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GOVERNMENT NOTICE

DEPARTMENT OF PUBLIC ENTERPRISES

No. 1300

1 December 2000

Pension Fund Rules

I, Jeffrey Thamsanqa Radebe, Minister of Public Enterprises, acting under section 4A(2) and (5) of the Transnet Pension Fund Act, 1990 (Act No 62 of 1990) as amended by Transnet Pension Fund Amendment Act, 2000 (Act No 41 of 2000), hereby with the concurrence of the Minister of Finance establish a Pension Fund and publish the Rules of the Pension Fund as required by those sections.

RULE 1: DEFINITIONS1.1 *words*

In these Rules, unless the context indicates otherwise, the following words bear the meanings assigned to them hereinafter:

1.1.1 **Act:** The Transnet Pension Fund Act, 1990 (Act 62 of 1990), as amended.

1.1.2 **Actuary:** The actuary of the Fund appointed in terms of Rule 4.14.1.

1.1.3 **Administration Committee:** The committee established in terms of Rule 4.7.1.

1.1.4 **Administrator:** The administrator appointed in terms of Rule 4.12.

1.1.5 **Approved Fund:** A Pension, Provident, Preservation or Retirement Annuity Fund approved as such by the Commissioner.

1.1.6 **Auditor:** The auditor as appointed in terms of Rule 4.16.

1.1.7 **Beneficiary:** Member, Dependant or Nominee.

1.1.9 **Commencement Date:** The date of publication of the notice in the Government Gazette as contemplated in section 14A of the Act.

1.1.10 **Death Benefits:** The benefits referred to in Rule 10.

1.1.11 **Death Multiple:** The multiple of the Member's salary to be paid as part of the Death Benefits as defined in Rule 10; provided that this multiple shall be dependent on the cost of benefits in relation to the Employer Contributions as defined in Rule 7.1.2; and provided further that this multiple shall be reviewed annually by the Trustees on the advice of the Actuary.

1.1.12 **Dependant :**

- (i) Qualifying Spouse;
- (ii) Qualifying child;
- (iii) any other person in respect of whom the Member is legally liable for maintenance, including if such person-;
- (iv) (a) ~~was~~, in the opinion of the Trustees, upon the death of the Member in fact dependent on the Member for maintenance; or
(b) a person in respect of whom the Member would have become legally liable for maintenance, had the Member not died.

1.1.13 **Disability Benefits:** The benefits in terms of Rule 9.

1.1.14 **Disability Proportion:** That 75% of the Disabled Members Pensionable Salary to be paid as a Disability Benefit on disability as defined in Rule 9; provided that this portion **will be dependant** on the cost of the benefit in

relation to the employer contributions as defined in Rule 7.1.2; and provided further that this portion shall be reviewed annually by the Trustees in the advice of the Actuary in terms of Rule 7.1.6.

- 1.1.15 **Disabled Member:** A Member in receipt of a benefit in terms of Rule 9.
- 1.1.16 **Eligible Employee:** An employee of an Employer who in terms of his/her conditions of service is obliged to become a Member of the Fund.
- 1.1.17 **Employer:** The Principal Employer and any other Employer which is a company which forms part of the group of companies as defined in section 14 of the Act which, on application, has been approved by the Trustees and the Principal Employer, subject to such conditions as determined by the Trustees and the Principal Employer, to qualify as an employer party to these Rules.
- 1.1.18 **Financial Year:** Any period of twelve months commencing on 1 April and ending on 31 March of the following year. The first financial year will start on Commencement date and ending on 31 March 2001.
- 1.1.19 **Financial Year-End: 31 March.**
- 1.1.20 **Fund:** The Transnet Retirement Fund.
- 1.1.21 **Insurer:** An insurer registered in terms of the Long Term Insurance Act, 1998 (Act 52 of 1998) to transact long term insurance business.
- 1.1.22 **Investment Committee:** The committee established in terms of Rule 4.7.2.
- 1.1.23 **Member:** A person who is a Member in terms of Rule 3.
- 1.1.24 **Member's Account:** The account referred to in Rule 5.1.

- 1.1.25 **Minister:** The Minister of Public Enterprises.
- 1.1.26 **Nominee:** Any person (natural or otherwise) appointed as such in writing by a Member in terms of these Rules.
- 1.1.27 **Normal Retirement Age:** The retirement age of a Member in terms of his/her conditions of service; provided that if no such age is specified, the normal retirement age of the Member shall be 63 (Sixty three) years.
- 1.1.28 **Normal Retirement Date:** The last day of the month in which a Member attains the Normal Retirement Age.
- 1.1.29 **Old Fund:** The Transnet Pension Fund established by the Transnet Pension Fund Act, 1990 (Act 62 of 1990).
- 1.1.30 **Pensionable Salary :** The remuneration of a Member stipulated by his/her Employer to constitute "Pensionable Salary" subject to approval of the Principal Employer;
- 1.1.31 **Pensionable Service :**
- (i) The Member's number of years (and completed months) of Membership of the Fund, plus
 - (ii) if the Member was a Member of the Old Fund and elected to become a Member of the Fund the number of years (and completed months) of pensionable service recognised by the Old Fund in respect of such a Member at the date of joining the Fund, plus

- (iii) if the Member was transferred from another approved fund in terms of Rule 12.9, the pensionable service accumulated by such a Member from such other approved fund.

1.1.32 **Principal Employer:** Transnet Limited.

1.1.33 **Principal Officer:** The person appointed in terms of Rule 4.11.

1.1.34 **Qualifying Child:** A child legally adopted or a stepchild of a Member at the time of the Member's death and a child whom the Trustees believe would have been dependent upon the Member had the Member not died, Where the Trustees so direct, any other child may be included as qualifying child on terms and conditions agreed to by the Trustees.

1.1.35 **Qualifying Spouse:** The surviving spouse(s) of a Member or a Recognised Marital Union existing at the time of the death of the Member.

1.1.36 **Recognised Marital Union:** A legal marriage or a union according to Customary Law, Common Law or a union recognised by the Trustees in their sole discretion to be a recognised marital union.

1.1.37 **Registered Trade Union:** A trade union that has been duly registered with the Department of Labour.

1.1.38 **Reserve Account:** The account referred to in Rule 5.2.

1.1.39 **Trustees:** The Board of Trustees as constituted in terms of Rule 4 to manage the Fund.

1.1.40 Transfer Value: In relation to a Member of the Old Fund and who is an employee of an Employer or the Principal Employer who has elected to become a Member of the Fund, an amount as calculated in terms of a formula as determined by the Actuary and approved by the Principal Employer and Trustees.

1.2 Interpretation

1.2.1 In these Rules, unless the context dictates otherwise, words and expressions signifying the singular, shall include the plural and vice versa.

1.2.2 The decision of the Trustees regarding the meaning of or interpretation of these Rules or of any particular Rule or part of a Rule shall be final and binding on the Employer, Member and every other person entitled to a benefit in terms of these Rules.

RULE 2: ESTABLISHMENT OF THE FUND

2.1 The Fund shall have legal personality and as such be capable of acquiring its own assets and of suing or being sued in its own name, and of doing all such things as may be necessary for, or incidental to the exercise of its powers or the performance of its functions in terms of these Rules.

2.2 The object of the Fund shall be to invest and administer the credit amounts in the Member Accounts and Reserve Accounts in respect of every Member for the benefit of such Member or their Defendants or Nominees as the case may be.

2.3 The registered office of the Fund shall be:

Transnet Retirement Fund

222 Smit Street

Johannesburg

Or such other address decided by the Trustees and notified in writing to the Minister.

- 2.4 Should the Fund be established after the Commencement Date, the Rules of the Fund shall be deemed to take effect on such later date.

RULE 3: MEMBERSHIP

- 3.1 Membership of the Fund shall commence from -

3.1.1 in the case of an Eligible Employee, who commences with his/her service with an Employer subsequent to the Commencement Date, at the date when he/she commences with such service or in the event that the approval as required in terms of Rule 1.1.17 had been granted at a date, subsequent to commencement of service, such later date; or

3.1.2 in the case of an employee who commenced with his/her service with an Employer prior to the Commencement Date and who is a Member of the Old Fund and who has elected within a period as decided by the Trustees, reckoned from the Commencement Date, to become a Member of the Fund retrospectively from the Commencement Date .

- 3.2 A Member shall produce such evidence as to the state of his/her health as the Trustees may require.

- 3.3 If, in the opinion of the Trustees such a Member is not in good health, he/she will be subject to such restrictions with regard to Disability Benefits and Death Benefits as the Trustees, acting on the advice of the Actuary, shall determine.

RULE 4: MANAGEMENT OF THE FUND

4.1 Board of Trustees

The management, control and administration of the Fund shall vest in a board of Trustees appointed in terms of Rules 4.2. and 4.3. The number of Trustees shall at no time be less than 7 (Seven). In the event that the recognised trade unions who are Registered Trade Unions do not appoint their Member Trustees as provided for in Rule 4.3 within 30 (Thirty) days of being requested thereto in writing by the Principal Officer, the Principal Employer may appoint such additional Trustees in order to comply with the minimum number of Trustees.

4.2 Employer Trustees

4.2.1 The Principal Employer shall appoint an equal number of Trustees as provided for in 4.3 (and their alternates) by giving written notice to that effect to the Principal Officer.

4.2.2 These Trustees will be known as Employer Trustees.

4.2.3 An Employer Trustee shall hold office for a period of 48 (forty-eight) months after which period he/she may either be replaced or reappointed by the Principal Employer.

4.2.4 An Employer Trustee may, at any time, be replaced by the Employer or he/she may resign from his/her position by giving the Employer and the other Trustees, 1 (one) month's written notice

4.3 MEMBER Trustees

- 4.3.1 Every recognised trade union as at Commencement Date with which the Principal Employer has a recognition agreement and that is a Registered Trade Union, may appoint 1 (one) Trustees who is a Member of the Fund (and his/her alternate) by giving written notice to that effect to the Principal Officer.
- 4.3.2 Members not belonging to a recognised trade union, may collectively appoint 1 (one) Trustees who is a Member of the Fund (and his/her alternate) by giving written notice to that effect to the Principal Officer.
- 4.3.3 These Trustee appointed in terms of Rules 4.3.1 and 4.3.2 will be known as Member Trustees.
- 4.3.4 A Member Trustee shall hold office for a period of 48 (forty eight) months after which period he may either be replaced or reappointed by the constituency that appointed him/her.
- 4.3.5 A Member Trustee may, at any time, be replaced by the constituency that appointed him/her, or he/she may resign from his/her position by giving the Principal Officer and other Trustees 1 (one) month's written notice.

4.4 Ability to act as Trustee

Any of the following persons shall be disqualified from being appointed or acting as a Trustee of the Fund:

- (i) a body corporate;
- (ii) a minor or any other person who is insane or otherwise incapable of acting as a Trustee;

- (iii) any person who is the subject of any order under the Companies Act, 1973 (Act 61 of 1973) disqualifying him from being a director;
- (iv) a Member Trustee who leaves the employment of an Employer;
- (v) save under authority of the Court -
 - a) an **unrehabilitated** insolvent
 - b) any person removed from an office of trust on account of misconduct;
 - c) any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an **offence** under the Prevention of Corruption Act, 1958 (Act 60 of 1958), or any **offence** involving dishonesty or in connection with the promotion, formation or management of a company, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding R1 00,00 (one hundred rand).

4.5 Meetings of the Board of Trustees

4.5.1 The Trustees shall elect 1 (one) of their number at the first Trustee meeting of every Financial Year to act as the chairperson at all meetings of the Trustees during that Financial Year and a further Trustee as vice chairperson to act in the place of the chairperson in his/her absence.

4.5.2 In the absence of both the chairperson and vice chairperson from any meeting, the Trustees present shall **elect** one of their number to act as chairperson for that meeting.

- 4.5.3 The Trustees shall meet at least once a quarter and from time to time if necessary to conduct the business of the Fund.
- 4.5.4 A quorum at any meeting of the board of Trustees shall be constituted when at least two thirds of the board are present at a **duly** convened Trustees meeting. In the event that no quorum is present, within "half an hour ~~after~~ the time appointed for the meeting, the meeting shall stand adjourned to a day not earlier than seven days and not later than twenty-one days after ~~the~~ date of the meeting and if at such adjourned meeting a quorum is not **present** within half an hour after the time appointed for the meeting the Trustees present in person or by proxy shall be a quorum.
- 4.5.5 All Trustees must be informed, in writing, at least 15 (fifteen) days prior to the date of any meeting of the board of Trustees unless all the Trustees agree on a shorter period.
- 4.5.6 The chairperson or vice-chairperson of the Trustees or any 3 (three) or more Trustees may instruct the Principal Officer to convene a meeting in ~~terms~~ of Rule 4.5.5.
- 4.5.7 At ~~all~~ meetings resolutions shall be made by a majority vote.
- 4.5.8 A resolution shall be regarded to have been made by a majority vote if the Trustees present at a duly constituted meeting of the board of Trustees voted in favor of the resolution. In the event of a deadlock, Rule 15 shall apply.
- 4.5.9 Voting shall be by show of hands by the Trustees, provided that if at ~~least~~ 2 (two) Trustees require that a voting by ballot be held, the voting shall ~~be~~ by ballot.

4.5.10 A resolution in writing signed by all of the Trustees or their alternates shall be effective as if it had been passed at a meeting of the Trustees duly convened and held.

4.5.11 Any resolution passed in terms of Rule 4.5.10 shall be minuted at the first meeting of Trustees held after the passing of such resolution.

4.6 Powers of the Board of Trustees

Subject to the provisions of the Act, the Trustees shall be empowered to carry out the objectives and purposes of the Fund in accordance with the Rules and, without prejudice to the general purport of this provision, shall have the following powers:

- (i) to receive, administer and invest the monies of the Fund;
- (ii) to contract on behalf of the Fund and to sign such contract or other document on behalf of the Fund;
- (iii) to institute and defend any legal or administrative action, application or process for or against the Fund and to conduct, oversee, defend, settle or abandon such action or application;
- (iv) to raise, borrow or lend moneys, at interest or otherwise, for the purposes of the Fund; provided that borrowing shall be limited to temporary loans for bridging unforeseen cash shortages or for taking advantage of attractive investment opportunities;
- (v) to acquire, hold, alienate or otherwise deal with any movable or immovable property of the Fund subject to the provisions of the Act;

- (vi) to invest, lend, place on deposit, make advances of, or otherwise deal with all moneys of the Fund upon such securities and in such manner as they may determine from time to time; and, in particular, to invest the whole or part of the moneys of the Fund, for such period and on such terms as they may determine, in an investment policy "issued by an Insurer; provided that the Trustees may delegate their powers to make investments of any nature to any 1 (one) or more of their Members, or to a financial institution as defined in the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984), or to a person approved in terms of section 4(1)(9) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985), and may defray expenses incurred as a result of such delegation out of the moneys of the Fund;
- (vii) to insure with an Insurer any benefits provided by the Fund to its Members or any potential liabilities that may be incurred by the Fund;
- (viii) to delegate any of their powers and functions to a sub-committee or any other person, subject to any conditions they may determine;
- (ix) to make, amend and rescind the regulations in respect of any matter concerning the Fund, which shall be binding on the Trustees, Members, Dependants and Nominees, provided that such regulations do not conflict with the existing Rules and the Act;
- (x) to insure the Trustees and all other officials (including the Principal officer and secretary) of the Fund against claims for damages arising from the negligent performance or non-performance of their functions, acting collectively or individually, excluding damages arising from dishonest and fraudulent conduct on the part of the Trustees or such other officials;
- (xi) to take, generally, such steps as are, in their discretion, conducive to the attainment of the objectives of the Fund.

(xii) To transfer the assets and liabilities of the transferring Members of the Fund or part thereof to another Approved Fund or to take transfer of the assets and liabilities or part thereof of another Approved Fund as approved by the Principal Employer.

4.7 Appointment of Committees

Without derogating from the powers of the Trustees in terms of the Rules, the Trustees may appoint –

4.7.1 an Administration Committee which shall consist of -

4 (four) persons (and their alternates), of whom at least 2 (two) must be Trustees or their alternates, as the Trustees may deem fit;

4.7.2 an Investment Committee, which shall consist of -

such persons as the Trustees may determine from time to time, but not less than 5 (five) (and their alternates), of whom at least 2 (two) must be Trustees or their alternates, as the Trustees may deem fit;

4.7.3 such other committees as appointed by the Trustees.

4.8 Termination of appointments

The Trustees may in their sole discretion terminate the appointment of Members or alternates of the Administration Committee and of the Investment Committee, or any other committee established in terms of Rule 4.7.3.

4.9 Powers of appointed Committees

4.9.1 Administration Committee

The Administration Committee shall-

- (i) consider cases in which Members apply for Disability Benefits in terms of Rule 9 and make decisions in connection therewith as the Administration Committee deems fit;
- (ii) attempt to settle all disputes in respect of contributions and benefits failing which the provisions of Rule 15 shall apply;
- (iii) authorise the payment of all Death Benefits, including payments to a guardian of a minor or to a curator of a person under curatorship or legal disability ; and
- (iv) perform any other duties prescribed by the Trustees or these Rules.

4.9.2 Investment Committee

The Investment Committee shall-

- (i) subject to guidelines prescribed by the Trustees and the requirements of the Pension Fund Act, 1956 (Act 24 of 1956), invest or cause to be invested the moneys of the Fund not immediately required for current expenses and benefit payments;
- (ii) submit reports on the investments to the Trustees at such intervals and in such form as the Trustees may prescribe;

- (iii) keep complete accounts, records and minutes of all actions taken in the performance of its functions and the exercise of its powers; and
- (iv) be allowed to make use of the services of portfolio managers not in the salaried employment of the Fund or the Employer.

4.9.3 **Other Committees**

Other Committees appointed in terms of Rule 4.9.3 shall have powers as decided by the Trustees and conveyed to such Committee in writing.

4.10 **Procedures at Committee Meetings**

4.10.1 The chairperson of each of the Administration Committee and of the Investment Committee shall be appointed by the Members of such committees at the commencement of every Financial Year.

4.10.2 A quorum at the meetings of the Administration Committee and the Investment Committee, shall be a majority of Members of such a committee.

4.10.3 Any resolution shall be made by a majority vote at a duly constituted meeting,

4.11 **Appointment of Principal Officer**

4.11.1 The Trustees will appoint a Principal Officer from time to time. The first Principal Officer shall be the Executive Manager of the Old Fund immediately prior to the Commencement Date of the Fund. Such appointment shall endure for a period not exceeding 12 (twelve) months calculated from the Commencement Date.

- 4.11.2 Any appointment of a Principal Officer may be revoked or amended by the Trustees in their sole discretion.
- 4.11.3 The Trustees shall inform the Principal Employer of the name of the Principal Officer within 30 (thirty) days of his/her appointment.
- 4.11.4 If the Principal Officer is absent from the Republic of South Africa for a period exceeding 30 (thirty) days or is otherwise unable to perform his/her duties, the Trustees shall appoint another person to act as principal officer during the period of his/her absence or disability and the Principal Employer shall be informed of the substituted appointment within 30 (thirty) days of such appointment.

4.12 Appointment of Administrator

- 4.12.1 The Trustees, subject to the approval of the Principal Employer, shall appoint the Administrator of the Fund for such periods and on such terms as shall be agreed between the Trustees, the Principal Employer and the Administrator.
- 4.12.2 The Fund shall be administered by the Administrator acting on the instructions of the Trustees.
- 4.12.3 The Administrator shall keep a complete record of all necessary particulars of the Member and beneficiaries of the Fund and of all other matters essential to the operation of the Fund.
- 4.12.4 The Administrator shall keep full and true accounts of the Fund as required in terms of Rule 4.13.

4.12.5 All **cheques**, contracts and other documents pertaining to the Fund shall be signed by such persons designated by the Administrator and the Trustees by resolution.

4.12.6 The Administrator shall maintain professional indemnity cover to indemnify the Fund against any loss resulting from theft, negligence, dishonesty or fraud by any person employed by it to administer the Fund.

4.13 Books of Account

4.13.1 **The Trustees** shall ensure that such accounts, entries, registers and **records as are** necessary for the proper management of the Fund are kept in accordance with generally accepted accounting practice.

4.13.2 The books of account must be closed off at every Financial Year End and be audited by the Auditor of the Fund.

4.13.3 The accounts shall be approved by the Trustees and a copy thereof shall be available for inspection by Members of the Fund and any other person having an interest in the Fund.

4.14 Actuary

4.14.1 The Trustees shall appoint an Actuary who shall be the valuator of the Fund in terms of the Act.

4.14.2 The appointment of an Actuary in terms of Rule 4.14.1 shall remain in force until terminated by the Trustees.

4.15 Actuarial Valuations

- 4.15.1 The Trustees shall ensure that such registers and records be kept which shall enable the Actuary to undertake an actuarial valuation of the Fund at any time.
- 4.15.2 The Fund shall be valued by the Actuary at intervals not exceeding 3 (three) years, the first such valuation to be done not later than the third Financial year-end following the Commencement Date.
- 4.15.3 The Actuary shall submit a valuation report to the Trustees within 12 (twelve) months of the date of valuation, which report shall contain recommendations in respect of the financial position of the Fund.
- 4.15.4 The Trustees shall send a copy of such report to the Employer and Minister within the period of 12 (twelve) months referred to in Rule 4.15.3 and shall indicate to the Minister if deemed necessary the action they and/or the Employer propose taking with regard to any recommendation made by the Actuary in his report.

4.16 Auditor

The Trustees shall appoint an Auditor for each Financial Year. The first Auditor shall be appointed at the first meeting of the Board of Trustees after the Commencement Date. At each first meeting thereafter of every Financial Year the Trustees shall appoint an Auditor for the Financial Year, The Trustees shall notify the Principal Employer thereof within 30 days of the appointment of the Auditor.

4.17 Records and safe custody of securities

4.17.1 The Trustees shall ensure that complete records are kept of all the necessary particulars of the Members and ~~any~~ other persons entitled to benefits and of all other matters essential to the efficient administration of the Fund.

4.17.2 All mortgage bonds, title deeds and other securities belonging to or held by the Fund shall, unless temporarily held in custody by approved custodians for the purposes of the Fund, be stored in safe custody in a safe or **strongroom** at the registered office of the Fund or with ~~any~~ registered financial institution approved by the Trustees.

4.18 Fidelity Insurance

The Trustees **shall** ensure that the Fund is sufficiently protected against losses owing to theft, negligence, dishonesty ~~or~~ fraud of any of its officials either by means of a policy of insurance or such other indemnification ~~as~~ the Trustees may **allow**.

4.19 Expenses

4.19.1 The expenses related to the Trustee meetings, management and administration (including legal costs) of the Fund, **including** the cost of audits and actuarial investigations shall be defrayed out of the 4,5% (four comma five per cent) contribution by the Employer as referred to Rule 7.1.2.

4.19.2 ~~The~~ expenses related to the asset management of the Fund **shall** be borne by the Fund.

RULE 5: ACCOUNTS

5.1 **Member's Account**

A Members' Account shall be debited and credited with the following:

Credits

- 5.1.1 The Member Transfer value in respect of Members who elected to transfer from the Old Fund in terms of Rule 6.1.2 or who elected to transfer in terms of Rule 12.9 to the Fund
- 5.1.2 The amount referred to in Rule 12.1
- 5.1.3 Any transfer amount from any other fund;
- 5.1.4 The contributions in terms of Rules 6.1.3 and 6.1.4 paid by the Member to the Fund from the date of becoming a Member of the Fund
- 5.1.5 The Employer contributions in terms of Rule 7.1.1 paid to the Fund in respect of the Members from the date of the Member becoming a Member of the Fund;
- 5.1.6 The investment returns (including any capital reduction as the case may be) as determined by the Trustees on the advice of the Actuary on the amounts referred to in Rules 5.1.1 to 5.1.5 which stand to the credit of a Member.

Debits

5.1.7 The full Members account on retirement in terms of Rule 8;

5.1.8 The full Members Account on withdrawal in terms of Rule 11.1;

5.1.9 The full Members Account on death in terms of Rule 10,1;

5.1.10 The investment returns (including any capital reduction as the case may be) as determined by the Trustees on the advice of the Actuary on the amounts referred to in Rules 5.1.7 to 5.1.9 which stand to the debit of a Member.

5.2 Reserve **Account**

The Reserve Account **shall** be credited and debited with the following:

Credits

5.2.1 **The** contributions in terms of **Rule** 7.1.2;

5.2.2 Any other contributions the Employer may choose to make in terms of Rule 7.1.7

5.2.3 the investment returns (including any capital reduction as the case may be) as determined by the Trustees on the advice of the Actuary on the amounts referred to in Rule 5.2.1 and 5.2.2 which stand to the credit of the Reserve Account.

Debits

- 5.2.4 Expenses in terms of Rule 4.19.1;
- 5.2.5 the amount in terms of Rule 10.1(i) on the death of a Member;
- 5.2.6 the amount and expenses in terms of Rule 9.2 and 9.4.1 on the disablement of a Member;
- 5.2.7 the investment returns (including any capital reduction as the case may be) as determined by the Trustees on the advice of the Actuary on the amounts referred to in Rule 5.2.4 to 5.2.6 which stand to the debit of the Reserve Account.
- 5.3 Any amounts not allocated to either the Member or Reserve Accounts shall be dealt with by the Trustees in their sole discretion on the advice of the Actuary.

RULE 6: MEMBER CONTRIBUTIONS**6.1 Member Contributions**

- 6.1.1 Members referred to in Rules 3.1.1 and 3.1.2 shall be obliged to contribute to the Fund.
- 6.1.2 A Member of the Old Fund, who elected to join the Fund, shall cause the Transfer Value to be transferred to the Fund by giving the Fund written notice of his/her election.
- 6.1.3 The contribution by Members in terms of Rule 6.1.1 shall be 1/13 (one thirteenth) monthly of 7,5% (seven comma five per cent) of the Members' annual Pensionable Salary save that in the month when the Members' annual service bonus is payable, the contribution will be 2/13 (two

thirteenth) of 7,5% (seven comma five per cent) of the annual Pensionable Salary.

- 6.1.4 A Member may increase his contribution as referred to in Rule 6.1.3 subject to such contributions as agreed between the Principal Employer and the Member.
- 6.1.5 Every Member's contribution shall be deducted by the Employer from the Member's salary or wages monthly and paid to the Fund not later than 7 (seven) days from the end of the calendar month to which such contributions relate.
- 6.1.6 In the event of a Member being on unpaid leave with the consent of the Employer, the Member may nevertheless continue to contribute his/her contribution as referred to in Rule 6.1.3 and 6.1.4, subject thereto that it shall be such Member's own responsibility to ensure that such contributions are paid to the Fund.
- 6.1.7 For as long as the Member is entitled to Disability Benefits in terms of Rule 9, the Member will remain a Member of the Fund and his/her contribution to the Member's Account will be deducted from the Disability Benefits payable to such a Member. The contributions will be based on the Member's Pensionable Salary.

6.2 Payment of Contributions

- 6.2.1 The Member's contributions in terms of Rule 6.1, shall be paid by the Employer to the Fund within a period of 7 (seven) days from the end of the calendar month to which such contributions relate.
- 6.2.2 The Principal Officer shall immediately notify the Employer should payment not be made within a period of 30 (thirty) days from the end of the calendar month to which such contributions relate.

RULE 7: EMPLOYER'S CONTRIBUTIONS

7.1 Contributions

The Employer shall contribute:

- 7.1.1 **a monthly amount** equal to 1/13th (one thirteenth) of 7,5% (seven comma five per cent) of the annual Pensionable Salary of every Member referred to in Rule 3.1.1 and 3.1.2 to the fund in terms of retirement benefits, save that in the month when the Member's annual service bonus is payable, the contribution will be 2/13ths (two thirteenths) of 7,5% (seven comma five per cent) of the annual Pensionable Salary; and
- 7.1.2 a monthly amount equal to 1/13* (one thirteenth) of 4,5% (four comma five per cent) of the annual Pensionable Salary of every Member referred to in Rule 3.1.1 and 3.1.2 to the fund in respect of provision for disability benefits, death benefits (and expenses of the fund in terms of Rule 4.19.1) save that in the month when the Member's annual service bonus is payable, the contribution is 2/13 (two thirteenths) of 4,5% (four comma five per cent) of the annual Pensionable Salary.
- 7.1.3 The amounts referred to in 7.1.1 and 7.1.2 as contribution by the Employer to the Fund, shall not be deducted from a Member's Pensionable Salary but shall be an amount paid by the Employer monthly as calculated in terms of the aforementioned Rules.
- 7.1.4 In the event of a Member being on unpaid leave with the consent of the Employer, for any period, the Employer shall not be obliged to contribute the amounts referred to in Rule 7.1.1 in respect of such a Member

(subject to the conditions of service between the Member and the Employer to the contrary) until such a Member has resumed his/her service with the Employer but the Employer shall nevertheless be obliged to contribute the amount referred to in Rule 7.1.2 to the Fund.

7.1.5 In the event of a Member receiving Disability Benefits in terms of Rule 9, the Employer shall nevertheless be obliged to continue to contribute the amounts referred to in Rules 7.1.1 and 7.1.2 in respect of such a Member.

7.1.6 The total Employer contribution in respect of Rule 7.1.2 is limited to the amount specified in that Rule. If the cost of Disability Benefits, Death Benefits and expenses in terms of Rule 4.19.1 exceed the amount stipulated in Rule 7.1.2, the DISABILITY and / or Death Benefits for future deaths and disabilities will decrease, in accordance with the advice of the Actuary.

7.1.7 The Employer may from time to time make additional contributions to the Fund in order to increase the balance in the Reserve Account in consultation with the Actuary and subject to the approval of the Principal Employer.

7.2 Payment of Contributions

7.2.1 The Employers' contributions in terms of Rule 7.1, shall be paid by the Employer to the Fund within a period of 7 (seven) days from the end of the calendar month to which such contributions relate.

7.2.2 The Principal Officer shall immediately notify the Principal Employer should payment not be made within a period of 30 (thirty) days from the end of the calendar month to which such contributions relate.

RULE 8: RETIREMENT BENEFITS**8.1 Benefit**

- 8.1.1 A Member shall be obliged to retire at the Normal Retirement Date in which event a benefit in terms of Rule 8.1.5 shall become payable to such a Member as from such date.
- 8.1.2 In the event of a Member who is not entitled to benefits in terms of Rule 9 and who retires before the Normal Retirement Date due to ill-health as approved by the Trustees, a benefit in terms of Rule 8.1.5 shall become payable to such a Member as from such accelerated retirement date.
- 8.1.3 A Member who resigns, or is dismissed at any time during a period of 3 (three) years prior to Normal Retirement Age shall be deemed to have retired for purposes of these Rules.
- 8.1.4 A Member may retire early in terms of his conditions of employment or agreements reached.
- 8.1.5 A Member who retires in terms of Rule 8.1.1, 8.1.2, 8.1.3 or 8.1.4 shall be entitled to a lump sum and an annuity vesting on the last day of the month in which he/she retires calculated as follows:
- (i) not more than 1/3 (one third) of the credit amount in the Member's Account (as elected in writing by the Member) at date of retirement paid as a lump sum; and
 - (ii) the balance of the amount in the Member's Account as instructed by the Member in writing, to be used to purchase an annuity on behalf of the Member from an Insurer or Approved Fund of the Member's

choice. In such event the Member **shall** have no further claim **against** the Fund, the Employer or Principal Employer in respect of any annuity purchased from an Insurer or Approved Fund in terms of this Rule.

8.2 Manner of Payment

Annuities payable on retirement in terms of these Rules must **be** payable in arrear in monthly installments commencing on the last day of the month following the date of retirement, (or at the discretion of the Trustees **and** subject to the approval of the Commissioner in which **case** the annuities **may** be **payable on some other basis**).

RULE 9: DISABILITY BENEFITS

9.1 Eligibility

9.1.1 A Member is totally disabled if, in the opinion of both the Employer and the Administration Committee (which shall consider the recommendation of a suitably qualified medical professional), he or she is by reason of infirmity of mind or body (whether temporarily or permanently) totally incapable of discharging **efficiently**

- (i) his or her duties; and
- (ii) any other duties which he or she may reasonably be expected to perform for the Employer, taking into account his or her age, training, remuneration, work experience, education and potential for re-training.

9.1.2 A Member is partially disabled if, in the opinion of both the Employer and the Administration Committee (which shall consider the recommendation of a suitably qualified medical professional), he or she is by reason of infirmity of mind or body (whether temporarily or permanently) partially incapable of discharging efficiently

- (i) his or her duties; and
- (ii) any other duties which he or she may reasonably be expected to perform for the Employer, taking into account his or her age, training, remuneration, work experience, education and potential for re-training.

9.1.3 A Member shall be entitled to receive a benefit in terms of this Rule 9 for the period referred to in Rule 9.3 below, and subject to any restriction in terms of Rule 3.3 and any limitations in terms of Rule 12.6) if he or she is totally disabled or partially disabled.

9.1.4 Any dispute arising out of the application of aforementioned Rules must be dealt with in terms of Rule 15.

9.2 Amount and Conditions of Benefit

9.2.1 A Member who is totally disabled shall receive a monthly benefit equal to $1/12^{\text{th}}$ of the Disability Proportion of the Member's Pensionable Salary immediately prior to becoming totally disabled.

9.2.2 A Member who is partially disabled shall receive a monthly benefit equal to $1/12^{\text{th}}$ of the Disability Proportion of the Member's Pensionable Salary immediately prior to becoming partially disabled, multiplied by a "Degree

of Disability Factor". The "Degree of Disability Factor" shall be determined by the Administration Committee (which shall consider the recommendation of a suitably qualified medical professional appointed by the Administration Committee who shall apply principles agreed with the Administration Committee) and must reflect the extent to which the Member is incapable of discharging efficiently the duties contemplated in 9.1.1 and 9.1.2; provided that, if the partially disabled Member remains in the employ of the Employer, the benefit in terms of this Rule 9.2.2 shall not exceed the difference between the Disability Proportion multiplied by the Member's Pensionable Salary immediately prior to becoming partially disabled and the amount of remuneration which the Member continues to receive from the Employer.

9.2.3 There shall be a waiting period of 3 months before any disability benefit shall be payable, such period being reckoned from the last day of full time employment.

9.2.4 The benefit in payment may be increased as may be decided by the Trustees from time to time in consultation with the Actuary.

9.2.5 The cost of providing the Disability Benefits in terms of this Rule 9 shall be met from the Reserve Account.

9.2.6 The Employer shall pay the costs of any reasonable initial medical examination, reports and evidence. Further medical costs required by the Administration Committee will be borne by the Fund.

9.3 Duration of Benefit

9.3.1 The Member shall be entitled to Disability Benefits as contemplated under Rule 9.2.1 or 9.2.2 as from a date determined by the Administration Committee until:

- (i) the Normal Retirement **Date**; or earlier termination *of employment but* not later than normal retirement date.
- (ii) the Administration Committee is of the opinion that the conditions for a Disability Benefit to be payable as set out in Rules 9.1.1 and 9.1.2 no longer apply, having received evidence from medical **examination(s)** conducted at intervals determined by the Administration Committee; or
- (iii) evidence is brought to the attention of the Administration Committee that he/she is receiving income by virtue of being **employed** elsewhere, having neglected to inform the Administration Committee of such income in terms of Rule 9.4.3; or
- (iv) death if it occurs prior to Normal Retirement Age,

Whereafter the Disability Benefits will cease, or shall be **adjusted** in terms of Rule 9.4.1, 9.4.2 and 9.4.3.

9.4 Proof of Continued Disability

- 9.4.1 A Member receiving Disability Benefits as contemplated under Rule 9.2.1 may be required by the Administration Committee to undergo further **medical** examinations at intervals determined by the Administration Committee. The cost of such examinations shall be borne by the Fund. If, in the opinion of the Administration Committee, the Member is no longer totally disabled, but rather partially disabled, the Administration Committee may, in its sole discretion, determine that Disability Benefits shall be paid as contemplated under Rule 9.2.2 from a date determined by the Administration Committee.
- 9.4.2 The Administration Committee may review the Degree of Disability Factor (as contemplated in Rule 9.2.2) upon considering evidence from **medical** examinations conducted at intervals determined by the Administration

Committee. An increased or decreased Degree of Disability Factor shall be applied in order to determine benefits as contemplated under Rule 9.2.2 as from a date determined by the Administration Committee.

9.4.3 If a Member receiving benefits under Rule 9.2.1 or 9.2.2 at any stage starts to receive income by virtue of being employed elsewhere, such Member shall notify the Employer and the Administration Committee immediately and the Administration Committee will determine revised benefits as determined by the Trustees from time to time. Failure to do so will give the Administration Committee the right to decrease or suspend all benefits payable to the Member under this Rule 9, and further to claim back any benefits already paid to the Member whilst he/she did receive such income.

9.4.4 In the event of Rule 7.1.6 being applied, the Trustees shall be entitled to reduce Disability Benefits in respect of Members who are not already receiving such benefits, on the advice of the Actuary.

RULE 10: DEATH BENEFITS

10.1 In the event of the death of a Member whilst in service with the Employer and prior to Normal Retirement Date, an amount equal to the sum of:

- (i) a lump sum equal to the Death Multiple times the annual Pensionable Salary, subject to Rule 3.3 and Rule 12.6; and
- (ii) the total amount in the Member's Account,

shall be payable to the Dependants and/or the Nominees of such a deceased Member and shall not form part of the assets in the estate of such a Member (subject to Rule 10.4 (iv)). It is provided in terms of Rules 10.4 (vi) and 10.4 (vii) that the Trustees may pay the amounts in some other manner than an immediate lump sum.

10.2 In the event of **Rule 7.1.6** being applied, the Trustees shall be entitled to reduce Death Benefits for Members, as determined by the Actuary.

10.3 For the purposes of Rule 10, a Disabled Member will be treated as a Member, and **the** Pensionable Salary of the Disabled Member will be taken into account for the purposes of determining the amount of Death Benefits.

10.4 The manner of payment of the amount referred to in Rule 10.1 shall be as follows :

- (i) If the Fund within 12 (twelve) months of the death of the Member becomes aware of or traces a Dependant or Dependants of the Member, the benefit shall be paid to such Dependant or, as may be deemed equitable by the Trustees, to 1 (one) of such Dependants or in proportions to some of or all such Dependants.
- (ii) If the Fund does not become aware of or cannot trace any Dependant of the Member within 12 (twelve) months of the death of the Member, **and the** Member has designated in writing to the Fund a Nominee who is not a Dependant of the Member, to receive the benefit or such portion of the benefit as is specified by the Member in writing to the Fund, the benefit or such portion of the benefit shall be paid to such Nominee: Provided that where the aggregate amount of the debts in the estate of the Member exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the Member in writing to the Fund shall be paid to the Nominee.

- (iii) If a Member has a Dependant and the Member has *also* designated in writing to the Fund a Nominee to receive the benefit or such portion of the benefit as is specified by the Member in writing to the Fund, the Fund shall within 12 (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 Trustees may deem equitable: Provided that this paragraph shall not prohibit the Fund from paying the benefit, either to a Dependant or Nominee contemplated in this paragraph or, if there is more than 1 (one) such Dependant or Nominee, in proportions to any or all of those Dependants and Nominees.
- (iv) If the Fund does not become aware of or cannot trace any Dependant of the Member within 12 (twelve) months of the death of the Member and if the Member has not designated a Nominee or if the Member has designated a Nominee to receive a portion of the benefit in writing to the Fund, the benefit or the remaining portion of the benefit after payment to the designated Nominee, shall be paid into the estate of the Member or, if no inventory in respect of the Member has been received by the Master of the High Court, in terms of section 9 of the Administration of Estates Act, 1965 (Act 66 of 1965), into the Guardian's Fund.
- (v) For the purposes of this Rule 10.1, a payment by the Fund to a trustee contemplated in the Trust Property Control, 1988 (Act 57 of 1988), for the benefit of a Dependant or Nominee shall be deemed to be a payment to such Dependant or Nominee.
- (vi) Any benefit payable to a minor Dependant or minor Nominee, may be paid in more than 1 (one) payment in such amounts as the Trustees may from time to time consider appropriate and in the best interests of such Dependant or Nominee: Provided that interest at a reasonable rate, having regard to the investment return earned by the Fund, shall be added to the outstanding

balance at such times as the Trustees may determine: Provided further that any balance owing to such a **Dependant** or Nominee at the date on which he or she attains majority or dies, whichever occurs first, shall be paid in full.

(vii) Any benefit payable to a major Dependant or major Nominee, may be paid in more than 1 (one) payment if the Dependant or Nominee has consented thereto in writing : Provided that-

- (a) the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a written agreement;
- (b) the agreement may be cancelled by either party on written notice not exceeding 90 days; and
- (c) if the agreement contemplated in paragraph (a) is cancelled the balance of the benefit shall be paid to the Dependant or Nominee in full.

RULE 11: WITHDRAWAL BENEFITS

11.1 if the service of a Member is terminated before retirement due to resignation, the Member is entitled to the total amount in his/her Members Account at the date of termination of his/her service subject to the provisions of Rule 8.1.3., 12.1 2 and 12.3.

11.2 If the service of a Member is terminated before retirement due to dismissal or retrenchment, the Member is entitled to the total amount in his/her Members Account at the date of termination of his/her service but subject to the provisions of Rule 8.1.3 and 12.3.

11.3 A Member whose service has been terminated as contemplated in Rule 11.1 or 11.2 may elect in writing prior to termination date to transfer all or part of the benefit to which he/she has become entitled to in terms of this Rule, to another Approved Fund.

11.4 Payment in terms of this Rule shall be made as soon as possible after termination of services subject to Rule 12.1.2.

RULE 12: GENERAL PROVISIONS

12.1 Incentive Payment

12.1.1 Every Member of the Old Fund who transfers to the Fund shall, receive an additional amount equal to 4.7% of such a Member's Transfer Value in order to induce Members of the Old Fund to transfer to the Fund which amount shall be paid by the Principal Employer on or before the date of transfer.

12.1.2 A Member of the Old Fund who elected to transfer to the Fund shall only be entitled to the additional amount referred to in Rule 12.1.1, together with any positive or negative return thereon, after expiry of 12 (twelve) months reckoned from the date of transfer irrespective of whether such a Member is still in the employment of the Employer.

12.2 Proof Of Age

Proof of age to the satisfaction of the Trustees is required in respect of a Member and of any other person to whom a benefit may be payable in terms of these Rules, before the payment of any benefit is to be made, unless the Trustees specify otherwise.

12.3 Prior Right To Benefits

Any benefit payable to a Beneficiary in terms of these Rules upon a Member's termination of service for any reason, is subject to a deduction in respect of -

- 12.3.1 any sum owing to the Employer by the Member for a **housing** loan granted to the Member in respect of a dwelling or land purchased by the Member;
- 12.3.2 any amount for which the Fund (or the Employer) is liable under a suretyship furnished in respect of a loan granted by some other **person** or body to the Member in respect of a dwelling or land **purchased by** the Member;
- 12.3.3 any amount advanced by the Employer to a Member in **terms** of a written loan agreement concluded between the Employer and a Member; and
- 12.3.4 compensation (including legal costs recoverable from the **Member**) in respect of any loss suffered by the Fund or the Employer as a **result** of any theft, misconduct, fraud or dishonesty on the Member's **part** for which the Member has admitted liability in writing or in respect **of** which the Employer has obtained a court judgement.

12.4 Moneys Not To Revert to Employer

No amount contributed by the Employer shall revert to or become the **property** of the Employer.

12.5 Alienation of Benefits

- 12.5.1 Subject to section 7 of the Divorce Act, 1979 (Act 70 of 1979) and section 9 and 10 of the Act, no benefit or right under the Fund shall be capable of being ceded, pledged or assigned nor shall any such benefit be subject to any form of attachment or execution.
- 12.5.2 No Beneficiary shall alienate any benefit or right to any benefit unless permitted by Rule 12.5.
- 12.5.3 Any act of insolvency or any attempt by any Dependant or Nominee to alienate any "benefit or right to any benefit (unless permitted by Rule 12.5) shall result in such benefit being withheld or suspended.
- 12.5.4 In the event of the benefit being withheld or suspended in terms of Rule 12.5.3, it shall thereupon become payable in such manner as the Trustees in their sole discretion may deem fit.

12.6 Re-insurance Of Disability Benefits And Death Benefits

- 12.6.1 This Rule shall apply notwithstanding anything to the contrary contained in Rules 9 and 10.
- 12.6.2 The Trustees may after consultation, with the Actuary reinsure the Disability Benefits and Death Benefits described in these Rules with an Insurer by utilising moneys in the Reserve Account.
- 12.6.3 The Disability Benefits and Death Benefits paid by the Insurer to the Fund shall be subject to such limitations and conditions as imposed by the Insurer concerned.

- 12.6.4 Where the Disability Benefits and Death Benefits paid by the Insurer is less than the benefit in terms of these Rules or where the Insurer refuses a claim on lawful grounds, the Member's benefit shall be reduced to the benefit paid to the Fund by the Insurer if at all.
- 12.6.5 Should the Member's benefit reduce in terms of Rule 12.6.4, the Trustees may in their discretion, after consultation with the Actuary, pay the balance of the benefit or the full benefit that would have been payable were it not for the provisions of Rule 12.6.4.
- 12.6.6 Any Member in respect of whom the benefits in terms of Rule 12.6.4, is restricted, shall be informed of the extent of such restriction by the Trustees.
- 12.6.7 For purposes of this Rule 12.6, the reference to reinsurance of Death Benefits shall not include a Member's accumulated credit in his/her Member's Account to which a Member will be entitled in addition to the reinsured Death Benefits.

12.7 Unclaimed Benefits

- 12.7.1 If a Beneficiary does not claim benefits payable to him/her in terms of the Rules, such benefits shall remain in the Fund and shall only become payable provided the Trustees are satisfied that a valid claim has been submitted within a period of 5 (five) years reckoned from the date upon which the Beneficiary becomes entitled to the benefit in terms of these Rules. Subsequent to the expiring of the 5 (five) year period, such benefits will be transferred to the Reserve Account.
- 12.7.2 In the event of the death of a Member, the provisions of Rule 10.4 (iv) shall apply.

12.8 Payment of Benefits

- 12.8.1 Whenever a benefit becomes payable to any Beneficiary, the benefit will be paid by means of an electronic fund transfer to the beneficiaries account in a banking institution, the details of which have been furnished by the Employer or the Beneficiary to the Trustees.
- 12.8.2 The Employer or the Beneficiary may however specifically request that the benefit be paid by means of a cheque posted to the Beneficiary's registered postal address as notified by the Employer and/or the Beneficiary to the Trustees.
- 12.8.3 The payment referred to in Rule 12.8.2 shall be on such terms and conditions as advised by the Trustees in writing to the Beneficiary and the Employer.

12.9 Transfers From Other Funds

The Trustees may, after consultation with the Actuary and on conditions determined by the Actuary, approve special arrangements for the preservation of transferred pension benefits, which may make provision, inter alia, for the following:

- 12.9.1 the recognition of certain periods of former service as pensionable or additional service in recognition of any former employment;
- 12.9.2 the payment by such persons or such other fund of contributors in respect of such recognition of service in any former employment.

RULE 13: AMENDMENT TO THE RULES OF THE FUND AND DISCONTINUANCE OF THE FUND

13.1 Amendment

13.1.1 Save for the provisions of Rules 13.1.2 and 13.1.3, the Trustees **may** at any time amend the Rules provided that:

- (i) the value of a Member's Account portion prior to such amendment shall not be reduced;
- (ii) the amendment is not inconsistent with the provisions of **the** Act or the Income Tax Act, 1962 (Act 58 of 1962);
- (iii) Members have been fully informed of the amendment;
- (iv) if the amendment would have the effect of increasing an Employer's contribution, the approval of the Employer **concerned** has been obtained.

13.1.2 Subject to the provisions of Rules 13.1.3 and 13.1.4, the **Rules** of the Fund shall be amended by the Trustees to give effect to any **agreement** signed between the Employer and a Registered Trade **Union** with whom the Principal Employer has a recognition agreement, provided that the amendment shall not affect any other Employer **or** being a party to the agreement, or a Member who is an Employee of **such** other Employer.

13.1.3 The Trustees shall submit any proposed amendment to the Rules to the Principal Employer, the Minister, and the Minister of Finance, for approval and the amendment shall become effective upon the date of such last approval.

13.1.4 Once any amendment to the Rules has been approved in terms of Rule 13.1.3, or at least once every year, the Trustees shall notify the Members of every amendment to the Rules.

13.2 Discontinuance

13.2.1 The Fund shall be dissolved under the following circumstances:

(i) by an unanimous decision by the Trustees; or

(ii) by an order of court; or

(iii) if there is no longer an Employer or Members in terms of the Rules.

13.2.2 If the Fund is dissolved in terms of Rule 13.2.1, the Trustees shall appoint a liquidator subject to the approval of the Principal Employer; or if no liquidator is so appointed by the Trustees, the Principal Employer shall appoint a liquidator.

13.2.3 The liquidator shall use each Member's amount in the Member's Account either to purchase an annuity from an Insurer or transfer such amount to a retirement annuity fund of the Member's choice in the Member's name.

13.2.4 The conditions determined in respect of such annuity shall be as similar to the Member's benefits in terms of these Rules as is reasonably possible.

- 13.2.5 The balance of the assets of the Fund shall be divided by the liquidator in an equitable manner, as recommended by the Actuary, amongst the Members then participating in the Fund, and each Member's share of the Fund shall be invested with the Insurer or retirement annuity fund.
- 13.2.6 Alternatively to Rules 13.2.2 to 13.2.4, the liquidator may determine another method of disposing of the assets of the Fund for the benefit of the Members, subject to the approval of the Principal Employer and the Commissioner.
- 13.2.7 Subject to the provisions of the Act, the liquidator shall decide in what manner the assets of the Fund shall be realised and, after consultation with the Actuary, in what manner the obligations of the Fund, including obligations and contingent obligations in respect of Members, shall be met.
- 13.2.8 The Actuary shall take the following into account:
- (i) any pensions and enhancements to pensions in the course of payment to Dependants and Nominees in terms of the Rules;
 - (ii) every Member's equitable interest of the Fund as at the date of dissolution; and
 - (iii) any other obligations and liabilities.
- 13.2.9 Any assets remaining in the Fund after the obligations referred to in Rule 13.2.7 above have been met, shall, in the discretion of the liquidator, be divided by the liquidator amongst the Member's in a just manner, provided that an ex Member who either voluntarily or due to a reduction in or reorganisation of staff left service during the

immediately preceding 12 (twelve) months or such shorter period as the liquidator may determine, may, for the purposes of this Rule, be regarded as if they were Members on the date of dissolution of the Fund; and provided further, that the benefits already paid to any such Eligible Employee before the division of the remaining assets, shall be taken into account in determining the amount payable to such person.

13.2.10 Should the Fund be terminated or dissolved under the Act, all moneys remaining unclaimed for a period of 6 (six) months from the date on which payment of benefits commenced after completion of all necessary formalities, shall be paid into the Guardian's Fund for the account of the Member concerned and thereafter there shall be no claim against the Fund or the Employer.

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

13.3 Withdrawal of An Employer

13.3.1 Subject to the giving of 3 (Three) months' (or such shorter period 'as is accepted by the Trustees) written notice by the Employer concerned to the Trustees and the Members employed by that Employer, and subject to the approval of the Principal Employer, an Employer may withdraw from the Fund when one of the following provisions shall apply:

- (i) If after such withdrawal there is no Employer in terms of the Rules, the Fund shall be discontinued and dissolved in accordance with Rule 13.2;

- (ii) In all other instances the Members who are employees of such Employer shall be entitled to their full equitable interest in the Fund as determined by the Actuary.

13.3.2 [an Employer ceases to operate for any reason, such cessation shall be deemed a withdrawal from the Fund by such Employer for the purposes of this Rule, in which event Rule 13.3.1(i) or (ii) above shall apply, as the case may be.

RULE 14: MEMBER INVESTMENT CHOICE

- 14.1 The Trustees may from time to time offer to Members different investment risk profile choices, on specified terms and conditions, as recommended by the Actuary.
- 14.2 Members shall exercise their choice of investment risk profile in writing addressed to the Fund, failing which, the Trustees will elect the investment choice on behalf of such Members.

RULE 15: DISPUTE RESOLUTION

- 15.1 **Save in respect of those provisions** of the Rules, which provide for their own remedies, which would be incompatible with arbitration, a dispute which arises in regard to -
- (i) the interpretation of; or
 - (ii) the carrying into effect of; or
 - (iii) any of any party's rights and obligations arising from; or
 - (iv) the rectification or proposed rectification of;

- (v) these **Rules**, or out of or pursuant to these Rules or on any matter which in terms of these Rules requires agreement by one or more parties (other than where an interdict is sought or urgent relief may be obtained from a **court** of competent jurisdiction), shall **be submitted** to and decided by arbitration.
- (vi) deadlock in respect of a resolution sought in terms of Rule 4.5.8.
- 15.2 That arbitration shall be held with only the parties and their representatives present thereat.
- 15.3 it is the intention that the arbitration shall, where possible, be held and **concluded** within 21 (twenty-one) working days after it has been demanded. The **parties shall use** their best endeavors to procure the expeditious completion of the arbitration.
- 15.4 **Save as** expressly provided in these Rules to the contrary, the arbitration **shall** be subject to the arbitration legislation for the time being in force in the Republic of South Africa.
- 15.5 Depending on the nature of the dispute, the arbitrator shall be an **impartial** practicing attorney or advocate, alternatively an independent actuary of **not** less than 10 (ten) years standing appointed by the parties, or, failing agreement by the parties within 5 (**five**) days after the arbitration has been demanded, at the **request** of either of the parties shall be nominated by the President for the **time being** of the Law Society of Gauteng or the Actuarial Society of South Africa (or the **successor** body thereto). If that person fails or refuses to make the nomination, **either** party **may** approach the High Court of South Africa to make such an appointment. To the extent necessary, the **court** is expressly empowered to do so.

- 15.6 If there is any other clause in these Rules providing for a different method of determination of a particular dispute, that clause shall prevail over this clause.
- 15.7 The parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 15.8 The arbitrator shall be obliged to give his or her award' in writing fully supported by reasons which shall be final and binding on all the parties and which shall include a determination on the cost of the arbitration.
- 15.9 The arbitrator shall have the power to give default judgement if any party fails to make submissions on due date and/or fails to appear at the arbitration.

Approved


J.T.Radebe

Minister of Public Enterprises

Date: 01/11/2000

Approved


T.A.Manuel

Minister of Finance

Date: 24/11/2000

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