

Zimbabwe

## Pension and Provident Funds Act

### Chapter 24:09

Legislation as at 31 December 2016

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# Zimbabwe

## Pension and Provident Funds Act Chapter 24:09

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Commission of Zimbabwe. This version is up-to-date as at 31st December 2016.]*

**AN ACT to provide for the registration, incorporation, regulation and dissolution of pension and provident funds and for matters incidental to or connected with the foregoing.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Pension and Provident Funds Act *[Chapter 24:09]*.

#### 2. Interpretation

(1) In this Act—

“**appointed day**” means the 1st July, 1976;

“**auditor**” means a person who is registered as a public auditor in terms of the Public Accountants and Auditor Act *[Chapter 27:12]* or is a member of such class of persons as may be prescribed;

“**Commissioner**” means the Commissioner of Insurance and Pension and Provident Funds appointed in terms of section 19 of the Insurance and Pensions Commissions Act *[Chapter 24:21]*;

*[definition as amended by Act 14 of 2002]*

“**controlled funding scheme**” means an insurance company scheme in terms of which—

- (a) the benefits are provided by means of pure endowment policies or deferred annuity policies or in any other manner whereby the interest and profits credited, and the expenses and losses debited, to the scheme are not disclosed in an account sent to the trustees administering the scheme or the participating employers, as the case may be; and
- (b) a valuator from time to time estimates the rate of contribution payable;

“**court**” means the High Court and, in relation to any offence under this Act, includes a magistrates court having jurisdiction in respect of that offence;

“**deferred annuity policy**” means a policy of insurance issued by an insurer in terms of which—

- (a) a single premium is paid or annual premiums are paid to secure the payment to the person insured under that policy of an annuity commencing on a specified date if he survives to that date and continuing for the remainder of his lifetime; and
- (b) if that person dies before that specified date, no payment is made by the insurer or a payment is made which is based on the premium or premiums paid;

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

- (a) the insurer maintains in his books of account a deposit account in respect of the fund to which—
    - (i) is credited all amounts paid by the fund to the insurer; and
    - (ii) is debited all amounts withdrawn from the fund to provide benefits in terms of the rules of the fund and such administrative and other expenses as are agreed upon between the fund and the insurer from time to time; and
    - (iii) is credited or debited either—
      - (A) interest at the rate agreed upon between the fund and the insurer and such bonuses as the insurer declares from time to time; or
      - (B) such investment income and capital profits or losses as are agreed upon between the fund and the insurer as being for the account of the fund;
- and
- (b) the liability of the insurer to the fund at any given time, other than in respect of benefits, if any, actually purchased by the fund from the insurer, is limited to the amount standing to the credit of the deposit account referred to in paragraph (a) after all credits and debits have been taken into account;

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

**“employee”** includes a director of a company whose time, in the opinion of the Commissioner, is wholly or almost wholly occupied in the service of the company;

**“existing fund”** means a fund which was established and has been approved by the Commissioner of Taxes in terms of section 13 of the Income Tax Act [*Chapter 23:06*] before the appointed day;

**“external fund”** means a fund which has a head office outside Zimbabwe;

**“fund”** means any scheme or arrangement the principal object of which is to provide benefits for persons who are or have been members of the scheme or arrangement upon their retirement on account of age or ill-health, whether or not such scheme or arrangement—

- (a) also provides benefits for dependants or nominees of deceased members; or
- (b) continues to admit members or to receive contributions;

and includes any fund established by or in terms of any enactment:

Provided that a scheme or arrangement which is established to benefit only one member or his dependants shall not be regarded as a fund;

**“fund administrator”**, means any person who carries on the business of administering any fund, whether on behalf of its trustees, or as the principal officer of the fund, or otherwise;

*[definition as amended by Act 14 of 2002]*

**“head office”**, in relation to a fund, means the office at which the main records of the fund are kept;

**“insurance company scheme”** means a scheme which provides for the establishment of a fund and its operation exclusively by means of one or more policies of insurance issued by an insurer;

**“insurer”** means a person which is registered as an insurer in terms of the Insurance Act [*Chapter 24:07*];

**“internal fund”** means a fund which has its head office in Zimbabwe;

**“life insurer”** means an insurer which carries on life insurance business as defined in the Insurance Act [Chapter 24:07];

**“member”**, in relation to a fund, means any person who is a member of that fund in terms of the rules thereof;

**“Minister”** means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;

**“officer”**, in relation to a fund, means any person who is employed by that fund or is otherwise concerned in the management of that fund;

**“other insured scheme”** means an insurance company scheme which is not a deposit administration scheme or a controlled funding scheme;

**“participating employer”**, in relation to a fund, means any employer who contributes to that fund in terms of the rules thereof or who participates in the administration of that fund;

**“pension”** includes an annuity acquired through a fund;

**“pension fund”** means any fund the principal object of which is to provide for the payment of a pension to a person who is or has been a member of the fund on his retirement;

**“principal officer”**, in relation to a fund, means a person appointed in terms of section thirteen to be the principal officer of that fund;

**“provident fund”** means a fund which is not a pension fund or a retirement annuity fund;

**“provisionally registered”**, in relation to a fund, means provisionally registered in terms of this Act;

**“pure endowment policy”** means a policy of insurance issued by an insurer in terms of which—

- (a) a single premium is paid or annual premiums are paid to secure the payment to the person insured under that policy of a capital sum if he survives to a specified date; and
- (b) if that person dies before that specified date, no payment is made by the insurer or a payment is made which is based on the premium or premiums paid;

**“registered”**, in relation to a fund, means registered in terms of this Act;

**“registered office”**, in relation to a fund, means the registered office of that fund referred to in section twelve;

**“Registrar”** [definition repealed by Act 14 of 2002]

**“retirement”** means the attainment of retiring age, whether or not there is a termination of employment;

**“retirement annuity fund”** means a fund established by an association of persons or an insurer which—

- (a) provides for the payment of a pension to a person who is or has been a member of the fund on his retirement; and
- (b) is operated either as an insurance company scheme or without payment of commission to any person for the introduction of business;

**“return”** includes—

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

(d) any other information which the Commissioner requires a fund to submit to him;

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

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

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

“**valuator**” means a person who is a member of such class of persons as may be prescribed;

“**Zimbabwe member**” means a member who is resident in Zimbabwe.

- (2) For the purposes of this Act, a member of a partnership whose time, in the opinion of the Commissioner, is wholly or almost wholly occupied in the service of the partnership may be regarded as an employee, in which case the partnership shall be regarded as his employer.

### 3. Performance of functions by Commissioner

In performing his functions in terms of this Act, the Commissioner shall act in consultation with the Insurance and Pensions Board established in terms of section 5 of the Insurance and Pensions Commissions Act [Chapter 24:21] (Act [No. 7 of 2000](#)).

*[section as substituted by section 14 of Act [3 of 2004](#)]*

## Part II – Registration and matters incidental thereto

### 4. Funds to be registered

- (1) No person shall establish or carry on the business of a fund unless that fund is registered or provisionally registered.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

*[subsection inserted by Act [22 of 2001](#)]*

### 5. Registration or provisional registration of fund

- (1) Any person who wishes to apply for the registration or provisional registration of a fund shall submit to the Commissioner—

- (a) an application for registration in the prescribed form; and
- (b) if the application is for registration, two copies of printed, duplicated or typed rules providing for the matters referred to in section seven:

Provided that in the case of an application by an existing fund which is provisionally registered, one copy of the rules of the fund which have been approved by the Commissioner of Taxes may be submitted, together with any amendment for approval in terms of section eight.

- (2) If, on receipt of an application in terms of subsection (1)—
  - (a) for registration, after considering the application, the rules accompanying such application and such further information as he may require, the Commissioner is satisfied that—
    - (i) the rules are not inconsistent with this Act; and

- (ii) the fund is or will be based on sound financial principles;
- he shall register the fund;
- (b) for provisional registration, the Commissioner is satisfied that the fund is or will be based on sound financial principles, he may provisionally register the fund.
- (3) The period of provisional registration of a fund in terms of paragraph (b) of subsection (2) shall not exceed six months unless, in the case of any particular fund, the Commissioner has, by notice in writing, extended the period of provisional registration of that fund, and any such fund shall cease to be provisionally registered when it is registered in terms of paragraph (a) of subsection (2).
- (4) A fund which is provisionally registered in terms of paragraph (b) of subsection (2) shall, before its provisional registration lapses, submit an application, together with rules, in terms of subsection (1) for registration of the fund.
- (5) The Commissioner—
  - (a) may at any time return rules submitted in terms of subsection (1) to the applicant for reconsideration or amendment;
  - (b) shall, on the registration of a fund in terms of paragraph (a) of subsection (2)—
    - (i) return to the fund a copy of the rules endorsed by him; and
    - (ii) issue to the fund a certificate of registration; and
    - (iii) if the fund was provisionally registered, require the return of the certificate of provisional registration;
  - (c) shall, on the provisional registration of a fund in terms of paragraph (b) of subsection (2), issue to the fund a certificate of provisional registration.
- (6) On the provisional registration of a fund in terms of paragraph (b) of subsection (2), section six shall apply, *mutatis mutandis*, in relation thereto and this Act shall apply, *mutatis mutandis*, in relation to the provisionally registered fund as they apply in relation to a registered fund.

## 6. Effect of registration of fund

On registration in terms of paragraph (a) of subsection (2) of section five—

- (a) a fund shall, under the name by which it is so registered, become a body corporate capable of suing and being sued in its corporate name and of doing all such things as may be necessary or incidental to the exercise of its powers or the performance of its functions in terms of its rules;
- (b) all the assets, rights, liabilities and obligations pertaining to the business of the fund shall, notwithstanding anything to the contrary contained in any law or in the memorandum, articles of association, constitution or rules of any body, corporate or unincorporate, having control of the business of the fund, be deemed to be assets, rights, liabilities and obligations of the fund to the exclusion of any other person, and no person shall have any claim on the assets or rights or be responsible for any liabilities or obligations of the fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund;
- (c) the assets, rights, liabilities and obligations of the fund, including any assets held by any person in trust for the fund, as existing immediately before its registration, shall vest in and devolve upon the fund without any formal transfer or cession.



## 7. Rules of fund

- (1) The rules of a fund—
  - (a) shall state the name of the fund; and
  - (b) shall comply with such requirements as may be prescribed.
- (2) Requirements prescribed for the purposes of paragraph (b) of subsection (1) may relate to—
  - (a) the membership of the fund;
  - (b) the contributions to be paid to the fund, whether compulsorily or otherwise;
  - (c) the benefits to be payable from the fund;
  - (d) the commutation of any pension;
  - (e) the appointment or election of trustees to administer the fund and their powers and duties;
  - (f) the dissolution of the fund, including the appointment and powers of a liquidator;
  - (g) the amendment or replacement of the rules.
- (3) Subject to this Act, the rules of a registered fund shall be binding on—
  - (a) the fund; and
  - (b) any participating employer and the members and officers of the fund; and
  - (c) any person who claims under the rules or whose claim is derived from a person claiming under the rules of the fund.

## 8. Amendment of rules of fund

- (1) Subject to this section, the rules of a fund may be amended or repealed and replaced at any time in accordance with such procedure as is provided for in the rules:

Provided that no such amendment or replacement shall be valid until it has been approved by the Commissioner and registered in terms of subsection (3).

*[subsection inserted by Act 22 of 2001 and as amended by Act 14 of 2002]*

- (2) Where a resolution has been passed approving the amendment or replacement of the rules of a fund, the principal officer of the fund shall, within thirty days of the passing of the resolution, submit two copies thereof to the Commissioner, together with—
    - (a) a certificate signed by the principal officer certifying that the rules of the fund applicable to the amendment or replacement have been complied with; and
    - (b) a statement setting out the reasons for the amendment or replacement; and
    - (c) if the amendment or replacement affects the financial position of the fund, a certificate in connection with the financial soundness thereof by the valuator or, if the fund has no valuator, by the auditor.
  - (2a) A principal officer of a fund who fails to submit a certificate or statement to the Commissioner in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.
- [subsection inserted by Act 22 of 2001]*
- (3) If the Commissioner is satisfied that an amendment or replacement referred to in subsection (1) is not inconsistent with this Act, he shall register such amendment or replacement and return to the principal officer of the fund a copy of the resolution with the date of registration endorsed thereon:

Provided that if any such amendment or replacement has the effect of reducing any benefit that has accrued to a member in respect of his service prior to the amendment or replacement, the Commissioner may refuse to approve the amendment or replacement unless it has been approved by a majority of the members of the fund, either in writing or at a meeting called for the purpose by the trustees administering the fund or the participating employers, as the case may be.

*[subsection as substituted by Act 14 of 2002]*

- (4) If at any time the Commissioner considers that the rules of a fund require to be amended for the purpose of ensuring compliance with this Act, he shall direct the fund to effect such amendment within such period as he may specify and the fund shall comply with such direction.
- (4a) If a fund fails to comply with a direction given to under subsection (4), the fund shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection inserted by Act 22 of 2001]*

- (5) Where a direction in terms of subsection (4) is given to a fund established by or in terms of an industrial agreement or determination published in terms of the Labour Relations Act [Chapter 28:01] and the parties to that agreement or determination fail to submit to the Minister to whom the administration of that Act has been assigned an amendment complying with the direction of the Commissioner within the period specified in terms of subsection (4), that Minister shall, by statutory instrument, amend the rules published in terms of that Act and such amendment shall be binding on all the parties to the industrial agreement and on all employers and employees upon whom the agreement or determination has been declared binding in terms of that Act as if the amendment had been made in accordance with that Act.
- (6) Where a direction in terms of subsection (4) is given to a fund established by or in terms of any enactment, other than the Labour Relations Act [Chapter 28:01], and the authority by which that fund was established or which is responsible for the administration of that fund fails to comply with the direction of the Commissioner within the period specified in terms of subsection (4), the Minister to whom the administration of the enactment concerned has been assigned shall, notwithstanding anything to the contrary contained in that enactment, by statutory instrument, amend the rules published in terms of that enactment and such amendment shall be valid and have the same force and effect as if it had been made by the appropriate authority in terms of that enactment.

## 9. Conclusiveness of certificate of registration

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

## 10. Dissolution of registered fund

- (1) Subject to this section, a registered fund—
  - (a) may be dissolved in accordance with the provisions of the rules of the fund; and
  - (b) shall be dissolved where so directed by the Commissioner in terms of section nineteen.
- (2) Where the Commissioner has, in terms of section nineteen, directed that a registered fund be dissolved, a liquidator approved by the Commissioner shall be appointed in the manner provided in the rules of the fund and the following provisions shall apply—
  - (a) the liquidator, with the approval of the Commissioner, shall determine the date of liquidation and the period of back-dating, if any, for the purpose of including in the calculations in connection with the liquidation those members who during that period resigned or were discharged solely because of the impending winding-up or liquidation of

the business operations of a participating employer and who shall be deemed to be members for the purposes of the liquidation;

- (b) until the liquidation is completed, the provisions of this Act shall, as far as practicable, continue to apply to the fund as if the liquidator were the principal officer of the fund;
- (c) the liquidator shall, as soon as possible, lodge with the Commissioner a list of the assets and liabilities of the fund certified by him as correct and a scheme setting out the manner in which he proposes to realize the assets of the fund, to discharge the liabilities to persons other than members and beneficiaries and to meet the expenses of liquidation;
- (d) the valuator shall submit to the liquidator a report showing the proportion of the amount available for distribution that the valuator recommends should be applied for the benefit of each beneficiary:

Provided that if the fund in terms of section fourteen has not appointed a valuator the amount to be applied for the benefit of each beneficiary shall be determined by the liquidator;

- (e) the liquidator shall submit the report in terms of paragraph (d) to the Commissioner with his estimate of the total amount available for distribution and his recommendations as to the manner in which the amount to be applied for the benefit of each member or beneficiary should be applied;
- (f) the documents submitted by the liquidator in terms of paragraph (e) shall lie open at the registered office of the fund for inspection by interested parties for a period of thirty days;
- (g) the Commissioner shall, at the expense of the fund, cause to be published in the *Gazette* and in a newspaper circulating in the district in which the registered office of the fund is situated a notice which—
  - (i) specifies the period during which and the places at which the documents referred to in paragraph (f) shall lie open for inspection in terms of that paragraph; and
  - (ii) calls upon every interested person who has any objection to the method of distribution recommended by the liquidator to lodge his objection in writing with the Commissioner within such period as may be specified in the notice, being not less than fourteen days from the last day on which the documents lie open for inspection;
- (h) if no objection is lodged with the Commissioner in terms of paragraph (g), he shall direct the liquidator to complete the liquidation in accordance with the scheme recommended;
- (i) if any objection is lodged with the Commissioner in terms of paragraph (g), the Commissioner shall consider the objection and shall direct the liquidator to complete the liquidation in accordance with the scheme as recommended or as amended by the Commissioner in such manner as he thinks fit after considering the objections received;
- (j) the Commissioner may give to the liquidator such directions relating to the liquidation as he thinks fit and such directions shall, subject to paragraph (k), be binding upon the liquidator;
- (k) within fourteen days of receiving any direction from the Commissioner in terms of paragraph (j), the liquidator shall post a copy thereof to every member, beneficiary and creditor of the fund and the liquidator or any person aggrieved by any such direction from the Commissioner may apply by motion to the court within forty-five days after the direction has been communicated to the liquidator for an order setting aside the direction or to make such other order as it thinks fit;
- (l) the Commissioner shall direct the liquidator to complete the liquidation in accordance with his directions in terms of paragraph (j) or with any court order in terms of paragraph (k), as the case may be;

- (m) within thirty days after the completion of the liquidation of the fund, the liquidate shall lodge with the Commissioner a final account signed and certified by him as correct showing the manner in which the assets of the fund have been realised and distributed;
- (n) every claim against the fund shall be proved to the satisfaction of the liquidate, subject to a right of appeal to the court and the liquidate may require any claim to be made on affidavit.

## 11. Cancellation of registration

- (1) Where the Commissioner has reasonable grounds for believing that—
  - (a) a body which was registered as a fund was registered in error; or
  - (b) a registered fund has ceased to exist or has been dissolved in terms of section ten;he shall, if possible, serve notice on the fund concerned at its registered office that he proposes to cancel its registration.
- (2) The fund concerned may, within thirty days thereafter, appeal to the Minister giving reasons why its registration should not be cancelled, and if—
  - (a) no such appeal is lodged, the Commissioner shall forthwith cancel the registration of the fund; or
  - (b) such appeal is lodged, the Minister may order the Commissioner to cancel or not to cancel the registration of the fund, as he thinks fit, and the Commissioner shall forthwith give effect to the order of the Minister.

## Part III – Management and administration

## 12. Registered office

- (1) Every registered fund shall have a registered office in Zimbabwe, the address of which shall be notified by the fund in writing to the Commissioner—
  - (a) in the case of an existing fund, within fourteen days after the appointed day;
  - (b) in the case of any other fund, within fourteen days after the registration of the fund.
- (2) Any change in the address of the registered office of a registered fund shall be notified by the fund in writing to the Commissioner within fourteen days after the date of such change of address.
- (3) A registered fund that contravenes subsection (1) or (2) shall be guilty of an offence and liable—
  - (a) in the case of a contravention of subsection (1), to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
  - (b) in the case of a contravention of subsection (2), to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

*[subsection inserted by Act 22 of 2001]*

## 13. Principal officer

- (1) Every registered fund shall have a principal officer appointed in terms of its rules who shall be ordinarily resident in Zimbabwe:

Provided that an external fund may instead appoint a person who is a responsible official of a participating employer and who is ordinarily resident in Zimbabwe to be its representative.

- (2) A registered fund shall notify the Commissioner in writing of the name and address of its principal officer or a representative appointed in terms of subsection (1)—
  - (a) in the case of an existing fund, within fourteen days after the appointed day;
  - (b) in the case of any other fund, within fourteen days after its registration; and shall notify the Commissioner in writing of any change in the name or address of the principal officer or representative within fourteen days after such change.
- (2a) A registered fund that contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.  
*[subsection inserted by Act 22 of 2001]*
- (3) Where anything is required by or in terms of this Act to be done—
  - (a) by a fund, it shall be the duty of the principal officer or representative appointed in terms of subsection (1) to ensure that the thing so required to be done is in fact done;
  - (b) by the principal officer, it may be done by the representative appointed in terms of subsection (1).

#### 14. Appointment of auditor and valuator

- (1) Every registered fund shall appoint in terms of its rules—
  - (a) an auditor who shall not be an officer of the fund; and
  - (b) a valuator:

Provided that it shall not be obligatory for a fund which has been exempted in terms of subsection (3) of section seventeen from compliance with subsection (1) of that section to appoint a valuator.
- (2) A registered fund that contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.  
*[subsection inserted by Act 22 of 2001]*

### Part IV – Financial requirements

#### 15. Accounts and holding of assets

- (1) Every registered fund shall maintain such books of account and other records as may be necessary for the purposes holding of assets of the fund.
- (2) A registered fund shall, within six months after the end of its financial year, submit to the Commissioner audited accounts and such other statements and reports as may be prescribed.
- (2a) A registered fund that contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.  
*[subsection inserted by Act 22 of 2001]*
- (3) If the Commissioner is not satisfied with any audited accounts, statement or report submitted in terms of subsection (2), he shall reject the document or documents concerned and direct the fund to provide such explanation or do such other thing as he thinks fit, and the fund shall, within two months of receiving any such direction, comply with the terms thereof.

- (4) All the assets of a registered fund, including any policy of insurance, shall be controlled and held in the name of—
  - (a) the fund or a nominee approved in terms of regulations made under the Exchange Control Act [Chapter 22:05]; or
  - (b) a nominee which is a company registered in terms of the Banking Act [Chapter 24:20].

## 16. Life insurers to maintain separate Pensions Fund and separate accounts

- (1) A life insurer which carries on pension and provident fund business shall maintain—
  - (a) a separate and distinct fund, to be entitled “The Pensions Fund”, representing the liabilities of that insurer in respect of its pension and provident fund business; and
  - (b) separate and distinct accounts relating to the income and expenditure of that insurer in respect of its pension and provident fund business.
- (2) A life insurer which carries on pension and provident fund business shall, on the recommendations of a valuator which are based on the liabilities represented in The Pensions Fund of that insurer, designate which of the assets of that insurer shall be regarded as assets of The Pensions Fund and the assets so designated shall be clearly shown in the balance sheet or other accounts of that insurer as being regarded as assets of The Pensions Fund.
- (3) Part of the assets of The Pensions Fund of a life insurer referred to in this section may be held in the form of shares in a company which is the insurer’s holding company or in any other subsidiary company of that holding company, as defined in section 2 of the Companies Act [Chapter 24:03]:

Provided that—

- (i) the value of the shares, excluding shares held in a company which is a subsidiary company of the insurer itself, shall not exceed ten *per centum* of the value of the total assets in The Pensions Fund; and
- (ii) the shares shall not confer any right on the life insurer to vote at any meeting of members of the holding company, notwithstanding anything to the contrary in the holding company’s articles of association.

*[subsection as substituted by section 14 of Act 3 of 2004]*

## 17. Investigation by valuator

- (1) Subject to this section, a registered fund shall cause its financial condition to be investigated and reported upon by a valuator at such period and in such manner as may be prescribed and shall, within thirty days of receiving any report from the valuator, submit a copy thereof to the Commissioner.
- (2) A valuation report in terms of subsection (1) shall be lodged with the fund within twelve months of the date specified in that report as the valuation date.
- (3) If the Commissioner is satisfied that the financial methods adopted by a registered fund are such as to render periodical investigations by a valuator unnecessary, he shall, if so requested by the fund in writing, exempt the fund from compliance with the provisions of subsection (1), subject to such conditions as he thinks fit.
- (4) The Commissioner may at any time vary any conditions fixed in terms of subsection (3) or cancel any exemption granted in terms of that subsection.

- (5) A registered fund shall be exempted from compliance with subsection (1) if—
- (a) the rules thereof provide for the payment of a lump sum benefit, based on a return of contributions with interest and a share of profits, which may be applied to the purchase of a pension from an insurer; or
  - (b) it is an insurance company scheme—
    - (i) the rules of which provide that the contributions payable by the members and the participating employers will be shown in the insurance policy issued in connection with the scheme; and
    - (ii) which does not provide for the payment of a pension based on the salary or emoluments of the member immediately before the pension becomes payable or the average of his salary or emoluments during a specified period.
- (6) A registered fund which, without lawful excuse, contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection as substituted by Act 22 of 2001]*

## 18. Investments

- (1) Subject to subsections (7) and (8), a registered fund shall at all times hold its assets in Zimbabwe in investments which are realizable in Zimbabwe:

Provided that the Commissioner may, in any particular case, authorize in writing a registered fund to hold part of its assets in other investments approved by him, subject to such terms and conditions as he may from time to time fix.

- (2) Subject to subsections (7) and (8)—
- (a) a registered fund that is not an insurance company scheme shall at all times hold not less than thirty-five *per centum* of the aggregate cost value of all its assets in Zimbabwe in—
    - (i) local registered securities which are issued or guaranteed by the State or which are issued by a local authority or statutory body; or
    - (ii) loans approved by the Commissioner to a local authority or statutory body;
  - (b) an insurer which carries on pension and provident fund business shall at all times hold not less than thirty-five *per centum* of its assets, which are assets in Zimbabwe and which have been designated in terms of subsection (2) of section sixteen as being assets of The Pensions Fund of that insurer, in securities or loans specified in subparagraph (i) or (ii) of paragraph (a).
- (3) Subject to subsection (7), no registered fund shall invest, whether by way of loans or otherwise—
- (a) more than ten *per centum* of the aggregate cost value of all its assets in Zimbabwe in—
    - (i) the business of a participating employer or of a subsidiary company of a participating employer; or
    - (ii) any business which is controlled or run by a participating employer:

Provided that the Commissioner may exempt, either wholly or in part, any fund established by a local authority or a statutory body from this subsection;
  - (b) its assets in any business referred to in paragraph (a) unless the return on such investment is reasonable and the investment is not prejudicial to the fund.



- (4) A registered fund may, if its rules so provide, grant to a member a loan secured by a first mortgage of immovable property on which a dwelling-house has been or is to be erected for the personal residence of the member:

Provided that the loan shall not exceed—

- (a) the amount of the benefit to which the member would be entitled if he resigned voluntarily on the date on which the loan was granted, together with seventy-five *per centum* of the market value of the property;
- or
- (b) if the employer of the member guarantees the fund that he will meet any shortfall between the amount referred to in paragraph (a) and the market value of the property, the market value of the property.

- (5) A registered fund may, if its rules so provide, contribute to any other registered fund that is conducted for the benefit of the employees of the first-mentioned fund.

- (6) No registered fund shall engage in or carry on—

- (a) any business undertaking for which a licence is required in terms of the Shop Licences Act [Chapter 14:17]; or
- (b) any form of business not referred to in paragraph (a) unless the form of business has been prescribed for the purposes of this subsection or the Commissioner has agreed in writing that such fund may carry on the business concerned and any terms and conditions fixed from time to time by the Commissioner are complied with.

- (7) Subsections (1) and (2) shall not apply in relation to an external fund which has less than thirteen Zimbabwean members.

- (7a) A registered fund which—

- (a) contravenes subsection (1) or (2) in regard to the holding or investment of its assets; or
- (b) grants a loan to a member in excess of the maximum amount permitted under subsection (4);

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

*[subsection inserted by Act 22 of 2001]*

- (7b) A registered fund which engages or carries on business in contravention of subsection (6) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection inserted by Act 22 of 2001]*

- (8) In this section—

“assets in Zimbabwe”, in relation to any fund, means the amounts paid to that fund after the appointed day in respect of Zimbabwean members, including, in the case of an existing fund, the assets of that fund which were realizable in Zimbabwe on the appointed day, less the amounts paid on or after the appointed day from that fund in Zimbabwean currency in respect of Zimbabwean members and former Zimbabwean members, with the income and profits and losses derived from the amounts so paid to that fund and such assets;

“local authority” means a municipal or town council;

“market value”, in relation to immovable property referred to in subsection (4), means the market value of the property concerned at the time of the grant of the loan in terms of that subsection or, if a dwelling-house is to be erected on that property or has been erected but is to be improved, at the time of the completion of the erection or improvement, as the case may be;



“statutory body” means any body established directly by a law in force in Zimbabwe for the purposes specified in that law.

## 19. Fund in unsound financial condition

- (1) If, after examining any return or report in terms of this Act in respect of a registered fund, the Commissioner is of the opinion that the fund is not in a sound financial condition and a satisfactory scheme for bringing the fund into a financially sound condition within a reasonable time has not been submitted to him—
  - (a) the Commissioner shall direct the fund to submit a scheme setting out arrangements for the purpose of bringing the fund into a financially sound condition within a period which he considers to be reasonable in the circumstances; and
  - (b) the fund shall deposit such scheme with the Commissioner within three months from the date directed by the Commissioner in terms of paragraph (a), together with a report on the scheme by the valuator or, if in terms of section fourteen the fund has not appointed a valuator, a report on the scheme by the auditor.
- (2) After considering a scheme deposited in terms of subsection (1), the Commissioner may—
  - (a) approve the scheme, either unconditionally or subject to such conditions as he thinks fit; or
  - (b) reject the scheme, in which case the fund shall submit a new scheme in accordance with the directions of the Commissioner, together with a report thereon by the valuator or auditor who reported on the scheme which has been rejected.
- (3) If the Commissioner is of the opinion that the financial condition of a registered fund which is not an other insured scheme is such that it is not possible or practicable to bring the fund into a financially sound condition within a reasonable time, he may direct that the whole or any part of the business of the fund shall be woundup and that the provisions of section ten shall apply, subject to such modifications as the Commissioner considers it reasonable to impose in the circumstances.
- (4) A registered fund which has been directed to submit a scheme in terms of subsection (1) and which, without just cause, fails to deposit such a scheme within the period specified in paragraph (b) of that subsection, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection inserted by Act 22 of 2001]*
- (5) A registered fund which fails to carry out the provisions of a scheme that has been approved by the Commissioner in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection inserted by Act 22 of 2001]*

## Part V – Inquiries by and other powers of Commissioner

### 20. Inquiries

- (1) The Commissioner may at any time call for any documents and any other information from a registered fund or an officer of a registered fund in relation to any matter connected with the business or transactions of that fund.
- (2) Within thirty days, or such further period as the Commissioner may allow, of receiving any inquiry in terms of subsection (1), the fund or officer to whom the inquiry is made shall reply in writing thereto and shall furnish any document called for.

## 21. Investigation of affairs of registered fund

- (1) If at any time the Commissioner, from information in his possession, is of the opinion that it is necessary or desirable to do so, he may—
  - (a) investigate the affairs or any part of the affairs of a registered fund; or
  - (b) appoint an inspector to hold an investigation into the affairs or any part of the affairs of a registered fund and to report the result of his investigation to the Commissioner.
- (2) In making an investigation in terms of this section, the Commissioner or inspector appointed by him, as the case may be, may—
  - (a) require from the fund the production of any of its securities, books or documents; and
  - (b) examine on oath, which the Commissioner or inspector, as the case may be, may administer, any person in relation to the business of the fund.
- (3) The Commissioner or an inspector appointed in terms of subsection (1) shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of this section and to any person summoned to give evidence or giving evidence at that investigation.
- (4) An inspector appointed in terms of subsection (1) may and, if so directed by the Commissioner, shall make interim reports to the Commissioner, and on the conclusion of the investigation shall make an official report to the Commissioner.
- (5) The Commissioner may, with the approval of the Minister, recover from the fund concerned all or part of the expenses necessarily incurred in connection with the investigation and any expenses not so recovered shall be paid from moneys appropriated for the purpose by Act of Parliament.

## 22. Lodging of securities

- (1) If the Commissioner, at any time before or during the course of an investigation in terms of section twenty-one, considers it to be in the interests of members or creditors, he may require a registered fund to lodge with him all or any of its securities.
- (2) The Commissioner shall return to the fund any securities lodged with him in terms of subsection (1) as soon as he considers it to be in the interests of members or creditors for him to do so:

Provided that if the fund is dissolved in terms of section ten, the Commissioner shall deliver the securities to the liquidator of the fund.

## 23. Commissioner may require unregistered fund to provide information

- (1) The Commissioner may, by notice in writing, require any person whom he has reason to suspect is carrying on the business of a fund which is not registered or provisionally registered to transmit to him, within such period as may be specified in the notice, a copy of the rules, if any, in terms of which the business concerned is being operated, together with a copy of the last annual accounts recorded by that person in relation to that business, and such other information relating to the business carried on by that person as the Commissioner may require.
- (2) If any person who has been required in terms of subsection (1) to transmit any document or information fails to comply with the terms of the notice within the period specified therein, the Commissioner may investigate or appoint an inspector to investigate the affairs or any part of the affairs of that person, and subsections (2) to (5) of section twenty-one shall apply, *mutatis mutandis*, in relation to such investigation.

- (3) If it appears from inquiries in terms of subsection (1) or an investigation in terms of subsection (2) that the person concerned is carrying on the business of a fund which is not registered, the Commissioner—
- (a) shall inform the person concerned accordingly by notice in writing sent by registered post; and
  - (b) may, if an application for the registration of the fund is not received within thirty days of the sending of such notice, direct that the business of the fund shall be wound-up and that section ten shall apply, *mutatis mutandis*, as though the fund were a registered fund.

## **24. Commissioner may grant exemptions**

- (1) Notwithstanding anything to the contrary in this Act, the Commissioner may, by notice in writing, exempt any fund from all or any of the requirements of this Act as may be specified in such notice, subject to such terms and conditions as he may fix in such notice.
- (2) The Commissioner may at any time, by notice in writing, vary any terms and conditions fixed in terms of subsection (1) or cancel any exemption granted in terms of that subsection.

## **25. Commissioner may extend periods of time**

Where by this Act any time is specified within which any act or thing is to be done, the Commissioner may extend the time, either before or after its expiration, if he is satisfied that the failure to comply with the provisions relating to such time has not been or will not be due to any neglect or default on the part of the person concerned.

# **Part VI – General**

## **26. Right to obtain copies of or to inspect documents**

- (1) A registered fund that is not an insurance company scheme shall deliver to any member or pensioner on demand by that member or pensioner and on payment of such sum, if any, as may be specified in the rules of the fund a copy of—
  - (a) the rules of the fund;
  - (b) the last audited income and expenditure accounts and balance sheet of the fund.
- (2) A member or pensioner of a registered fund that is not an insurance company scheme shall be entitled at all reasonable times to inspect, without charge, at the registered office of the fund and to make extracts from—
  - (a) the rules of the fund;
  - (b) the last audited income and expenditure accounts and balance sheet of the fund;
  - (c) the last report, if any, by a valuator in terms of section seventeen;
  - (d) any scheme being carried out by the fund in accordance with section nineteen.
- (3) A registered fund which, without just cause—
  - (a) fails to deliver any document to a member or pensioner when required to do so in terms of subsection (1); or

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

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

*[subsection inserted by Act 22 of 2001]*

## 27. Amalgamation and transfers

- (1) Subject to this section—
  - (a) two or more registered funds may, with the approval of the Commissioner, amalgamate and become one registered fund;
  - (b) a registered fund may, with the approval of the Commissioner, transfer all or any of its assets and liabilities to another fund.
- (2) Notice of any proposed amalgamation or transfer referred to in subsection (1) and the terms thereof, together with a copy of the scheme setting out details of the proposed amalgamation or transfer, including a copy of every actuarial or other statement taken into account for the purposes of the scheme, shall be submitted to the Commissioner with the request for his approval for the purposes of subsection (1) and the Commissioner may thereafter require such additional particulars, including any special report by a valuator or auditor, as he thinks fit.
- (3) If, on the receipt of the notice and other information required by or in terms of subsection (2), the Commissioner is satisfied—
  - (a) that the proposed amalgamation or transfer would be in the interests of the members of the funds concerned; and
  - (b) that the proposed amalgamation or transfer would not render any fund that is a party thereto and which will continue to exist if the proposed amalgamation or transfer is completed unable to meet the requirements of this Act or to remain in a sound financial condition or, in the case of a fund that is not in a sound financial condition, to attain such a condition within a period deemed by the Commissioner to be satisfactory; and
  - (c) that any rules of a fund that is a party to the proposed amalgamation or transfer which are applicable to the proposed amalgamation or transfer have been complied with or that adequate arrangements have been made to ensure that such provisions will be complied with at the appropriate time;

he shall forward a certificate to the funds concerned to the effect that the requirements of this subsection have been satisfied and that the funds concerned may amalgamate or transfer the assets and liabilities concerned, as the case may be.
- (4) Upon the completion of an amalgamation in terms of this section of two or more registered funds—
  - (a) the funds amalgamated shall be deemed to be dissolved; and
  - (b) the Commissioner shall thereupon cancel their registration and shall register the new fund in terms of this Act;

and

  - (c) the assets of the funds so amalgamated shall vest in the new fund and the new fund shall assume the liabilities of the funds so amalgamated.
- (5) Upon the completion of the transfer of all the assets and liabilities of one registered fund to another registered fund in terms of this section—
  - (a) the former fund shall be deemed to be dissolved and the Commissioner shall cancel its registration; and

- (b) if any change in the name of the latter fund has been agreed upon, the Commissioner shall enter such new name in his records in place of the former name and shall issue a certificate of registration to the fund concerned under its new name; and
  - (c) the assets of the former fund shall be transferred to the latter fund and the latter fund shall assume the liabilities of the former fund.
- (6) Notwithstanding anything to the contrary contained in any enactment, the Minister may, by order in the *Gazette*—
  - (a) direct the Master of the High Court, the Chief Commissioner of Companies, the Chief Commissioner of Deeds or any other official of the State or of any other authority specified in that order to make such endorsements on or alterations in his register or other records or on any document or to issue such certificates, deeds or other documents as may be specified in that order for the purpose of recording and giving effect to an amalgamation or transfer approved by the Commissioner in terms of subsection (3); and
  - (b) authorize or direct the waiver of the payment, in whole or in part, of any capital gains tax, transfer fee, stamp duty, registration fee, licence fee or other charge arising out of or in connection with an amalgamation or transfer approved by the Commissioner in terms of subsection (3);and the Master of the High Court, the Chief Registrar of Companies, the Chief Registrar of Deeds, the Commissioner of Taxes or other official, as the case may be, shall comply with any such direction.
- (7) The amalgamation of two or more registered funds or the transfer of assets and liabilities in terms of this section shall not affect the rights of any creditor of a party to the transaction otherwise than in his capacity as a member of such party.
- (8) This section shall not apply to any transfer of assets and liabilities between two registered funds which is made by virtue of a change in employment of any member of a registered fund.

## **28. Winding-up of operations of life insurer carrying on pension and provident fund business**

If, on the winding-up of the operations of a life insurer which is carrying on pension and provident fund business, the assets of the insurer are insufficient to pay in full the claims of every holder of a policy issued by that insurer, the assets which have been designated in terms of subsection (2) of section sixteen as being assets of The Pensions Fund of that insurer shall be applied only for the benefit of the pension and provident fund schemes operated or administered by that insurer.

## **29. Effect of certificate of Commissioner on documents**

Any document that purports to have been certified by the Commissioner to be a document lodged with him in terms of this Act or to be a copy of such a document shall be *prima facie* presumed to be such a document or copy thereof and every copy which purports to be so certified shall be admissible in evidence as if it were the original document.

## **30. Service of process**

Process in any legal proceedings against a registered fund may be served on that fund at its registered office: Provided that if that fund is not carrying on business at its registered office, service of the process upon the Commissioner shall be deemed to be service upon that fund.

### 31. Appeals

- (1) Any fund or person aggrieved by a decision of the Commissioner in terms of any provision of this Act, other than section eleven, may, within thirty days of the date on which he is notified of that decision, lodge with the Commissioner an appeal in writing which—
  - (a) is signed by the principal officer of the fund or by the person concerned, as the case may be; and
  - (b) specifies in detail the decision against which and the grounds on which the appeal is lodged.
- (2) The Commissioner shall transmit to the Minister any appeal lodged in terms of subsection (1), together with a statement prepared by him giving in full the reasons for his decision.
- (3) After considering an appeal in terms of subsection (1) and having taken such expert advice as he considers to be necessary, the Minister may—
  - (a) confirm the decision of the Commissioner; or
  - (b) if he considers that the decision of the Commissioner should be varied or set aside, give such direction to the Commissioner as he considers to be necessary in the circumstances.
- (4) The Commissioner shall notify any person or fund who has lodged an appeal in terms of subsection (1) of the decision of the Minister in terms of subsection (3).
- (5) Where any appeal is lodged in terms of subsection (1), the decision of the Commissioner against which the appeal is made shall be suspended until such time as the Minister confirms or varies the decision in terms of subsection (3).

### 32. Annual report of Commissioner

The Commissioner shall, at the end of each calendar year, submit to the Minister a report on the pension and provident fund business in Zimbabwe during that calendar year.

### 33. Improper use of certain designations

- (1) No person shall, without the approval of the Commissioner in writing, apply to any business carried on by him in Zimbabwe a name which includes the words “pension fund”, “provident fund” or “retirement annuity fund” or a name which indicates that he carries on the business of a fund unless the fund concerned is registered.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### 33A. Liability of officers for offences of fund

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

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

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

*[section inserted by Act 22 of 2001]*

### 34. Offences relating to false statements or entries

- (1) No person shall, in any statement, return, report, certificate, balance sheet or other document required by or for the purposes of this Act, wilfully make a statement which is false in any material part knowing such statement to be false or not believing it to be true.
- (2) No person shall, with intent to defraud or deceive—
  - (a) destroy, mutilate, alter or falsify any books, papers or securities belonging to a registered fund; or
  - (b) make or be a party to the making of any false or fraudulent entry in any register, book of account or other document belonging to a registered fund.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

*[subsection inserted by Act 22 of 2001]*

### 35. Offences and penalties

- (1) Any person fails to make a return or to transmit or deposit any scheme, report, account, statement or other document when required to do so in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.
- (2) Any person who, when called upon to do so in terms of this Act, fails or refuses—
  - (a) to furnish information; or
  - (b) to produce documents or accounts; or
  - (c) to lodge securities; or
  - (d) to render any other assistance to the Commissioner;shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (3) Any person who fails to comply with any term or condition fixed or direction given by the Commissioner in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection inserted by Act 22 of 2001]*

### 36. Regulatory powers of Minister

- (1) The Minister may make regulations prescribing any thing which under this Act is to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration. for—
- (2) Regulations in terms of subsection (1) may provide for—
  - (a) the form of any document referred to in this Act and the manner in which it shall be prepared, executed, registered, transmitted or delivered;
  - (b) the fees of office to be charged in respect of any act matter or thing required or permitted to be done by or in relation to the Commissioner;

- (c) the matters to be included in the document submitted with an application for the registration of a fund and the conditions and procedures for such registration;
- (d) the appointment of a valuator or an auditor and the matters to be included in any report by a valuator or auditor;
- (e) the submission to the Commissioner of financial statements, reports, statistics, accounts and other documents;
- (f) the fees for the inspection of any document;
- (g) the deduction by an employer from the emoluments payable to his employee of contributions to be paid to a registered fund;
- (h) the maximum benefits that may be payable by a registered fund or registered funds;
- (i) subject to the Maintenance Act [Chapter 5:08] and the Children's Protection and Adoption Act [Chapter 5:05], the prohibition or control of the cession, pledging or hypothecation of benefits payable by a registered fund and the protection of such benefits on insolvency or assignment or from attachment or execution under a judgment or order of a court;
- (j) the withholding of any benefits payable by a registered fund where the member concerned—
  - (i) has borrowed and not fully repaid money from the fund or from his employer and has pledged his rights to benefits from the fund as security therefor; or
  - (ii) has been discharged because of dishonesty which has resulted in his employer suffering loss;
 and the person to whom such benefits or portion thereof may be paid.
- (k) the principles to be observed with respect to the investment of a fund's assets;
- (l) conditions subject to which the Commissioner may approve persons who are not insurers to act as fund administrators;
- (m) the minimum professional conduct to which trustees and fund administrators shall be subject as a condition of commencing or continuing to practise as such;
- (n) penalties for any contravention of the regulations not exceeding—
  - (i) a penalty of level four for each day that the contravention continues up to a maximum of sixty days, where the contravention involves a delay in doing anything required by the regulations;
  - (ii) a fine of level six or imprisonment for one year or both such fine and such imprisonment.

*[subsection as amended by section 47 of Act 12 of 2006]*

- (3) A penalty imposed by regulations pursuant to subparagraph (i) of paragraph (n) of subsection (2) shall constitute a debt due to the Insurance and Pensions Commission established in terms of section 3 of the Insurance and Pensions Commission Act [Chapter 24:21] (No. 7 of 2000) by the person liable to pay it, and may be recovered by action in a court of competent jurisdiction by proceedings in the name of the Insurance and Pensions Commission.

*[subsection as amended by section 47 of Act 12 of 2006]*

- (4) The Commissioner may waive the payment or refund the whole or any part of any penalty referred to in subsection (3) if he or she is satisfied that the failure of the person to comply with any requirement of these regulations that rendered such person liable to pay the penalty was not due to an intent to evade those provisions or the lack of reason able care.

*[subsection as amended by section 47 of Act 12 of 2006]*



**37. Saving in respect of existing rights**

Notwithstanding anything to the contrary contained in this Act, where an authority by which a fund was established or which is responsible for the administration of a fund is required in terms of subsection (4) of section eight to amend the rules of the fund in so far as they affect the rights of members or former members, that authority may, in making such amendment, limit its application to persons who become members of the fund after the date on which the amendment was required and the Commissioner shall not regard the rules as so amended as being inconsistent with this Act by reason only of the fact that the amendment so made does not apply to persons who were members of the fund before the said date.