

GOVERNMENT NOTICE No. 96 published on 24/4/2009

THE SOCIAL SECURITY (REGULATORY) AUTHORITY
ACT, 2008

(ACT No. 8 OF 2008)

SOCIAL SECURITY REGULATIONS, 2009

Made under section 54

PART I

PRELIMINARY PROVISIONS

- Citation 1. These Regulations may be cited as the Social Security Regulations, 2009 and shall come into operation on the day of publication.
- Application 2. These Regulations shall apply to the Authority, schemes, managers and custodians.
- Interpretation 3. In these Regulations, unless the context otherwise requires-
"Act" means the Social Security Regulatory Authority Act;
- Act No. 8 of 2008 "Authority" means the Social Security Regulatory Authority established under the Act;
- "custodian" has the meaning ascribed to it under the Act;

"existing scheme" means a scheme which existed prior to the coming into force of these Regulations;

"guaranteed fund" means funds as provided for under regulation 18;

"manager" has the meaning ascribed to it under the Act;

"new scheme" means a scheme which was established after the date of publication of these Regulations;

"pooled fund" means a fund established for the purpose of pooling schemes' funds for collective investment;

"Nomination Committee" means a committee established by the Minister for the purpose of regulation 4;

"supplementary scheme" has the meaning ascribed to it under the Act.

PART II

ESTABLISHMENT OF NOMINATION COMMITTEE

4.-(1) There is established a Committee to be known as Nomination Committee.

Nomina-
tion
Committee

(2) The Committee shall be comprised of-

(a) the Permanent Secretary of the Ministry responsible for Social Security matters;

(b) the Permanent Secretary of the Ministry responsible for finance;

- (c) the Permanent Secretary of the Ministry responsible for health;
- (d) the Permanent Secretary of the Ministry responsible for Local Government Authorities;
- (e) the Permanent Secretary of the Ministry responsible for public service;
- (f) two experts in social security matters appointed by the Minister; and

(3) The Nomination Committee shall work on *ad-hoc* basis depending on the need for nomination.

(4) The Authority shall pay all such allowances, fees and any other expenses incurred by the Nomination Committee, as it may be approved by the Minister.

Functions
of the
Nomination
Committee

5.-(1) The functions of the Nomination Committee shall be to invite applications, scrutinize and shortlist persons who apply for appointments as—

- (a) Chairman;
- (b) members of Board of Directors; or
- (c) Director General.

(2) The Nomination Committee may take as are necessary actions to identify and attract the best candidates by advertising.

(3) The Nomination Committee shall submit to the Minister—

- (a) three names of persons to be forwarded to the President by the Minister to be considered for appointment as Chairman;

- (b) three names of persons to be forwarded to the President for consideration for appointment as Director General.
- (c) four names of persons to be considered for appointment as members of Board of Directors other than members who are Board members by virtue of their position;

(4) The Nomination Committee shall regulate its own proceedings and other matters in relation thereto.

PART III

APPOINTMENT OF CHAIRMAN, BOARD OF DIRECTORS AND DIRECTOR GENERAL

6.-(1) Subject to the provisions of regulations 4 and 5-

- (a) the Chairman of the Board of Directors and the Director General shall be appointed by the President; and
- (b) the Minister shall appoint members of the Board of Directors, other than the Chairman and members by virtue of their position.

Appoint-
ment

(2) A person shall not be appointed under sub-regulation (1) unless he is knowledgeable or has considerable experience in social security, finance, actuarial science, law, or any other relevant field.

7.-(1) A person shall be disqualified for appointment as the Chairman, the Director General or, if already appointed, shall become disqualified as such if he-

Disquali-
fication

- (a) is adjudged bankrupt;
- (b) has applied for the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) compounds with his creditors or makes an assignment of his remuneration for their benefit.

(2) Notwithstanding regulation (1), no act of commission or omission by the Chairman or Director General done or omitted to be done in good faith for the purpose or in pursuance of these Regulations shall be invalid by reason only of any defect in his appointment.

(3) The Chairman or Director General shall, in compliance with the provisions of these Regulations, declare his interest when dealing with any matter in relation to the schemes, custodians or manager in which he has such interest.

PART IV

REGISTRATION OF SCHEMES, MANAGERS AND CUSTODIANS

Application
for
registration
of
schemes

8.-(1) An application of registration of an existing scheme or a new scheme shall be submitted to the Authority in the prescribed form accompanied with a prescribed fee.

(2) The Authority shall within ninety days from the date of receipt of an application-

(a) consider the application, if it meets the requirement under these Regulations-

- (i) notify the applicant in writing;
- (ii) proceed to register the scheme; and
- (iii) issue a certificate of registration,

(b) consider the application, if it does not meet the requirements under these regulations, notify the applicant in writing accordingly and the reasons thereof.

Schemes
manage-
ment

9.-(1) A scheme shall at all times have in its top management including the Board of Trustees persons who are academically qualified in matters relating to social security, actuarial science, banking, insurance, finance, economics or investment of funds of schemes.

(2) Notwithstanding the provisions of sub-regulation (1), the appointment of trustees of a mandatory scheme shall take into consideration any administrative conflict of interest between the scheme and the Authority.

10.-(1) An application for registration of a manager shall be submitted to the Authority in the prescribed form accompanied with the prescribed fee.

Application for registration of managers

(2) The Authority shall-

- (a) within ninety days from the date of receipt of an application for registration consider the application of a manager and if it is found acceptable notify the applicant in writing accordingly;
- (b) proceed to register the manager and issue the applicant with a certificate of registration.

(3) The minimum paid up share capital including unimpaired reserve of a manager shall be one hundred and twenty percentum of the total risk liability undertaken by or under the manager as may be prescribed by the Minister.

(4) A manager shall at all times have in its top management including the board of directors persons who are academically qualified in matters relating to social security, actuarial science, banking, insurance, finance economics or investment of funds of schemes.

11.-(1) An application for registration as a custodian shall be in the prescribed form together with the prescribed fee.

Application for registration for custodian

(2) The Authority shall-

- (a) within ninety days from the date of receipt of an application for registration consider the application of a custodian and notify the applicant in writing whether the custodian is acceptable for registration;
- (b) proceed to register the custodian and issue the applicant with a certificate of registration; or
- (c) notify the applicant in writing that the custodian and the reason thereof, if the application doesn't meet the requirement.

(3) A custodian shall not qualify for registration unless the minimum paid up share capital including unimpaired is one hundred and twenty percentum of the total risk liability undertaken by the manager as may be prescribed from time to time.

Social Security (Regulatory) Authority

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- Renewal of certificate of registration 12.-(1) The certificate of registration of schemes, managers and custodians shall be renewed annually upon application.
- (2) An application for renewal shall be submitted to the Authority three months before expiry of the current certificate.
- Registered office 13. A scheme, manager or custodian shall not be registered under these regulations unless it has a registered office in Mainland Tanzania.
- Inspection of register 14. Any person may, upon a written application inspect the register of any scheme, manager or custodian maintained by the Authority and receive a copy of the register upon payment of the prescribed fee.

PART V

**ADMINISTRATION OF SUPPLEMENTARY SCHEMES,
MANAGERS AND CUSTODIANS**

- Contents of supplementary schemes rules 15.-(1) Every supplementary scheme shall have rules which shall be written in English and translated into Kiswahili and which shall provide the following-
- (a) the full name of the scheme, including reference to any prior change of name;
 - (b) the physical address of the registered office of the scheme;
 - (c) the date of commencement of the scheme;
 - (d) a list of definitions, in alphabetical order defining the terms which are frequently used in the rules and which bear the special connotation;
 - (e) requirement for admission to membership and the circumstances under which membership is to cease;
 - (f) condition under which and when a member may become entitled to any benefit including death benefits, the nature and extent of any such benefit and the mode of calculating the benefits;
 - (g) the appointment, term, removal from office, powers and remuneration of trustees and officers of the scheme:
- Provided that, unless otherwise stipulated, the term of office of a trustee shall not exceed three years but shall be subject to renewal;
- (h) power of investment of scheme funds;
 - (i) pensionable emoluments applicable in relation to each category of members;

- (j) rate of contributions by employers and / or members as the case may be;
- (k) interest chargeable on the contributions which have not been remitted;
- (l) interest chargeable on late payment of benefits from the scheme:

Provided that such interest shall not be less than the investment interest declared by the scheme in the year the payment was due.

- (m) mode of recovery of un remitted contributions;

Provided that such mode includes treatment of un remitted contributions as a civil debt recoverable summarily by a scheme;

- (n) vesting formula of benefits of its members;
- (o) manner of determining surplus and deficit and disposing of such deficit;
- (p) the normal retirement age of members;
- (q) the manner in which contracts and other documents binding the schemes shall be executed;
- (r) the procedure of amending schemes rules;
- (s) appointment and term of the auditor of the scheme and any other person rendering professional services to a scheme;
- (t) custody of a scheme fund, title deeds and other securities belonging to scheme;
- (u) the appointment of the liquidator in case of a voluntary dissolution;
- (v) the manner in which the scheme shall be dissolved subject to the provisions of the Act and the regulations made thereunder; and
- (w) the manner in which disputes between parties of a scheme shall be resolved.

(2) In case of any conflict between English Version and Kiswahili version the English version shall prevail.

16-(1) The scheme rules shall contain provisions in relation to-

- (a) the manner of appointment or election of trustees and their term of office;

Rules
relating
to
trustees
and their
duties

- (b) the functions, powers and duties of trustees which shall include the general supervision and administration of the scheme;
- (c) the number of trustees:

Provided that-

- (i) no defined benefit scheme shall have less than three trustees and the number of trustees nominated by members shall not be less than one third of the Board of Trustees unless the scheme has appointed a corporate trustee;
 - (ii) no defined contribution scheme shall have less than four trustees and the number of trustees nominated by members shall not be less than half of the Board of Trustees unless the scheme has appointed a corporate trustee.
- (d) the method of and grounds for the removal of a trustee from office;
 - (e) the manner of election of a chairman of the Board of Trustees; and
 - (f) the procedure for convening meetings of the Board of Trustees:

Provided that-

- (i) the trustees shall meet four times in every calendar year; and
- (ii) not more than four months shall elapse between the date of one meeting and the next.

(2) The duties of the trustees shall include-

- (a) administering the scheme in accordance with the provisions of the Act, these Regulations and scheme rules;
- (b) keeping all proper books and records of accounts in respect of income expenditure, liabilities and assets of the scheme fund;
- (c) computing and preparing statements of payments of benefits to members;
- (d) liaising with the Authority, employer members, manager, custodian and any other professional engaged by the scheme;
- (e) collecting, keeping and updating retirement benefits data of each member including maintenance of individual membership records;

- (f) updating the employer and members at least quarterly during the financial year on all matters regarding the scheme;
- (g) ensuring that contributions based on correct pensionable emoluments have been remitted to the custodian as specified in the Act, these Regulations and scheme rules;
- (h) communicating regularly with the members with respect to the affairs of the scheme and furnishing them with annual membership benefit statements;
- (i) ensuring that all documents intended to bind the scheme are professionally prepared;
- (j) convening an annual meeting of members to enable them raise any matters that relate to the scheme;

Provided that as a minimum the agenda for the meeting shall comprise but not be limited to the following-

- (i) a report on any changes to the benefit and contribution structure;
 - (ii) a report on audited accounts;
 - (iii) a report on investments;
 - (iv) a report on remuneration of trustees; and
 - (v) issues from members.
- (k) ensuring all minutes, statements and resolution in respect of a scheme are properly kept and maintain.

17.-(1) A scheme may amend its rules as specified in the rules but no such amendment shall be valid-

Amend-
ment of
rules

- (a) if it purports to invalidate or reduce accrued rights and interest of the employer and members of the scheme;
- (b) if it purports to affect any right of a creditor of the scheme other than as a member thereof;
- (c) unless it has been approved by the Authority and registered as provided in paragraph (3).

(2) Within thirty days from the date of the passing of a resolution for the amendment of the scheme rules, a copy of such amendment shall be transmitted by the trustees to the Authority for registration:

Provided that if any such amendment affects the financial position of the scheme, the trustees shall transmit to the Authority such amendment certified by an actuary.

(3) Where the Authority finds that any such amendment is consistent with the Act and is satisfied that the financial soundness of the scheme will not be affected, it shall within sixty days register the amendment and return the copy of the resolution to the trustees with the date of registration endorsed thereon, and such amendment shall be deemed to take effect as from the date determined by the scheme concerned, or, if no date has been so determined, as from the date of registration.

Rules
relating
to
custody
of
scheme
funds

18.—(1) Scheme funds including the title deeds, securities and income that shall accrue thereto shall at all times be held and maintained in custody by a custodian on behalf of the trustees or the pooled fund.

(2) Notwithstanding any provision of the scheme rules to the contrary, any contribution payable in respect of any member of the scheme to an appointed custodian shall be paid net of outstanding benefit payments and operational expenses directly to the custodian by or on behalf of the trustees:

(3) The payment of contributions under paragraph (2) shall be made before the tenth day of every calendar month or before any other day that may be notified in writing and approved by the Authority.

(4) A custodian shall, not later than the first business day following the day on which the custodian receives the contribution, deposit in an account with a bank duly registered under the bank account and such account shall be maintained by a custodian on behalf of and in the name of the scheme or pooled fund.

(5) A custodian shall open a clients account on behalf of a scheme or pooled fund but the scheme fund and the pooled fund shall not form part of the assets or funds of such custodian.

(6) A custodian shall, at the end of each quarter of the financial year, submit to the Authority a report detailing the assets of a scheme fund and active membership of the scheme during that quarter.

19.-(1) A scheme shall prepare and maintain a schedule showing the rate of contributions payable by or on behalf of the employer and members.

Formula and schedule of contributions

(2) The schedule of the rates of contributions shall allow for additional voluntary contributions by a member.

(3) In the case of a defined benefit scheme, a schedule of the rates of contributions referred to in paragraph (1) shall be certified by an actuary and approved by both the trustees and the employer.

(4) A scheme may, if agreed upon by the employer, from time to time revise the schedule of the rates of contributions and any such revision shall in the case of a defined benefit scheme, be certified by an actuary and, without prejudice to the provisions in regulation 38, a copy thereof shall be submitted to the Authority within thirty days from the date of the revision.

20. The scheme rules may provide for the protection of the scheme fund and assets against any manner of insurable risk and financial loss arising out of any negligence, default or willful default of its officers, trustees, manager, or custodian either by way of a guarantee from the employer or by way of insurance of such amount as the trustees may deem appropriate.

Protection against financial loss

21.-(1) No scheme rules shall-

- (a) restrict eligibility to membership of a scheme on the basis of gender, race, or religion or in any manner which is discriminatory;
- (b) contain any provision which would render admission to membership subject to any discretionary power;
- (c) unless it is a defined contribution scheme allow an employee to join the scheme where such employee has less than five years remaining before attaining retirement age:

Record of contributions of members

Provided that the scheme may reduce a qualifying period or vary an age limit in any special case provided for in the scheme rules;

(d) provide for qualifying period for the membership to the scheme to be more than one year from the date of employment subject to approved by the Authority:

Provided that-

- (i) where an employee is moving from his previous employer to join a new employer, he may transfer his membership from the previous scheme which the former employer sponsored to the scheme sponsored by the new employer and he shall become a member of the scheme on completion of transfer proceedings with the qualifying period for membership waived ; and
- (ii) the transfer value of the accrued rights in respect of a member transferring his membership from one scheme to another shall be transferred to the scheme to which he is transferring his membership within a period of sixty days from the date of service of the application for such transfer to the scheme to which he is transferring a copy of which application shall be served on the Authority.

(2) Where a scheme is established or the scheme rules relating to eligibility for membership are amended, the scheme rules shall provide that any person who-

- (a) is an employee of a participating employer and-
 - (i) is eligible for membership of the scheme may elect to become a member within such period, being not more than twelve months, and on such conditions as may be specified in the scheme rules, failing which he shall cease to be eligible for membership unless the Authority approves;
 - (ii) is ineligible for membership of the scheme but subsequently becomes eligible, may elect to become a member within such period being not more than twelve months from the date he becomes eligible, and on such conditions as may be specified in the rules , failing which he shall cease to be eligible for membership unless the Authority approves;
- (b) after the employee referred to in sub-regulation 2(a) becomes an employee of an employer and is eligible for membership of the scheme, he shall, as a condition of his employment, become a member.

(3) The scheme rules shall provide that a member of the scheme shall not be permitted to withdraw his benefits from the scheme whilst he remains an employee of the employer unless he-

- (a) becomes a member of another scheme established for the benefit of employees of that employer; or
- (b) attains the retirement age provided for in the scheme rules.

22.- (1) In this regulation-

""pension factor" means a fraction, percentage or proportion of a member's pensionable emoluments which when multiplied by all or part of his period of pensionable service, defines the amount of benefit payable to him under the scheme rules."

Benefit
from
scheme

(2) The scheme rules shall specify every benefit payable from the scheme and, where applicable, the method by which any such benefit is calculated.

(3) The scheme rules shall not provide different pension factors for members employed by the same employer unless-

- (a) the difference is based on actuarial considerations;
- (b) the difference is designed to favour members engaged in hazardous occupations in such event the same pension factors shall apply equally to all members engaged in such occupations; and
- (c) the Authority has approved the difference:

Provided that the Authority shall not approve different pension factors where the differentiation is based on differences in the employees' salaries, wages, gender, rank, seniority at the work place or any such discriminatory factor.

(4) The scheme rules shall provide for the transfer to or receipt from another scheme of benefits of a member:

Provided that-

- (i) such transfer of benefits includes the cash equivalent of the present value of the deferred benefits of the member;

- (ii) every member who is entitled to or has transferred such benefits from one scheme to another shall, if so required by the trustees, provide in writing the amount of such benefits and the names of the scheme from which the benefits will become payable and any other information as may be required; and
- (iii) the basis of paying a transfer value from a scheme shall be certified by an actuary:

Provided that this proviso shall not be applicable in case of a member transferring from a defined contributions scheme which does not have a reserve fund.

Benefits
to fully
vest
within
five years

23. The scheme shall provide a benefit to a member where such member leaves employment after a specified period of membership, but before attaining the specified retirement age:

Provided that

- (a) all benefits derived from statutory contributions made by a member shall vest immediately in the member; and
- (b) the periods of service of a member for the purposes of this regulation shall be determined without regard to temporary interruptions of employment of continuous periods of up to one hundred and twenty six days

Leaving
service
benefits.

24.-(1) The scheme rules shall make provision as to the treatment of the retirement benefits of a member where such member ceases to be an employee of the employer before attaining the retirement age and such provisions may include-

- (a) payment of benefits to the leaving member as provided in the trust deed,
- (b) deferment of benefits until the leaving member attains the normal retirement age; and
- (c) transferring of benefits to another scheme elected in writing by the leaving member.

(2) Where a member elects in writing to have the retirement benefits referred in sub-regulation (1) transferred to another scheme for the purpose of purchasing a retirement benefit-

- (a) the basis of paying transfer value shall be reviewed and certified by an actuary; and

(b) the case of a member transferring from a defined contributions scheme that does not have a reserve fund, the basis of paying transfer value shall not be required to be certified by an actuary.

25. The scheme rules shall provide that upon the death of a member the benefits payable from the scheme shall be paid to the nominated beneficiary and if the deceased member had not named a beneficiary then the trustee shall exercise their discretion in the distribution of the benefit to the dependant(s) of the deceased member:

Benefits to nominated beneficiary

Provided that the trustee may refuse to pay the nominated beneficiary and the reason for such refusal shall be recorded.

26.-(1) The scheme rules may authorize the trustees to exercise their discretion in the following respects-

Discretionary power of trustees in payment of benefit

- (a) the amount of the retirement benefits payable to a nominated beneficiary;
- (b) the amount of retirement benefits payable to the children of a member;
- (c) the apportionment of a lump sum benefit amongst all dependants;
- (d) the apportionment of a retirement benefit amongst surviving spouses and children; or
- (e) the reinstatement of a surviving spouse's retirement benefit that had ceased on re-marriage.

(2) Trustees shall not increase any retirement benefit unless such increase has been recommended and certified by an actuary.

27.-(1) The formula for commutation of the retirement benefit which may be paid to a member who has attained the normal retirement age or persons entitled to receive a benefit under the scheme shall be provided for in the scheme rules and such formula shall be as recommended by an actuary.

Commutation of retirement benefits

(2) The un commutated portion of the retirement benefit which is payable to a retiring or deferred member shall be payable for the duration of his life time or the period for which payment is guaranteed in the scheme rules whichever is longer.

- (3) The provisions of sub-regulations (1) and (2) shall not apply-
- (a) to a scheme which is a provident fund; or
 - (b) to benefits payable to a member where the portion of the retirement benefit remaining after commutation of the pension will result in a trivial pension.

(4) For the purpose of paragraph 3, "trivial pension" shall be an amount, determined from time to time by the Authority, which is less than fifty percentum of the minimum pension under the statutory/compulsory schemes.

(5) Where the scheme rules provide for purchase of an annuity for members at a retirement age, the members shall have the option of selecting the service provider from whom to purchase the annuity.

Lump-sum
payment
of the
death
benefits

28. In the event of the death of a member of a scheme before attaining the retirement age, or of a members' drawing of retirement benefits, the scheme rules may provide that the death benefits, which shall include a capital sum and any other amount payable as a benefit may be payable in a lump sum to a nominated beneficiary, spouse, dependant child, any other dependants or estate should any such entitled beneficiary elect in writing for lump sum payment.

Retire-
ment of a
disabled
member

29. The scheme rules may provide that a member be permitted to receive benefit before attaining the retirement age if medical evidence is submitted to the scheme showing that he is permanently incapacitated and cannot perform his normal gainful employment or any other occupation for which he is reasonably suited by education, training or experience.

The role
of
Manager

30.-(1) A manager of a scheme fund or a pooled fund shall be appointed by the trustees of the scheme on such terms and conditions of service as shall be determined by the trustees in the instrument of appointment or otherwise in writing from time to time.

(2) Subject to investment guidelines issued by the Bank of Tanzania, a manager shall have all the powers necessary for the performance of his functions under this Act and in particular the manager shall-

- (a) advise the scheme or pooled fund on the asset classes which are available for investment;

- (b) assist the scheme or pooled fund to formulate a prudent investment policy on the investment of scheme funds or pooled fund;
- (c) invest capital moneys which form part of the scheme or pooled fund subject to the adopted investment policy;
- (d) reinvest any income of the scheme fund or pooled fund which is not required by the trustees for any immediate payments;
- (e) submit to the scheme or pooled fund at least quarterly from the date of commencement of the financial year of the scheme or pooled fund-
 - (i) a valuation of the scheme fund or pooled fund and of all the investment representing the same including details of the cost of such investments and their estimated yields;
 - (ii) a report reviewing the investment activity and performance of the investment portfolios comprising the scheme fund or pooled fund since the last report date and containing the manager's proposals for the investment of the scheme fund or pooled fund during the following period as recommended by the Authority;
 - (iii) a record of all investment transactions during the previous period;
- (f) sit in attendance, in the case of a scheme whose funds are not invested in a pooled fund, at the meeting of the board of trustees whenever the trustees have an agenda item involving management of the scheme fund;
- (h) issue instructions on behalf of the trustees or the pooled fund to the custodian to transfers, exchange and/or deliver in the required form and manner scheme or pooled fund assets held by such custodian;
- (i) issue instructions on behalf of the trustees or pooled fund to the custodian to effect payment in respect of purchased securities or any other assets;
- (j) keep or cause to be kept such books, records and statements as may be necessary to give a complete record of-
 - (i) the scheme fund or pooled fund and investment portfolio held by the custodian;
 - (ii) the investment transaction carried out by the custodian as instructed by the manager, and shall permit the scheme

or pooled fund, their officers or duly authorized agents to inspect within the premises of the manager such books, records and statements at any time during business hours.

(3) A manager shall ensure that those minutes, statements and resolutions in respect of a scheme fund investment portfolio are at all time and places properly kept and maintained.

(4) A manager shall not be liable for any loss, damage or depreciation in the value of the scheme fund or any investment comprised therein or the income there from which may arise by reason of depreciation of the market value of the securities and other assets in which scheme funds or pooled funds are invested unless such loss, damage depreciation in the value of the scheme fund or pooled fund arise from negligence whether professional or otherwise, willful default or fraud by the manager or any of his agents or employees.

(5) A manager shall submit to the Authority within ninety days from the date of his appointment and subsequently after ninety days from the date of the previous submission-

(a) a statement of a scheme fund or pooled fund and investment portfolio including details of the cost of such investments;

(b) a statement detailing the investment transactions carried out within the ninety days' period of reporting; and

(c) a report reviewing the investment activity and performance of the investment portfolio comprising the scheme fund or pooled fund and proposed investments of the scheme fund or pooled fund during the ensuing ninety days.

(6) A manager shall invest the assets of the pooled fund in the name of the pooled fund and all accrued investments income, commissions, fees and direct and indirect gains from investing the pooled fund shall be credited into the pooled fund account which is maintained by a custodian on behalf of the pooled fund.

(7) A manager shall not engage the services of a property manager on behalf of the scheme or pooled fund without the prior written approval of the trustees or pooled fund.

(3) A manager shall within twenty one days or such shorter period as may be stipulated in the agreement, from the date of de-registration or from the date a winding up order has been issued by a competent court against such manager hand over, transfer and deliver all minutes, statements and resolutions in respect of the scheme fund or pooled fund investment portfolio together with any other information as may be reasonably required by the scheme or pooled fund to a manager subsequently appointed in writing by such scheme or pooled fund.

The role
of
custodian

32.-(1) The custodian of a scheme fund or pooled fund shall be appointed by the trustees of the scheme on such terms and conditions of service as shall be determined by the trustees in the instrument of appointment or otherwise in writing from time to time.

(2) Subject to investment guidelines issued by the Bank, a custodian shall have all the powers necessary for the performance of his functions under this Act and in particular the custodian shall-

- (a) receive and keep in safe custody the title documents- securities and cash of the scheme fund or pooled fund;
- (b) open a bank account or bank accounts with a bank duly registered under the Banking and Financial Institutions Act on behalf of the scheme fund or a pooled fund for the exclusive benefit of such scheme fund or pooled fund;
- (c) transfer, exchange or deliver in the prescribed form securities held by a custodian upon receipt of proper instructions from the manager;
- (d) keep or cause to be kept such books, records and statements as may be necessary to give a complete record of-
 - (i) the entire scheme fund, or pooled fund, investment portfolio held by the custodian;
 - (ii) the transactions carried out by the custodian on behalf of the scheme or pooled fund; and shall permit the scheme fund or pooled fund, their officers or duly authorized agents to inspect such books, records and statements within the premises of the custodian at any time during business hours;

- (e) submit to the scheme fund or pooled fund at least quarterly from the date of commencement of the financial year of the scheme fund or pooled fund-
 - (i) a valuation of a scheme fund or pooled fund and of all the investments representing the respective fund including details of the cost of such investments and the estimated yields;
 - (ii) a report reviewing the investment activity and performance of investment portfolios comprising the scheme fund or pooled fund for the period succeeding the date of the last report and containing the manager's proposals for the investments of the scheme fund or pooled fund for the forthcoming period as recommended by the Authority;
- (f) deliver to the scheme fund or pooled fund, or to such other persons as the scheme fund or pooled fund may in writing authorize copies of all notices, proxies, proxy, soliciting materials received by the custodian in relation to any of the securities held in the scheme fund or pooled fund account, all publicly available information, financial reports and stockholder communications as the custodian may receive from insurers of securities and all information the custodian may receive from an offer relating to exchange or tender offers or other rights or offerings or as may be agreed upon from time to time;
- (g) submit to the scheme fund or pooled fund-
 - (i) a written report on specified dates listing all assets of the scheme fund, or pooled fund, in the scheme fund or pooled fund account together with a full account of all receipts and payments made and other actions taken by the custodian;
 - (ii) advice or notification of any transfers of property or securities to or from the scheme fund, or pooled fund account indicating securities acquired for the account and the identity of the party in possession of such securities;
 - (iii) a copy of the most recent audited financial statements of the custodian prepared together with such information regarding the policies and procedures of the custodian as the scheme fund or pooled fund may request in connection with the agreement or the duties of the custodian under that agreement.

- (h) exercise subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the manager; exercise the same standard of care that it would exercise over its own assets in holding, maintaining, servicing and disposing of property and in fulfilling any other obligations in the agreement:

Provided that the custodian shall exercise the degree of care expected of a prudent professional custodian for hire.

(3) Except in a case where a scheme fund or a pooled fund holds offshore investments, a custodian in discharging its contractual functions to the scheme fund, or a pooled fund, shall not contract out the discharge of the custodian services to third parties.

(4) An agreement between a scheme fund or a pooled fund and a custodian shall make provision for the computation of the fee in respect of custodial services.

Termination of
custodian
agreement

33.-(1) An agreement between a scheme fund, or a pooled fund, and a custodian may be terminated at any time.

(2) In the event of termination of the agreement between a custodian and a scheme fund, or a pooled fund, the custodian shall within thirty days from the date of such termination hand over, and deliver all the assets, documents and funds including the bank account of the scheme held by such custodian to a custodian appointed in writing by the scheme fund or pooled fund.

(3) A custodian shall within thirty days or such shorter period as may be stipulated in an agreement from the date of deregistration or from the date a winding up order has been issued by a competent court against such custodian hand over, transfer and deliver all the assets, documents and funds including the bank account of the Scheme fund or pooled fund held by such custodian to a custodian appointed in writing by the scheme fund or pooled fund.

(4) A custodian shall within thirty days from the date of termination of the agreement arising out of a breach of such agreement by either party

submit to the Authority an audit reports indicating the assets, liabilities and an inventory of the scheme fund or pooled fund, securities and title documents of the scheme fund or pooled fund and assets which have been handed over, transferred and delivered to the appointed custodian.

(5) The party liable for the termination of the agreement shall meet the cost of the audit report referred to in paragraph (4).

(6) A scheme fund, or a pooled fund shall be served with an audit reports and inventory as specified in paragraph (4) before the handing over, transfer and delivery to the appointed custodian is effected.

34.-(1) A manager or a custodian shall be deemed to be insolvent in accordance with provisions of the Companies Act.

Insolvency
and
winding
up of a
manager
and
custodian
Cap. 212

(2) A manager or a custodian that is insolvent shall be wound up in the manner provided for in the Companies Act.

PART V

ADMINISTRATION OF POOLED FUND

35.-(1) The scheme rules may provide for the appointment, function, powers, duties and termination of appointment of a pooled fund for the purpose of investment and or custody of the scheme fund.

Rules
relating
to Pooled
funds

(2) The instrument appointing the pooled fund shall provide for the rights and obligations of the pooled fund to the trustees.

(3) A scheme authorized by its scheme rules to appoint a pooled fund may, under a written instrument, appoint a pooled fund whose duties shall include-

- (a) receiving and accounting for the scheme fund in the pooled fund;
- (b) keeping or causing to be kept such books, records and statements as may be necessary to give a complete record of-
 - (i) the value of the scheme fund in a pooled fund; and
 - (ii) the investment transactions in respect of the pooled fund carried out by the custodian as instructed by the manager

and shall permit, subject to notice, the scheme or any duly authorized agent to inspect within the premises of the pooled fund such books, records and statements at anytime during business hours;

- (c) submitting to the scheme within a period of three months from the end of the financial year, the audited accounts of the pooled fund;
- (d) notifying the scheme of the particulars of the manager and custodian of the pooled fund as may be sought by the scheme, which particulars shall include-
 - (i) the full name of the manager and custodian;
 - (ii) the physical and postal address of the registered office of the managers and custodian;
 - (iii) the date of the first and subsequent financial year of the manager and custodian;
 - (iv) the content of an agreement between the pooled fund and the manager and the custodian; and
 - (v) any other particulars as the scheme may request from the pooled fund;
- (e) submitting to the scheme at least quarterly from the date of commencement of the financial year of the scheme-
 - (i) a valuation of the scheme fund in a pooled fund;
 - (ii) a report reviewing the investment activities and performance of the investment portfolios comprising the pooled fund since the last report date and containing the manager's proposals for the investment of the pooled fund; and
 - (iii) a record of all investment transactions of the pooled fund during the previous period,
- (f) issuing proper instructions as provided for in the agreement to the custodian and managers;
- (g) furnishing the scheme with a copy of the most recent audited financial statements of the manager and custodian and with such information as may be sought by the scheme; and
- (h) exercising the same standard of care that it exercises of its own assets in fulfilling any other obligation in the agreement.

(4) All monetary benefits, commissions or gain arising directly or indirectly out of the pooling of the scheme fund shall be credited into the pooled fund account.

(5) An agreement between a scheme and a pooled fund shall make provision for computation of the fees in respect of the pooling services.

(6) In the event of termination of the agreement referred to in paragraph (2) the pooled fund shall within ninety days from the date of termination, handover, transfer and deliver to a manager or another pooled fund appointed in writing by the scheme-

- (i) the fund representing the value of the scheme fund in a pooled fund which shall be equal to the market value, at the time of transfer of the scheme fund invested in the pooled fund plus a proportionate share of all accrued investment income commissions, fees and direct and indirect gains from investing the pool fund less the proportionate share of all accrued investment income commissions, fees and direct and indirect gain from investing the pooled fund less the proportionate share pre-agreed professional fee due to the pooled fund account;

Provided that where liquidation of assets of the pooled fund may lead to material adverse financial loss, the pooled fund and the scheme may negotiate an in-specie transfer of assets to the scheme at arms length market value:

- (ii) the statement pertaining to the entire scheme fund;
- (iii) any other information as may be reasonably required by the scheme.

(7) Trustees shall jointly and severally be liable for any appointment of the pooled fund that does not meet the qualifications and requirements set out for pooled funds in these Regulations.

36.-(1) In determining whether a pooled fund has the qualification to be appointed by a scheme for the purpose of investing the scheme fund, a scheme shall consider whether a pooled fund-

- (a) is established by a limited liability company with a minimum paid up share capital of one hundred per centum of the total

Qualifica-
tion of
pooled
fund

risk the manager carries or as may be prescribed by the Minister.

(b) has-

- (i) the professional and technical capacity and adequate operational systems to manage a pooled fund; and
- (ii) developed a prudent investment policy for the investment of pooled funds in accordance with the guidelines issued by the Bank.

(2) A scheme shall not appoint a pooled fund unless such pooled funds consist only of scheme funds maintained separately at all times from any other funds under control of the pooled fund.

(3) A scheme shall ensure that a pooled fund keeps or has cause to be kept a designated account for the scheme fund of such scheme in the pooled fund.

No
penalty
clause
agreements

37. An agreement between a scheme and a pooled fund, custodian or manager shall not include a clause whose purpose and intent is to penalize a scheme financially or otherwise on account solely of determination wherever such scheme opts to terminate the said agreement.

PART VI

TRANSFERS AND AMALGAMATION OF SCHEMES

Amalgamation
and
Transfers

38.-(1) No amalgamation of schemes or transfer of any scheme fund from one scheme to another shall be valid unless-

- (a) the arrangements and particulars for the proposed amalgamation and transfer, including copies of current actuarial reports, in respect of the schemes and other statements taken into account for the purposes of the amalgamation and transfer, have been submitted to the Authority;
- (b) the Authority has been furnished with such additional particulars, or such specific reports by an actuary or auditor, as it may deem necessary for the purposes of this regulation;
- (c) the Authority is satisfied that the arrangements referred to in paragraph (a) accords full recognition to the responsible expectations of the members of the schemes concerned, and

that the proposed transaction would not render any scheme which is a party thereto and which will continue to exist if the proposed transaction when completed is unable to:

- (i) meet the requirements of the Act and these Regulations remain in a sound financial condition, or in the case of a scheme which is not in a sound financial condition, to attain a sound condition within the period of time deemed by the Authority to be satisfactory;
- (ii) the Authority has been furnished with such evidence as it may require to show that the provisions of the scheme rules of the concerned schemes in so far as they are applicable, have been carried out or that adequate arrangements have been made to carry out such provisions at such intervals as may be required by the concerned schemes; and
- (iii) the Authority has forwarded an approval in writing to the concerned schemes to the effect that all the requirements of this sub-regulation have been satisfied:

Provided that the Authority shall formally consider such application of approval within thirty days of receipt of all the information required under paragraph .

- (2) An amalgamation or transfer of a scheme fund shall not-
 - (a) diminish the retirement benefit of the members of such scheme;
 - (b) reduce the accrued benefit of its members;

(3) Whenever any transaction comes into force in accordance with the provisions of this regulation, the relevant assets and liabilities of the schemes so amalgamated shall respectively vest in and become binding upon the resultant scheme, or as the case may be, the relevant assets and liabilities of the scheme transferring its assets and liabilities or any portion thereof shall respectively vest in and become binding upon the scheme to which they are being transferred.

(4) Trustees of a scheme being amalgamated or transferred shall determine the application of the surpluses arising out of the amalgamation or transfer of such scheme.

(5) A transaction effected in terms of this regulation shall not deprive any creditor of any scheme thereto, except in his capacity as a member, of any right or remedy which he had immediately prior to that date against any scheme to the transaction or against any member of such scheme.

PART VII

MISCELLANEOUS PROVISIONS

Actuarial
valuation

39.—(1) Every scheme shall cause to have actuarial valuation within a period of five years in a prescribed form and submit a copy of the valuation report to the Authority and the employer within five months from the date of actuarial valuation.

Provided that in the case of a defined benefit scheme, the actuary shall provide for annual pension increases and determine a rate of increase of pension which shall apply until the next Valuation.

(2) Notwithstanding the generality of sub-regulation (1) the Authority may, when deem fit, call for a scheme to undertake actuarial valuation.

(3) A scheme shall within five months upon receipt of the actuarial report from the Actuary publish a notice to its members that such report or an abstract thereof is available in its office for inspection.

(4) Notwithstanding anything contained in these Regulations—

(a) the Authority may by notice require scheme or a pooled fund to be valued at the cost of such scheme or pooled fund by an actuary anytime in respect of any matter the Authority may deem appropriate;

(b) a scheme shall cause an actuarial evaluation or actuarial review to be carried out in the event of major benefits improvements, group transfers of members, significant changes in the membership size, termination; and

(c) amalgamations, or other special circumstances that affect its financial position.

(4) Where a valuation under paragraph (3) is made as at a date other than the end of financial year, the Authority may require that the accounts for the period since the expiring of the last financial year and statement of

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to the reserve account created under paragraph two and net profit arising from the sale of investment after restitution of any shortfall in the reserve account and any other income accruing to the scheme.

(2) in preparing a statement of income and expenditure the trustees may create and maintain a reserve fund with such sum as they shall in their discretion so determine:

Provided that the Authority may in writing require trustee to adjust the reserve fund to such level as it may so determined.

Valuation
of assets

42.-(1) In this regulation, "net realizable value" means the value which an assets or investment can realize upon disposal at arms length transactions less expenses payable to effect the disposal.

(2) Assets of a scheme shall be valued for the purpose of this regulation at values not exceeding their market or net realizable value and in particular

- (a) the value of land and buildings shall not exceed the value determined on the basis of a valuation by a registered valuer once in every three years or at such shorter interval as the Authority may otherwise permit in writing where the market value of any security, share, or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable, having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors; and
- (b) office machinery, furniture, motor vehicle, and computer equipments shall in the year of purchase be valued at one half of the cost thereof and shall be, in any subsequent financial year, left out of the accounts.

SCHEDULES

assets and liabilities on the date as at which the investigation is made be prepared and audited in a manner prescribed in the Act and in these Regulations.

(5) The actuarial method and assumptions selected by an actuary shall be stated and explained taking into account experience of the scheme to the extent that the information is available and significant, and shall reflect long term trends without giving undue weight to recent experiences.

(6) The Authority may require an actuarial valuation or review to be prepared on whatever basis it might prescribe in specific circumstances.

(7) Trustees shall prepare a certificate in the prescribed form that shall form part of the actuarial evaluation report.

40.-(1) No surplus of a scheme fund shall be directly or indirectly refunded to the employer.

Surplus
not
refundable

Provided that-

- (a) a contribution holiday for both employer and the member as shall be determined by an actuary shall not be construed to mean a refund of the surplus of a scheme fund; and
 - (b) any surplus of the scheme fund shall be wholly credited to the scheme fund for the benefit of the members.
- (2) Notwithstanding the provisions of sub-regulation (1);
- (a) any surplus of the scheme fund available after the winding up of the scheme may be refunded to the employer;
 - (b) where, in the opinion of an actuary, there is disclosed an actuarial surplus;
 - (c) the actuary may-
 - (i) recommend maintenance of the current contribution rate for such period of time as the surplus shall be exhausted;
 - (ii) recommend increase of benefit amount or number of benefits to members;
 - (iii) recommend review of the benefit formula.

41.-(1) The statement of the income and expenditure of a scheme here applicable shall be credited with income receivable; the amount debited

Accounting
procedure
for
invest-
ment