MEMBER.

6.2.5.1 The BOARD may appoint the MEMBER with the next highest number of votes obtained in the previous elections, to step into a vacant alternate MEMBER-ELECTED BOARD MEMBER until the next elections.

6.2.6 A BOARD MEMBER will cease to hold office if –

6.2.6.1 at least six (6) of the other BOARD MEMBERS resolve that such BOARD MEMBER is to be removed from office because of a breach of his / her fiduciary duty towards the FUND or a breach of his / her duties to its MEMBERS and/or other BENEFICIARIES, after having given him / her a fair hearing, conducted by the BOARD or a committee of the BOARD; or

6.2.6.2 he / she has failed to attend three (3) consecutive BOARD meetings without leave from a majority of the other BOARD MEMBERS or without



providing reasons acceptable to the majority of the other BOARD MEMBERS.

6.2.7 A vacancy on the BOARD will not invalidate any proceedings of the BOARD, provided that the requirements for a quorum are met.

### **6.3 Term of Office of the Board**

6.3.1 The BOARD MEMBERS will hold office for three (3) years, provided that a BOARD MEMBER whose term of office has expired may be re-appointed or re-elected as the case may be. In the event of a delay in the election or appointment of a new BOARD MEMBER or BOARD MEMBERS following the expiry of the term of office of a BOARD MEMBER or BOARD MEMBERS, the existing BOARD MEMBERS will continue in office.

6.3.2 A BOARD MEMBER will remain a BOARD MEMBER until –

6.3.2.1 the expiry of his / her term of office;

6.3.2.2 he / she resigns by giving the Chair Person written notice to that effect;

6.3.2.3 in the case of the Chair Person resigning, he / she gives the rest of the BOARD written notice to that effect;

6.3.2.4 he / she ceases to hold office in terms of RULE 6.4;

6.3.3 he / she is removed from office in terms of RULES 6.2.2, 6.2.4 or 6.2.6.

### **6.4 Persons Disqualified From Being or Acting as BOARD MEMBERS**

6.4.1 A person may not be appointed or elected as a BOARD MEMBER or will cease to hold office as such if:

6.4.1.1 he / she becomes mentally or physically incapable of acting; or

6.4.1.2 his / her estate is sequestrated or surrendered or assigned in favour of his / her creditors; or

- 6.4.1.3 he / she is convicted by a competent court of theft, fraud, forgery or a similar offence; or
- 6.4.1.4 he / she is discharged by a competent court from an office of trust on account of misconduct; or
- 6.4.1.5 he / she is convicted by a competent court on any charge and sentenced to a prison term without the option of a fine.

## **6.5 Meetings of the Board**

- 6.5.1 The BOARD shall meet from time to time as is necessary to conduct the business of the FUND but no less than two (2) times in every twelve (12) months.
- 6.5.2 The Chair Person may convene a special meeting of the BOARD if the Chair Person regards it as necessary. The Chair Person must also convene a special meeting within twenty-one (21) days of being so requested by at least six (6) of the BOARD MEMBERS.
- 6.5.3 Save as otherwise provided, the Chair Person must cause at least fourteen (14) days' notice to be given of every BOARD meeting, specifying the place, date and time of the meeting, provided that the aforementioned notice period may be waived by agreement of the majority of the quorum present at the meeting in respect of which such notice was not given.
- 6.5.4 At least six (6) BOARD MEMBERS will be required to constitute a quorum, provided that there are at least three (3) MEMBER-ELECTED BOARD MEMBERS and three (3) EMPLOYER-appointed BOARD MEMBERS present.
- 6.5.5 If a quorum is not present at the time determined for the start of the meeting, the meeting may be adjourned by the Chair Person for a period of at least seven (7) working days. At such postponed meeting the BOARD MEMBERS present will constitute a quorum.
- 6.5.6 The meetings of the BOARD will be chaired by the Chair Person. If the Chair Person is temporarily absent or, for any other reason, is unable to perform his /

her functions as Chair Person, the BOARD MEMBERS present must elect an acting Chair Person for that meeting.

6.5.7 The Chair Person must cause minutes to be kept of all meetings held by the BOARD, such minutes to be distributed within a reasonable time of the BOARD meeting to the BOARD MEMBERS. If no objections are raised at the next meeting of the BOARD, the minutes of the previous meeting will be proposed, seconded and signed by the Chair Person. Once the minutes of the previous meeting are signed by the Chair Person, they will constitute *prima facie* evidence of the business transacted at the meeting.

6.5.8 Decisions of the BOARD will be taken by a simple majority of votes of BOARD MEMBERS present at any meeting, each BOARD MEMBER having one vote.

6.5.9 In the event of a deadlock the matter will be postponed to the next meeting of the BOARD. Should a simple majority not be reached at that meeting of the BOARD, the matter will be referred to an arbitrator appointed by the AUDITOR. The arbitrator's decision will be final and binding on the BOARD. The BOARD may, by consensus, decide to refer the matter to an arbitrator immediately rather than postponing the matter to the next meeting of the BOARD.

6.5.10 An alternate BOARD MEMBER is restricted to an observer role at meetings and may only exercise his / her vote when the BOARD MEMBER for whom he / she is acting as alternate is not present at the meeting.

6.5.11 A resolution in writing signed by a majority of the BOARD MEMBERS excluding alternate BOARD MEMBERS will have the same force and effect as a resolution passed at a BOARD meeting duly convened and held. Such written resolution must be submitted to the BOARD meeting immediately following the last signature on the written resolution for ratification.

## **6.6 Board to Direct and Control Fund**

6.6.1 The purposes of the BOARD are to direct, control and oversee the operations of the FUND in accordance with applicable laws and the RULES.

## 6.6.2 In pursuing its object the BOARD must-

- 6.6.2.1 take all reasonable steps to ensure that the interests of MEMBERS in terms of the RULES and the provisions of the ACT are protected at all times especially in the event of an amalgamation or transfer of any business contemplated in Section 14 of the ACT, splitting of the FUND, termination or reduction of contributions to the FUND by an EMPLOYER, increase of contributions of MEMBERS and withdrawal of an EMPLOYER;
- 6.6.2.2 act with due care, diligence and good faith;
- 6.6.2.3 avoid conflicts of interest; and
- 6.6.2.4 act with impartiality in respect of all MEMBERS.

## 6.7 Duties of the Board

### 6.7.1 The duties of a BOARD will, *inter alia*, include to –

- 6.7.1.1 ensure that proper registers, books and records of the operations of the FUND are kept, including proper minutes of all resolutions passed by the BOARD;
- 6.7.1.2 cause true and full accounts of the FUND to be kept for each FINANCIAL YEAR in accordance with general accounting practice and any guidelines issued by the AUDITOR from time to time, such accounts to be made up to the FINANCIAL YEAR END and fairly to present the state of affairs of the FUND and its business and financial position and to be audited by the AUDITOR;
- 6.7.1.3 ensure that adequate and appropriate information is communicated to the MEMBERS of the FUND informing them of their rights, benefits and duties in terms of the RULES;
- 6.7.1.4 take all reasonable steps to ensure that the monthly contributions are paid timeously to the FUND in accordance with the ACT;

- 6.7.1.5 obtain expert advice on matters in respect of which the BOARD may lack sufficient expertise;
  - 6.7.1.6 ensure that the RULES, operation and administration of the FUND complies with the ACT, the Financial Institutions (Protection of Funds) Act, 2001 and all other applicable laws and any other duties imposed by the RULES;
  - 6.7.1.7 operate a banking account opened in the name of the FUND with a bank registered in terms of the Banks Act, 1990;
  - 6.7.1.8 use their best endeavours to ensure that any contributions or other moneys paid to the FUND are paid in accordance with the provisions of Section 13A of the ACT;
  - 6.7.1.9 cause every document of title to an investment to be registered in the name of the FUND, or in the name of a nominee company approved by the REGISTRAR;
  - 6.7.1.10 procure that every title deed and other document of title belonging to the FUND will be kept in the safes or strong rooms at the registered office or other office of the FUND or in a banking institution, as decided by the BOARD;
  - 6.7.1.11 procure that every cheque, contract or other document pertaining to the FUND be signed by such persons as the BOARD by resolution appoints and if applicable, in the manner set out in the ACT; and
  - 6.7.1.12 take such measures as may be prudent to protect the assets of the FUND and pay only such benefits as are provided for in the RULES.
- 6.7.2 The reference to the specific duties of the BOARD above will not in any way derogate from the other common law and statutory duties of the BOARD.

## 6.8 Powers of the Board

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

6.8.2 Subject to the provisions of RULE 18.1, the BOARD will have the power, subject to the provisions of the ACT and of this RULE to invest in immovable property, and in like manner to invest, lend, put out at interest, place on deposit, make advances of, or otherwise deal with all the monies of the FUND upon such securities and in such manner as it from time to time may determine and to dispose of immovable property, realise, vary, reinvest, or otherwise deal with such securities and other investments as it from time to time may determine, provided that any amount advanced on mortgage of immovable property will not, together with any other amount that has been or can be advanced on security of a prior or *pari passu* mortgage of that property, exceed 80 (eighty) percent of the value of the property on the date of the advance.

6.8.3 The power of the BOARD to make investments and to realise, vary, reinvest or otherwise deal with the securities concerned, may be delegated by the BOARD, on such written terms and conditions as they may specify, to -

6.8.3.1 a subcommittee of such of their number as they nominate; and/or

6.8.3.2 a stockbroker as defined in Section 1 of the Securities Services Act, 2004; and/or

6.8.3.3 a long-term insurer registered in terms of the Long-term Insurance Act, 1998; and/or

6.8.3.4 a bank registered under the Banks Act, 1990; and/or

6.8.3.5 a nominee company approved by the REGISTRAR; or

6.8.3.6 a person approved in terms of the Financial Advisory and Intermediary Services Act, 2002; or

- 6.8.3.7 a person approved by the REGISTRAR, or who is a member of a category of persons approved by the REGISTRAR.
- 6.8.4 The BOARD will not be liable for the negligence, dishonesty or fraud of an institution or person referred to in RULE 6.8.3 above.
- 6.8.5 The BOARD may grant a loan to a MEMBER from the FUND or furnish a guarantee in favour of a person other than the FUND in respect of a loan granted or to be granted by such other person to a MEMBER for the purposes set out in Section 19 of the ACT.
- 6.8.6 The BOARD may obtain an overdraft from a bank, or borrow from any other party, on such terms as it thinks fit, such sum as it approves for the purpose of completing any investment, or meeting any temporary unforeseen cash shortage, and for this purpose may give such security as it decides, provided that the aggregate amount of such loans does not at any time exceed one-half of the FUND'S gross income from all sources during the immediately preceding FINANCIAL YEAR unless otherwise authorised by the REGISTRAR.
- 6.8.7 To reinsure with a REGISTERED INSURER any benefits provided by the FUND to its MEMBERS.
- 6.8.8 To contract on behalf of the FUND and to sign such contract or other document on behalf of the FUND, to institute legal action or process for the FUND and to conduct, settle or abandon such action or process, to defend or settle legal action or process instituted against the FUND.
- 6.8.9 To make, amend and rescind policies and procedures in respect of a matter concerning the FUND, provided that such policies and procedures do not conflict with the RULES, the ACT and the INCOME TAX ACT.
- 6.8.10 To amend the RULES, provided that no amendment affecting the financial obligation of an EMPLOYER will be made without the prior approval of the EMPLOYER.

6.8.11 To make any arrangements for the administration of the FUND and in this regard to appoint an ADMINISTRATOR. The BOARD must ensure that the ADMINISTRATOR is registered in terms of Section 13B of the Act and must enter into an administration agreement which complies with BOARD Notice 101 of 1995 issued in terms of Section 13B of the ACT.

6.8.12 The BOARD will be entitled, in its absolute discretion, to appoint consultants, investment advisers, investment managers, legal advisers and other service providers to assist the BOARD in performing its duties and functions where it considers this necessary or prudent.

6.8.13 The BOARD may, in accordance with the provisions of Section 14 of the ACT, amalgamate any business carried on by the FUND with any business carried on by any other person, or transfer any business carried on by the FUND to any other person, or accept transfer of any business from any other person to the FUND.

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

### **6.9 Delegation of Powers by the Board**

6.9.1 The BOARD may delegate any of its powers and/or duties and/or responsibilities to another person or a committee of the BOARD by means of a written mandate, provided that the delegation of the power of investments may only take place to a person or institution referred to in RULE 6.8.3. Any decision taken by a committee of the BOARD must be noted or ratified by the BOARD at the next following BOARD meeting, depending on the mandate given to such person or committee.

6.9.2 For the purpose of interpretation of the RULES, it will be deemed that when a RULE empowers the BOARD to perform a function or duty, that the BOARD may delegate the power concerned in terms of RULE 6.9.1 above, unless the context clearly indicates otherwise.



## **6.10 Principal Officer**

6.10.1 The BOARD shall appoint the PRINCIPAL OFFICER. The appointment of the PRINCIPAL OFFICER shall be subject to approval by the REGISTRAR at date of appointment and at all times thereafter during the term of the appointment. Any such appointment may be changed by the BOARD in its sole discretion.

6.10.2 The BOARD shall notify the REGISTRAR, in writing, of the name of the PRINCIPAL OFFICER and shall furnish the REGISTRAR with the prescribed information in respect of the PRINCIPAL OFFICER within thirty (30) days of the appointment of the PRINCIPAL OFFICER.

6.10.3 If the PRINCIPAL OFFICER is absent from the Republic of South Africa for a period exceeding thirty (30) days or is otherwise unable to perform his / her duties, the BOARD must appoint another person to act as PRINCIPAL OFFICER during the period of his / her absence or disability, subject to the provisions of RULE 6.10.2 above.

6.10.4 The REGISTRAR may object to the appointment if he / she, subject to the provisions of the Promotion of Administrative Justice Act, 2000, reasonably believes that the PRINCIPAL OFFICER is not, or is no longer, a fit and proper person to hold that office, or if it is not in the public interest that the PRINCIPAL OFFICER holds or continues to hold such office. The REGISTRAR must, in the aforementioned circumstances, state the grounds of his / her objection and provide those to the Chair Person and the PRINCIPAL OFFICER.

6.10.5 If the REGISTRAR objects to the appointment of the PRINCIPAL OFFICER in terms of RULE 6.10.4 above, the BOARD must terminate the appointment within thirty (30) days of the REGISTRAR informing the BOARD of the finalisation of the processes and procedures provided for in the Promotion Administrative Justice Act, 2000.

6.10.6 The REGISTRAR may for purposes of assessing if the PRINCIPAL OFFICER is not, or is no longer, a fit and proper person in accordance with paragraph RULE 6.10.4 above, have regard to—

- 6.10.6.1 the competence and soundness of judgment of the person for the fulfilment of the responsibilities of the particular office and the type of fund;
- 6.10.6.2 the diligence with which the person concerned is likely to fulfil those responsibilities;
- 6.10.6.3 previous conduct and activities of the person in business or financial matters; and
- 6.10.6.4 any evidence that the person—
- 6.10.6.5 after 27 April 1994 has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004, an offence under the Prevention of Organised Crime Act, 1998, or any offence involving dishonesty;
- 6.10.6.6 has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993, took effect, and sentenced to imprisonment without the option of a fine;
- 6.10.6.7 has contravened the provisions of any law the object of which is the protection of the public against financial loss;
- 6.10.6.8 is a former principal officer of an APPROVED FUND and whose actions contributed to that APPROVED FUND'S inability to pay its debts or caused financial loss to its members;
- 6.10.6.9 has taken part in any business practices that, in the opinion of the REGISTRAR, were deceitful, prejudicial, or otherwise improper (whether unlawful or not) or which otherwise brought discredit to that person's methods of conducting business; or
- 6.10.6.10 has taken part in or been associated with any other business practices, or conduct that casts doubt on his / her competence and soundness of judgement.

6.10.7 The REGISTRAR may request any person to assist him / her in assessing whether a person is fit and proper to act as PRINCIPAL OFFICER of the FUND.

6.10.8 The PRINCIPAL OFFICER must perform all the functions required to fulfil his / her duties in terms of the ACT, the RULES and the directions of the BOARD.

6.10.9 The PRINCIPAL OFFICER must—

6.10.9.1 within twenty-one (21) days of his / her appointment being terminated, other than in accordance with the conditions referred to in RULE 6.10.5 above, submit a written report to the REGISTRAR detailing his / her perceived reasons for the termination; and on becoming aware of any matter relating to the affairs of the FUND which, in his / her opinion, may prejudice the FUND or its MEMBERS, inform the REGISTRAR thereof in writing.

## **7. REGISTRATION AND APPROVAL OF THE FUND**

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

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

## **8. CONFIDENTIAL INFORMATION**

The BOARD and all BOARD MEMBERS will be entitled to only such information from an EMPLOYER as the BOARD may require for the exercise of its duties in terms of the RULES. Such information will be used only for the purpose of the BOARD performing the duties in terms of the RULES and will not be disclosed to any person or body other than such office-bearer or employee of the FUND, the REGISTERED INSURERS which the FUND has entered into contracts with for the reinsurance of any benefits or the ADMINISTRATOR whose province it is to have such information.

## **9.ADMINISTRATION OF THE FUND**

### **9.1 Documents**

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

### **9.2 Records and Safe Custody of Securities**

9.2.1 The BOARD must ensure that complete records are kept of all MEMBERS and of matters essential to the efficient administration of the FUND.

9.2.2 All mortgage bonds, title deeds and other securities belong to or held by the FUND must, unless temporarily held in custody by another on behalf of the FUND, be stored in safe custody in the safe or strong room at the registered office of the FUND or with any registered financial institution approved by the REGISTRAR.

9.2.3 All policies of insurance will be issued in the name of the FUND and will be held in safekeeping by the FUND.

## **10.MEMBERSHIP**

### **10.1 Member Eligibility and Admission**

10.1.1 Subject to the provisions of RULE 10.1.2 below, membership of the FUND is a condition of service for every person who becomes an ELIGIBLE EMPLOYEE of an EMPLOYER. Each such ELIGIBLE EMPLOYEE, as advised to the FUND by the EMPLOYER will become a MEMBER of the FUND on the first day of the month coincident with or next following that in which such person became an ELIGIBLE EMPLOYEE of an EMPLOYER.

10.1.2 An ELIGIBLE EMPLOYEE who is in the service of an employer immediately prior to such employer becoming an EMPLOYER (other than in circumstances of a merger or amalgamation of another fund with the FUND in terms of RULE 24) may, on application made within a period of not more than twelve (12) months after such employer becomes an EMPLOYER, become a MEMBER of the FUND. In the event of such ELIGIBLE EMPLOYEE waiving his / her right to join the

FUND or electing not to join the FUND such ELIGIBLE EMPLOYEE will not be permitted to join the FUND at a later stage.

10.1.3 A MEMBER who becomes entitled to a disability benefit in terms of the provisions of a separate disability income benefit scheme will be deemed, for the purposes of the FUND, to remain employed by his / her EMPLOYER while receiving such benefit and will remain a MEMBER of the FUND. Contributions by the MEMBER will continue to be payable in terms of RULE 11.1.

## **10.2 Absence**

10.2.1 At the discretion of the EMPLOYER, a MEMBER who is temporarily absent from SERVICE with full normal remuneration, may continue to be a MEMBER of the FUND and the benefits provided by and contributions payable to the FUND will not be affected by the MEMBER'S absence from SERVICE.

10.2.2 When a MEMBER is absent from SERVICE with less than full normal remuneration or no remuneration, his / her MEMBER'S FUND CREDIT will be credited with any contributions actually paid by the MEMBER and/or the EMPLOYER in respect of retirement funding during such period.

## **10.3 Termination of Membership**

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

10.3.2 A MEMBER who for any reason leaves SERVICE and has received the benefits due to him / her in terms of the RULES will forthwith cease to be a MEMBER, provided that in the period between leaving SERVICE and receiving his / her benefits, he / she will only be regarded as a MEMBER of the FUND for the purposes of the benefits that accrued on his / her termination of SERVICE and will not become entitled to any other benefits and will have no other rights in terms of the RULES.

10.3.3 A MEMBER who leaves SERVICE as a result of the transfer of his / her contract of employment to another employer in terms of Section 197 of the Labour

Relations Act, 1995, may be permitted to remain a MEMBER of the FUND for such period and on such conditions as the BOARD may determine provided that, for that period, the employer of that MEMBER will be deemed to be an EMPLOYER as defined in the RULES.

10.3.4 Notwithstanding anything to the contrary contained elsewhere in these RULES, a MEMBER who leaves the SERVICE of one EMPLOYER to commence SERVICE with another EMPLOYER will be deemed to have remained in SERVICE and will not become entitled to any cash benefit in terms of these RULES.

10.3.5 When required by the BOARD, a MEMBER must produce a birth certificate or other satisfactory evidence of age in respect of himself and of his / her DEPENDANTS and/or NOMINEES and must give the BOARD such other information as the BOARD may require for the purposes of the FUND.

10.3.6 If a MEMBER fails to comply with RULE 10.3.5 above the BOARD may withhold payment of any benefit due to or in respect of him / her until the provisions are complied with.

10.3.7 The FUND will not be liable for any loss sustained by a BENEFICIARY or an EMPLOYER arising from any misstatements or errors or omissions in any information supplied by such BENEFICIARY or EMPLOYER in terms of the RULES.

## **11. CONTRIBUTIONS**

### **11.1 Member Contributions**

11.1.1 MEMBERS will contribute the following amounts monthly to the FUND:

11.1.1.1 A CATEGORY ONE MEMBER, five percent (5%) of PENSIONABLE EMOLUMENTS;

11.1.1.2 A CATEGORY TWO MEMBER, six percent (6%) of PENSIONABLE EMOLUMENTS;

11.1.1.3 A CATEGORY THREE MEMBER, seven comma five percent (7,5%) of PENSIONABLE EMOLUMENTS.

11.1.2 MEMBERS may make monthly voluntary contributions to the FUND, provided that such voluntary contributions must be regular in rate, as agreed between the MEMBER and the FUND from time to time.

11.1.3 MEMBERS will, on being admitted to membership and subject to legislation regarding transfers between funds, be entitled to transfer amounts to the FUND from another APPROVED FUND.

## **11.2 Selection of Contribution Rate**

11.2.1 On a MEMBER'S commencement of his / her membership of the FUND and when his / her PENSIONABLE EMOLUMENTS change, the FUND must ensure that a MEMBER elects whether he / she will contribute to the FUND at the rate of five percent (5%), six percent (6%) or seven comma five percent (7,5%) of his / her PENSIONABLE EMOLUMENTS.

11.2.2 In the event that a new MEMBER fails to make an election within the time period set by the FUND, he / she will be regarded as having elected that he / she contribute to the FUND at the rate of seven comma five percent (7,5%) of PENSIONABLE EMOLUMENTS.

11.2.3 In the event that an existing MEMBER fails to make an election within the time period set by the FUND in the event that his / her PENSIONABLE EMOLUMENTS change, he / she will be regarded as not having elected any change to his / her contribution rate.

## **11.3 Employer Contributions**

11.3.1 The EMPLOYER shall contribute monthly to the FUND in respect of all MEMBERS an amount equal to three percent (3%) of PENSIONABLE EMOLUMENTS.

11.3.2 The EMPLOYER shall contribute monthly to the FUND in respect of RISK EXPENSES a maximum amount equal to three percent (3%) of PENSIONABLE

EMOLUMENTS less the cost of ADMINISTRATION EXPENSES and the cost of the disability income benefit scheme. Such amount will be credited to the Expense Reserve Account.

11.3.3 The EMPLOYER shall be entitled to make such additional voluntary contributions, whether as a lump sum payment or recurring contributions, if the EMPLOYER at its sole discretion deem it appropriate to do so.

#### **11.4 Payment of Contributions**

11.4.1 Contributions are payable to the FUND monthly in arrears.

11.4.2 The EMPLOYER must deduct the MEMBERS' contributions payable in terms of RULE 11.1 from the MEMBERS' remuneration at the end of each pay-period. The first deduction will be at the end of the pay-period during which the MEMBER became a MEMBER in terms of the RULES.

11.4.3 The MEMBERS' contributions payable in terms of RULE 11.1 and the EMPLOYER'S contributions payable in terms of RULE 11.3 must be paid over to the FUND within 7 (seven) days of the end of the month in respect of which the contributions in question are payable.

11.4.4 An amendment of the RULES relating to the reduction of contributions or the suspension or discontinuation of the payment of contributions will not affect any liability to pay any contributions which became payable at any time before the date of the resolution whereby the amendment was effected, irrespective of the date on which the amendment may take effect.

11.4.5 The BOARD must procure that the PRINCIPAL OFFICER or an authorised person as contemplated in Section 13A(6) of the ACT ensures that the provisions of Section 13A of the ACT are complied with, including but not limited to the payment of late payment interest as prescribed from time to time.



## **12. FINANCIAL AND ACTUARIAL**

### **12.1 Actuary and Actuarial Valuations**

12.1.1 The BOARD shall appoint an ACTUARY, for such periods as they determine, and may withdraw any such appointment and make another appointment in its place.

12.1.2 The provisions of RULES 6.10.4, 6.10.5, 6.10.6 and 6.10.7 will apply *mutatis mutandis* to the ACTUARY.

12.1.3 The ACTUARY will be the valuator of the FUND in terms of the ACT and will, in addition to the function of valuator, perform such other functions as may be specified in the RULES.

12.1.4 The FUND will be valued by the ACTUARY at intervals not exceeding three years. Within twelve months of the valuation date the ACTUARY shall be required to submit a valuation report to the BOARD, who shall submit a copy thereof to the REGISTRAR. A copy of the valuation report or a summary thereof in the prescribed format will be open for inspection by the EMPLOYERS and MEMBERS at the registered office of the FUND.

12.1.5 The BOARD must maintain such records as may be required by the ACTUARY to perform the valuation function referred to above.

### **12.2 Auditor and Financial Statements**

12.2.1 The BOARD shall appoint an AUDITOR, for such periods as they determine, and may withdraw any such appointment and make another appointment in its place.

12.2.2 The BOARD shall, within thirty (30) days of the appointment of the AUDITOR, apply to the REGISTRAR for approval of the appointment.

12.2.3 The provisions of RULES 6.10.4, 6.10.5, 6.10.6 and 6.10.7 will apply *mutatis mutandis* to the AUDITOR.

12.2.4 Where the AUDITOR is a partnership, the appointment of such AUDITOR will not lapse by reason of a change in the composition of the partnership, as long as not

less than half of the partners in the reconstituted partnership are persons who were partners as at the date when the appointment of the partnership was last approved by the REGISTRAR.

12.2.5 The AUDITOR has for the purpose of performing his / her functions and duties –

12.2.5.1 the right of access at all reasonable times to the accounting records and all books, vouchers, documents and other property of the FUND;

12.2.5.2 the right to require from the BOARD such information and explanations as he / she deems necessary;

12.2.5.3 the right to investigate whether there are adequate measures and procedures for the proper application of sound economical, efficient and effective management of the FUND and for the utilisation of all the resources under the control of the BOARD; and

12.2.5.4 the right to investigate any matter, including the efficiency and effectiveness of the internal control of the FUND, relating to expenditure by and the revenue of the FUND.

12.2.6 The BOARD must cause full and true accounts of the FUND to be kept in respect of each FINANCIAL YEAR. Such accounts must be made up as at each FINANCIAL YEAR END, audited by the AUDITOR, and submitted to the REGISTRAR, provided that all of the aforementioned functions must be performed in accordance with the provisions of the ACT.

12.2.7 The AUDITOR must—

12.2.7.1 within twenty-one (21) days of his / her appointment being terminated, other than in accordance with the conditions referred to in RULE 6.10.5, submit a written report to the REGISTRAR detailing his / her perceived reasons for the termination;

12.2.7.2 if he / she, but for the termination referred to in RULE 12.2.7.1 above, would have had reason to submit a report contemplated in Section 45(3)

of the Auditing Profession Act, 2005, submit such a report to the REGISTRAR; and

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

## **13. EXPENSES**

### **13.1 Payment of expenses**

13.1.1 ADMINISTRATION EXPENSES will be borne from the EMPLOYER CONTRIBUTION as per RULE 11.3.2.

13.1.2 RISK EXPENSES and AD HOC EXPENSES will be borne by the FUND and will be met from the balance standing to the credit of the Expense Reserve Account.

### **13.2 Ad Hoc Expenses**

13.2.1 The following provisions will apply in respect of AD HOC EXPENSES

13.2.1.1 AD HOC EXPENSES need not have accrued for an appropriate deduction to be made from the MEMBERS' FUND CREDITS and the BOARD may deduct in respect of provisions that they make to ensure impartiality among the MEMBERS of the FUND.

13.2.1.2 AD HOC EXPENSES may furthermore be funded by way of interest earned in the bank account of the FUND other than interest allocated in terms of the provisions of RULE 18.2.

13.2.1.3 Should the amounts deducted from MEMBERS' FUND CREDITS be in excess of the amounts required to fund AD HOC EXPENSES, an appropriate credit will be made to the MEMBERS' FUND CREDITS.

### **13.3 Provider and Creditor Payments**

The FUND will make payments in respect of AD HOC EXPENSES and RISK EXPENSES directly to its service providers and creditors.

### 13.4 Tracing Costs

13.4.1 If any costs are incurred as a consequence of the **BOARD** tracing any potential **BENEFICIARIES** whose benefits due under the **FUND** are unclaimed, such reasonable costs may be taken into account in the calculation of the benefits payable to such beneficiaries.

13.4.2 The costs associated with such reasonable steps taken by the **BOARD** in order to give effect to the provisions of Section 37C of the **ACT** may, having regard to the quantum of the benefit, also be taken into account in the calculation of the benefits payable to such **BENEFICIARIES**.

## 14. BENEFITS

### 14.1 Normal Retirement

14.1.1 Subject to RULES 14.2 and 14.3 a MEMBER must retire as at his / her NORMAL RETIREMENT DATE and will become entitled to an annuity vesting on the following day.

14.1.2 Subject to the provisions of RULE 18.2, the amount of the annuity will be equal to that which may be purchased by the MEMBER'S FUND CREDIT, as determined by the BOARD after consultation with the ACTUARY.

14.1.3 The MEMBER'S FUND CREDIT will be calculated as at the date on which the FUND is regarded as having been notified of such MEMBER'S retirement in terms of RULE 14.4.3.

### 14.2 Early Retirement

14.2.1 Subject to the written consent of the EMPLOYER a MEMBER may retire from SERVICE on the last day of any month once he / she has attained the age of fifty-five (55) years and will become entitled to an annuity vesting on the following day.

14.2.2 A MEMBER who does not qualify for a disability income benefit in terms a separate disability income benefit policy may, on production of medical evidence acceptable to the EMPLOYER, retire at any time before such MEMBER reaches

NORMAL RETIREMENT AGE and will become entitled to an annuity vesting on the following day.

14.2.3 Subject to the provisions of RULE 18.2, the amount of the annuity referred to in RULES 14.2.1 and 14.2.2 above will be equal to that which may be purchased by the MEMBER'S FUND CREDIT, as determined by the BOARD after consultation with the ACTUARY.

14.2.4 The MEMBER'S FUND CREDIT will be calculated as at the date on which the FUND is regarded as having been notified of such MEMBER'S retirement in terms of RULE 14.4.3.

### **14.3 Late Retirement**

14.3.1 Subject to the written consent of the EMPLOYER a MEMBER who has reached his / her NORMAL RETIREMENT DATE may remain in SERVICE and retire at on the last day of such month as may be advised to the FUND by the EMPLOYER. Contributions on behalf of the MEMBER will continue until the date of such late retirement. At date of late retirement, the MEMBER will become entitled to an annuity vesting on the following day.

14.3.2 Subject to the provisions of RULE 18.2, the amount of the annuity will be equal to that which may be purchased by the MEMBER'S FUND CREDIT, as determined by the BOARD after consultation with the ACTUARY.

14.3.3 The MEMBER'S FUND CREDIT will be calculated as at the date on which the FUND is regarded as having been notified of such MEMBER'S retirement in terms of RULE 14.4.3.

### **14.4 Notification of Retirement, Death or Withdrawal**

14.4.1 A MEMBER and/or the EMPLOYER by whom the MEMBER is employed are required to provide the FUND with written notice of a MEMBER'S retirement, death or withdrawal.

14.4.2 The written notice must include the options elected by the MEMBER, in particular regarding payment of any portion of the benefit as a lump sum benefit, and/or the

annuity selected in terms of RULE 14.5.3 and any other information which may be required by the BOARD and/or the ADMINISTRATOR from time to time.

14.4.3 The FUND will be regarded as having been notified of a MEMBER'S retirement, death or withdrawal on receipt by the ADMINISTRATOR of a validly completed claim form, the format of which must be agreed between the FUND, the ADMINISTRATOR and the EMPLOYER.

#### **14.5 Lump Sum Benefit and Pension Options**

14.5.1 At the request of the retiring MEMBER made at the time of retirement, the MEMBER may choose to receive as a lump sum benefit up to one-third (1/3) of his / her FUND CREDIT (or up to the whole thereof if permitted in terms of the INCOME TAX ACT) that becomes payable in terms of RULES 14.1, 14.2 or 14.3, whichever is applicable.

14.5.2 The balance of his / her FUND CREDIT will be payable as an annuity.

14.5.3 All annuities which become payable in terms of RULES 14.1, 14.2 and 14.3 will be purchased in the MEMBER'S name from a REGISTERED INSURER. The terms and conditions applicable to such annuity, including options elected by the MEMBER, will be subject to the provisions of the ACT and must be set out in writing by the REGISTERED INSURER; provided that-

14.5.3.1 The annuity will be purchased by the balance of the MEMBER'S FUND CREDIT after payment of any lump sum benefit;

14.5.3.2 The annuity must be a compulsory, non-commutable, non-assignable annuity, provided that this includes a living annuity as defined in the INCOME TAX ACT, and must be payable for life;

14.5.3.3 On purchase of the annuity in terms of this RULE, the MEMBER will cease to be a MEMBER of the FUND and the FUND will have no further liability to or in respect of such MEMBER, such liability resting with the REGISTERED INSURER from which the annuity was purchased;

14.5.3.4 The purchase of more than one annuity will be subject to the requirements of the REVENUE SERVICE.

#### **14.6 Death In Service Prior To Retirement**

14.6.1 On the death of a MEMBER while in SERVICE prior to his / her retirement, an annuity as determined by the BOARD will become payable, provided that the amount of such annuity will be that which may be purchased with the deceased MEMBER'S FUND CREDIT plus an amount equal to four (4) times the deceased MEMBER'S PENSIONABLE EMOLUMENTS. The MEMBER'S FUND CREDIT will be calculated as at the date on which the FUND is regarded as having been notified of such the MEMBER'S death in terms of RULE 14.4.3.

14.6.2 The provisions of RULES 14.5.1 and 14.5.3 , apply *mutatis mutandis* to an annuity that becomes payable in terms of this RULE 14.6 and to the BENEFICIARY to whom that annuity is payable; provided that the BENEFICIARY may elect to take as a lump sum up to the whole of that portion of the benefit referred to in RULE 14.6.1 that is awarded to him / her.

#### **14.7 Withdrawal Benefits**

14.7.1 If a MEMBER resigns from SERVICE prior to his / her NORMAL RETIREMENT DATE or is dismissed for operational reasons, misconduct or incapacity prior to his / her NORMAL RETIREMENT DATE, he / she will become entitled to his / her MEMBER'S FUND CREDIT, subject to the provisions of RULE 18.2. The MEMBER'S FUND CREDIT will be calculated as at the date on which the FUND is regarded as having been notified of such the MEMBER'S withdrawal in terms of RULE 14.4.3.

14.7.2 The MEMBER may elect to receive his / her MEMBER'S FUND CREDIT, less any applicable tax, as a cash benefit, to transfer his / her MEMBER'S FUND CREDIT to another APPROVED FUND or APPROVED PENSION PRESERVATION FUND, or, subject to prevailing legislation, to receive part of his / her MEMBER'S FUND CREDIT as a lump sum benefit, less any applicable tax and transfer the balance to another APPROVED FUND.

14.7.3 In the event of the MEMBER electing to receive a cash benefit or partial cash benefit in terms of RULE 14.7.2 above, payment will take place within a reasonable period of the FUND receiving notification that the MEMBER has left SERVICE, provided that in the event that the FUND has, within a reasonable period, made application to the appropriate Receiver of Revenue for a tax directive and through no fault of the FUND, has not received such document, the FUND may extend the payment period.

14.7.4 In the event of the MEMBER electing to transfer his / her benefit or part of his / her benefit in terms of RULE 14.7.2 above, the FUND will, within a reasonable period of receiving the MEMBER'S written request ensure that the transfer takes place.

## **15. PAYMENT OF BENEFITS**

### **15.1 Identification of BENEFICIARY**

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

### **15.2 Manner of Payment**

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

### **15.3 Payment Recipient**

15.3.1 Notwithstanding a contrary provision contained in the RULES, if the BOARD, in its absolute discretion, for some good and sufficient reason deem it not advisable to make payment of a benefit, other than a benefit referred to in RULE 14.6, in the manner elsewhere provided for in these RULES, the BOARD may pay the benefit to a BENEFICIARY in one of the following ways:



15.3.1.1 where a BENEFICIARY is a minor, to the guardian of such BENEFICIARY, for the benefit of such BENEFICIARY; and/or

15.3.1.2 where a BENEFICIARY is contractually incapacitated, to the curator of such BENEFICIARY, for the benefit of the BENEFICIARY.

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

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

#### **15.4 Full and Final Settlement**

Upon payment of the benefit due to a MEMBER or BENEFICIARY in terms of these RULES, the FUND shall cease to have any obligation to such person, and the MEMBER shall cease to be a MEMBER of the FUND on the date of payment.

#### **15.5 Payment of Death Benefits**

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

15.5.2 If the FUND does not become aware of or cannot trace any DEPENDANT of the MEMBER within twelve months of the death of the MEMBER and the MEMBER has designated in writing to the FUND a NOMINEE who is not a DEPENDANT of the MEMBER, to receive the benefit or such portion of the benefit as is specified by the MEMBER in writing to the FUND, the benefit or such portion of the benefit will be paid to such NOMINEE: Provided that where the aggregate amount of the debts in his / her estate exceeds the aggregate amount of the assets in his / her estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets will be paid into the estate and the balance of such benefit or the balance of such portion of the

benefit as specified by the MEMBER in writing to the FUND will be paid to the NOMINEE.

15.5.3 If the MEMBER has a DEPENDANT and the MEMBER has also designated in writing to the FUND a NOMINEE to receive the benefit or such portion of the benefit as is specified by the MEMBER in writing to the FUND, the FUND will within twelve months of the death of such MEMBER pay the benefit or such portion thereof to such DEPENDANT or NOMINEE in such proportions as the BOARD may deem equitable: Provided that this RULE will not prohibit the FUND from paying the benefit, either to a DEPENDANT or NOMINEE contemplated in this RULE or, if there is more than one such DEPENDANT or NOMINEE, in proportions to any or all of those DEPENDANTS and NOMINEES.

15.5.4 If the FUND does not become aware of or cannot trace any DEPENDANT of the MEMBER within twelve months of the death of the MEMBER and if the MEMBER has not designated a NOMINEE or if the MEMBER has designated a NOMINEE to receive a portion of the benefit in writing to the FUND, the benefit or the remaining portion of the benefit after payment to the designated NOMINEE, will be paid into the estate of the MEMBER or, if no inventory in respect of the MEMBER has been received by the Master of the Supreme Court in terms of Section 9 of the Estates Act, 1965, into the Guardian's Fund.

15.5.5 For the purposes of this RULE, the BOARD may make payment to—

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

15.5.5.1.1 the MEMBER;

15.5.5.1.2a major DEPENDANT or NOMINEE, subject to RULE 15.5.5.2 below; or

15.5.5.1.3a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a minor DEPENDANT or NOMINEE, or a major

DEPENDANT or NOMINEE not able to manage his / her affairs or meet his / her daily care needs;

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

15.5.5.3 a BENEFICIARY FUND.

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

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

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

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

15.5.8 If the agreement contemplated in RULE 15.5.7 above is cancelled, the full balance of the benefit will be paid to the DEPENDANT or NOMINEE.

## **15.6 Benefits Inalienable**

15.6.1 Save to the extent permitted by the ACT, the INCOME TAX ACT, the Maintenance Act, 1998, the Divorce Act, 1979 and the Magistrates Court Act, 1944, no benefit or right thereto provided for in the RULES, or right in respect of

contributions made by or on behalf of a MEMBER will be capable of being reduced, transferred, ceded, pledged or hypothecated or be liable to attachment or subject to any form of execution under a judgment or order of court, or be capable of being taken into account in the determination of a debtor's financial position.

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

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

## **16. DEDUCTIONS FROM BENEFITS**

16.1.1 Notwithstanding anything to the contrary contained elsewhere in these RULES, the FUND may deduct any amount due to the FUND in respect of a loan granted to a MEMBER in terms of Section 19(5) of the ACT or any amount for which the FUND may become liable under a guarantee furnished in respect of a MEMBER for a loan granted by some other person to the MEMBER in terms of Section 19(5), from:

16.1.1.1 the amount of the benefit to which the MEMBER or other BENEFICIARY becomes entitled in terms of the RULES of the FUND; or

16.1.1.2 In the case of a transfer of the MEMBER to another APPROVED FUND, the amount of the benefit which the FUND must transfer, if the BOARD is

satisfied that it is not otherwise reasonably possible to negotiate the repayment or to transfer the loan or the guarantee; or

16.1.1.3 in the case of default on the repayment of any such loan by the MEMBER concerned in circumstances where his / her or her membership of the FUND is not terminated, the amount of the benefit which the MEMBER would have received on termination of membership on the date of default, if such a deduction is only effected as a last resort after the BOARD of the FUND is satisfied that no other arrangement for the required repayment can be made.

16.1.1.4 Provided that for the purpose of RULES 16.1.1.2 and 16.1.1.3 above the amounts so deducted will be deemed to be a benefit to which the MEMBER becomes entitled on termination of his / her membership of the FUND for reasons other than as a result of retirement or death arising at the date of the transfer or the default.

16.1.2 Notwithstanding anything to the contrary contained elsewhere in these RULES the FUND may deduct any amount due by a MEMBER to his / her EMPLOYER on the date on which he / she ceases to be a MEMBER of the FUND, in respect of -

16.1.2.1 a loan granted by the EMPLOYER to the MEMBER for any purpose referred to in Section 19(5)(a) of the ACT; or

16.1.2.2 any amount for which the EMPLOYER is liable under a guarantee furnished in respect of a loan by some other person to the MEMBER for any purpose referred to in Section 19(5)(a) of the ACT,

up to an amount not exceeding the amount which in terms of the Income Tax Act, 1962, may be taken by the MEMBER or BENEFICIARY as a lump sum benefit as defined in the Second Schedule to the Income Tax Act, 1962.

16.1.3 Notwithstanding anything to the contrary contained elsewhere in these RULES the FUND may also deduct any amount due by a MEMBER to his / her EMPLOYER on the date on which he / she ceases to be a MEMBER of the FUND, in respect of compensation (including any legal costs recoverable from the MEMBER) in respect of any damage caused to the EMPLOYER by reason of any theft, dishonesty, fraud or misconduct by the MEMBER, and in respect of which -

16.1.3.1 the MEMBER has in writing admitted liability to the EMPLOYER; or

16.1.3.2 judgment for damages has been obtained against the MEMBER in any court, including a magistrate's court,

from any benefit payable in respect of the MEMBER or a BENEFICIARY in terms of the RULES of the FUND, and pay such amount to the employer concerned.

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

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

16.1.4.2 the BOARD is satisfied that the EMPLOYER is not at any stage of the proceedings responsible for any undue delay in the prosecution of the proceedings; and

16.1.4.3 the amount withheld may not exceed the value of the EMPLOYER'S claim against the MEMBER; and

- 16.1.4.4 the amount withheld must be invested in the DEFAULT PORTFOLIO or such other INVESTMENT PORTFOLIO as agreed by the BOARD from time to time; and
- 16.1.4.5 once the proceedings have been determined, settled or formally withdrawn, any benefit to which the MEMBER is entitled, is paid forthwith.
- 16.1.5 Notwithstanding anything to the contrary contained elsewhere in these RULES and subject to the provisions of the ACT and the INCOME TAX ACT, a FUND may deduct from a MEMBER'S FUND CREDIT any amount payable in terms of a maintenance order as defined in Section 1 of the Maintenance Act, 1998 or any amount assigned from his / her pension interest to a non-MEMBER spouse in terms of a decree granted under Section 7(8)(a) of the Divorce Act, 1979 plus the tax liability, if any, in respect of such assigned amount.

## **17. UNCLAIMED BENEFITS**

17.1.1 UNCLAIMED BENEFITS will remain in the FUND and the MEMBER'S FUND CREDIT will be maintained until such time as payment is made, provided that the BOARD may transfer such UNCLAIMED BENEFITS to a fund which is registered as an unclaimed benefits fund.

17.1.2 The BOARD will be entitled, in its sole discretion, to invest the UNCLAIMED BENEFITS in the DEFAULT PORTFOLIO or another INVESTMENT PORTFOLIO of its choice.

## **18. INVESTMENTS AND DISINVESTMENTS**

### **18.1 Investment of Assets**

18.1.1 The BOARD shall, in its sole discretion, invest the assets of the FUND in various INVESTMENT PORTFOLIOS.

18.1.2 The BOARD shall, as set out in the INVESTMENT RULES, make available to the MEMBERS of the FUND, the choice to have the assets underlying their FUND

CREDITS as well as the contributions made to the FUND by them in terms of RULES 11.1.2 and 11.3.1 in a specific portfolio or specific portfolios. In relation to a particular MEMBER such portfolio or portfolios will be referred to as SELECTED INVESTMENT PORTFOLIO(S).

18.1.3 The manner of exercising the choice referred to in RULE 18.1.2 above as well as the manner and costs involved in changing such choice will be set out in the INVESTMENT RULES.

18.1.4 The BOARD shall, in its sole discretion, select one or more of the INVESTMENT PORTFOLIOS as the DEFAULT PORTFOLIO or DEFAULT PORTFOLIOS and shall ensure that the assets of the FUND in respect of which a choice has not been made as permitted in terms of RULE 18.1.2 are invested in one or more of the DEFAULT PORTFOLIOS.

18.1.5 The INVESTMENT RULES will set out the specific DEFAULT PORTFOLIO or DEFAULT PORTFOLIOS as well as the manner of making any changes to such DEFAULT PORTFOLIOS and the costs involved.

## **18.2 Disinvestment of Monies Pending Payment**

18.2.1 Notwithstanding anything to the contrary contained elsewhere in these RULES when a benefit accrues to or in respect of a MEMBER or as soon thereafter as is reasonably possible, other than a benefit in respect of which a scheme as envisaged in terms of Section 14 of the ACT applies, the ADMINISTRATOR shall disinvest the assets underlying the benefit in accordance with the INVESTMENT RULES. Interest, if any, will be calculated and allocated in accordance with the INVESTMENT RULES.

18.2.2 Interest, if any, earned on the amount referred to in RULE 18.2.1 above up to the date of payment of such interest will form part of the benefit.

18.2.3 Costs incurred by the FUND in tracing a MEMBER or other BENEFICIARY may be deducted from the interest referred to in RULE 18.2.2 or, if the interest is not sufficient to cover such costs, from the benefit that accrued to or in respect of the MEMBER or other BENEFICIARY.



18.2.3.1 The costs associated with such reasonable steps taken by the TRUSTEES in order to give effect to the provisions of Section 37C of the ACT may, having regard to the quantum of the benefit, also be taken into account in the calculation of the benefits payable to such beneficiaries.

## **19. RESERVE ACCOUNTS**

### **19.1 Expense Reserve Account**

19.1.1 An Expense Reserve Account will be established in the FUND.

19.1.2 The purpose of the Expense Reserve Account is to fund the cost of AD HOC EXPENSES and RISK EXPENSES.

19.1.3 The following credit transactions will be recorded in the Expense Reserve Account:

19.1.3.1 Amounts paid to the FUND by the EMPLOYER in terms of RULE 11.3.2; plus

19.1.3.2 Positive INVESTMENT EARNINGS on the amount standing to the credit of the Expense Reserve Account.

19.1.4 The following debit transactions will be recorded in the Expense Reserve Account:

19.1.4.1 Amounts paid to any of the FUND'S service providers or creditors in respect of AD HOC EXPENSES and RISK EXPENSES that are not deducted from Members' Fund Credits; and

19.1.4.2 Negative INVESTMENT EARNINGS from time to time;

19.1.4.3 Any allocations made to Members' Fund Credits by the Board from time to time.

### **19.2 Data Processing Error Reserve Account**

19.2.1 A Data Processing Error Reserve Account is established in the Fund.

19.2.2 The Data Processing Error Reserve Account will be used as a measure of protection of the FUND'S financial position against mismatches that occur between the actual investment or disinvestment of moneys and when they are deemed to have occurred in the calculation of benefits, as well as any other miscellaneous mismatches or data processing errors that may occur.

19.2.3 An amount deemed appropriate by the BOARD, after consultation with the ACTUARY, will be credited or debited to this account following the valuation of the FUND by the ACTUARY from time to time provided that the amount will comply with guidelines issued by the REGISTRAR.

19.2.4 The following credit transactions will be recorded in this account:

19.2.4.1 Amounts allocated from time to time by the BOARD following a valuation of the FUND as per RULE 19.2.3; plus

19.2.4.2 Positive INVESTMENT EARNINGS on the amount standing to the credit of the Data Processing Error Reserve Account.

19.2.5 The following debit transactions will be recorded in this account:

19.2.5.1 Amounts debited from time to time by the BOARD following a valuation of the FUND as per RULE 19.2.3; plus

19.2.5.2 Negative INVESTMENT EARNINGS from time to time; plus

19.2.5.3 Any allocations made to Members' Fund Credits by the Board from time to time.

19.2.6 The balance maintained in the Data Processing Error Reserve shall be limited at all times so as not to put the Fund into deficit.

### **19.3 Employer Surplus Account**

19.3.1 An Employer Surplus Account is established in the Fund.

19.3.2 The following credit transactions will be recorded in this account:

- 19.3.2.1 The Employer Surplus Account shall be credited with any amount allocated in terms of Section 15C (1) of the ACT.
- 19.3.2.2 The Employer Surplus Account shall be increased or debited by the Investment Return allocated to this account.
- 19.3.3 The following debit transactions will be recorded in this account
  - 19.3.3.1 The amount standing to the credit of the Employer Surplus Account may be used in the manner and for any of the purposes set out in the ACT.
  - 19.3.3.2 Any amount due by the EMPLOYER to the FUND in terms of Section 15B(6), as set out in the surplus apportionment scheme submitted and approved by the REGISTRAR in terms of Section 15B of the ACT, increased or decreased by fund returns between the surplus apportionment date and the date of receipt thereof by the FUND;
  - 19.3.3.3 Negative fund returns earned on the balance in the account;
  - 19.3.3.4 Investment and other expenses incurred in relation to the management and investment of the assets held in this account;
  - 19.3.3.5 Any portion of the balance held in the account as may be utilised by the BOARD at the request and discretion of the EMPLOYER, for any of the purposes envisaged in Section 15E of the ACT;
  - 19.3.3.6 Any portion of the account as may be transferred to another approved fund in which the EMPLOYER participates, subject to approval of the REGISTRAR;
  - 19.3.3.7 Upon termination of the FUND, the balance in the account shall for as far as it is not required to be applied towards any deficit in the FUND as envisaged by Section 15H, be paid to the EMPLOYER as a cash lump sum, or transferred to another approved fund in which the EMPLOYER participates.

## **19.4 Member Surplus Account**

19.4.1 A Member Surplus Account is established in the Fund.

19.4.2 The following transactions will be recorded in this account:

19.4.2.1 The amount standing to the credit of the Member Surplus Account may be used in the manner and for any of the purposes set out in the ACT.

19.4.2.2 The Member Surplus Account shall be credited with any amount allocated in terms of Section 15C (1) of the ACT.

19.4.2.3 The Member Surplus Account shall be increased or decreased by the INVESTMENT RETURN allocated to this account.

## **19.5 Surplus Expense Reserve Account**

19.5.1 A Surplus Expense Reserve Account is established in the Fund.

19.5.2 The following transactions will be recorded in this account:

19.5.2.1 The FUND shall maintain a Surplus Expense Reserve Account which shall be credited with an amount allocated by the TRUSTEES in consultation with the ACTUARY.

19.5.2.2 The amount standing to the credit of the Surplus Expense Reserve Account shall be increased or decreased by the INVESTMENT RETURN allocated to this account.

19.5.2.3 The Surplus Expense Reserve Account shall be debited with any amounts required to meet all or part of the costs associated with the FUND's surplus apportionment scheme.

## **20. AMENDMENTS TO THE RULES**

20.1.1 The BOARD may at any time amend the RULES by a majority of votes, provided that:

- 20.1.1.1 the value of a MEMBER'S FUND CREDIT prior to such amendment will not be reduced;
  - 20.1.1.2 the amendment is not inconsistent with the provisions of the ACT and of the INCOME TAX ACT;
  - 20.1.1.3 the amendment will not be made if the effect would be that the liabilities of one or more of the EMPLOYERS will or in all likelihood will be increased and such EMPLOYERS have not consented to the amendment,
  - 20.1.1.4 provided further that an amendment to the RULES affecting the financial basis of the FUND will be referred to the ACTUARY for his / her comments before being adopted.
- 20.1.2 Within sixty (60) days of the passing of a resolution effecting an amendment to the RULES, the PRINCIPAL OFFICER will submit the resolution to the REGISTRAR together with the particulars prescribed.
- 20.1.3 Once registration has taken place, the BOARD will submit the amendment to the REVENUE SERVICE in writing, for their approval.
- 20.1.4 An amendment to the RULES will only apply from the time it is registered by the REGISTRAR unless specifically specified that the amendment be effective retrospectively.

## **21. BINDING POWER OF THE RULES**

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

## **22. TERMINATION OF THE FUND**

22.1.1 The FUND may be wound up if –

- 22.1.1.1 the BOARD resolves that it should be wound up; or

- 22.1.1.2 a court of competent jurisdiction determines that it be wound up; or
- 22.1.1.3 all the EMPLOYERS decide unanimously that it be wound up, subject to six (6) months' notice to the BOARD;
- 22.1.1.4 if the PRINCIPAL EMPLOYER should for any reason cease to operate; provided that if the PRINCIPAL EMPLOYER ceases to operate for the purposes of reconstruction or amalgamation, such reconstructed or amalgamated organisation shall have the right to replace the PRINCIPAL EMPLOYER in the FUND, in which event the FUND shall not otherwise be affected.
- 22.1.2 If the FUND is wound up in any of the circumstances referred to above, the BOARD will appoint a liquidator, subject to the approval of the REGISTRAR.
- 22.1.3 The liquidator shall allocate the assets of the FUND to each MEMBER in proportion to the MEMBER'S FUND CREDITS at the time. Such amount shall be invested in an APPROVED FUND or an APPROVED PENSION PRESERVATION FUND.
- 22.1.4 If the FUND is terminated or dissolved under Section 28 of the ACT, all moneys remaining unclaimed for a period of six (6) months from the date on which payment of benefits commenced after completion of all necessary formalities, will be paid into the a fund referred to in RULE 17.1.1 or, failing that, the Guardians Fund by the liquidator for the benefit of the BENEFICIARIES concerned, and thereafter there shall be no claim against the FUND or the EMPLOYER. The liquidator must indicate in his / her final liquidation account the amount thus paid and shall simultaneously furnish the REGISTRAR with a certificate to the effect that all reasonable steps were taken to trace persons entitled to the amount. An auditor approved by the REGISTRAR shall certify the account as correct.
- 22.1.5 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, 1973 applicable or direct otherwise regarding unclaimed monies, the provisions of RULE 22.1.4 above shall apply.

22.1.6 The provisions of Section 30 of the ACT will apply on such liquidation.

### **23. WITHDRAWAL OF AN EMPLOYER**

If one of the EMPLOYERS gives written notice to the BOARD of its intention to terminate its participation in the FUND or is wound up, whether voluntarily or not, or ceases to carry on business, then, unless a reconstructed company or organisation takes the place of such EMPLOYER, the provisions of RULE 22 will apply *mutatis mutandis*. If the EMPLOYER wishes to participate in another APPROVED FUND, the provisions of RULE 25 will apply *mutatis mutandis*.

### **24. TRANSFER OR AMALGAMATION OF AN EMPLOYER, RECLASSIFICATION OF A MEMBER AND SECTION 197 TRANSFERS, AMALGAMATION OF THE FUND**

24.1.1 If the operation of an EMPLOYER is transferred to or amalgamated with that of another organisation, such other organisation may :

24.1.1.1 continue contributions to the FUND in respect of the existing MEMBERS at the time of such transfer or amalgamation, subject to such conditions imposed by the BOARD, in which case the FUND will not be affected; or

24.1.1.2 withdraw from the FUND in terms of RULE 23.

24.1.2 If a MEMBER is reclassified in terms of his / her conditions of SERVICE and is, as a result thereof, required to transfer to another Fund, such MEMBER will, subject to the provisions of Section 14 of the ACT, be permitted to transfer to such fund.

24.1.3 In the event of the transfer of the contract(s) of employment of a MEMBER or group of MEMBERS to another employer in terms of Section 197 of the Labour Relations Act, 1995, the provisions of RULE 14.7 will apply in respect of the computation of the benefits as well as the payment of the benefits, other than the provisions that allow for a cash payment.

24.1.4 The BOARD may amalgamate the FUND with another APPROVED FUND, subject to the provisions of Section 14 of the ACT. On completion of such

amalgamation the FUND will cease to exist and the BOARD must arrange for the FUND to be deregistered in terms of Section 27 of the ACT.

## **25. NEW FUND OR SCHEME**

If an EMPLOYER decides to establish a new fund or scheme for the principal purpose of providing retirement benefits for its employees or for certain of its employees, or to participate in another fund or scheme for this purpose, the BOARD will, notwithstanding anything to the contrary in the RULES, apply each MEMBER'S FUND CREDIT to obtain benefits for the MEMBERS concerned under the new fund or scheme, in such manner as the BOARD, after consultation with the ACTUARY and with the approval of the REGISTRAR, may decide, subject to the provisions of Section 14 of the ACT.

## **26. DISPUTES**

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

26.1.2 The complaint will set out the basis for the dispute in writing and the PRINCIPAL OFFICER will, subject to the provisions of RULE 26.1.5 below, deliver the complaint to the Chair Person.

26.1.3 The Chair Person or his / her delegate will in their sole discretion refer the dispute to –

26.1.3.1 the BOARD or an appropriate committee of the BOARD for consideration and decision; or

26.1.3.2 an appropriate officer or employee of the FUND.

26.1.4 If a dispute is referred to the BOARD, the BOARD will deal with the dispute as it would with any other decision in terms of RULES 6.5.8 and 6.5.9.



26.1.5 If a dispute is referred to an employee or officer of the FUND, such employee or officer will attempt to resolve the dispute and if unsuccessful, will advise the Chair Person or his / her delegate. The PRINCIPAL OFFICER will, unless the matter is resolved and, subject to the provisions of the ACT, inform the MEMBER or BENEFICIARY in writing of the decision taken on behalf of the FUND in terms of this RULE.

26.1.6 If the MEMBER or BENEFICIARY is not satisfied with the decision referred to above or if the PRINCIPAL OFFICER fails to reply to the matter, the MEMBER or BENEFICIARY may lodge the complaint with the ADJUDICATOR in terms of the ACT.

## **27. CLAIMS AGAINST THE FUND AND EMPLOYERS**

27.1.1 A MEMBER will not have any claim against the FUND in respect of the *bona fide* investment of the assets of the FUND.

27.1.2 No person will have any claim concerning the FUND either upon the FUND or against the BOARD or an EMPLOYER, except in accordance with the RULES.

27.1.3 The RULES will not in any way be interpreted as restricting the right of an EMPLOYER to terminate the employment of a MEMBER lawfully and will not grant the MEMBER any additional rights in this regard.

## **28. INDEMNITY AND FIDELITY INSURANCE**

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

28.1.2 The BOARD shall insure the FUND against loss which may arise due to the negligence, dishonesty or fraud of any of the officials of the FUND, including a BOARD MEMBER.

## **29. TRANSFERS FROM OTHER FUNDS**

The BOARD may, after consultation with the ACTUARY and subject to the provisions of Section 14 of the ACT, if applicable, approve the transfer of benefit entitlements in respect of a particular MEMBER or a category of MEMBERS or persons who will, on completion of the transfer, become MEMBERS of the FUND.

## **30. CURRENCY**

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

## **31. MONETARY Advantage**

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

## **32. RIGHT to Obtain Copies of or to Inspect Documents**

### **32.1 MEMBER Access to RULES and Documents**

The FUND will deliver to any MEMBER on request by such MEMBER and on payment of an amount to cover any photocopying, printing and related costs, a copy of the RULES of the FUND or a copy of the latest revenue account and balance sheet.

### **32.2 MEMBER Inspection of Documents**

Every MEMBER will be entitled to inspect without charge at the registered office of the FUND, a copy of any of the documents referred to in RULE 32.1 above as well as the last valuation report prepared by the ACTUARY and any other document referred to in Section 37 of the ACT.