

*Statutory Instrument No. 38 of 2017*

RETIREMENT FUNDS ACT  
(Act No. 27 of 2014)

**RETIREMENT FUNDS REGULATIONS**  
*(Published on 11th April, 2017)*

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PART I – Preliminary

Citation  
Interpretation

1. These Regulations may be cited as the Retirement Funds Regulations, 2016.
2. In these Regulations unless the context otherwise requires –
  - “administration services” means the affairs of the fund that are administered by the fund in accordance with the provisions of the Retirement Funds Act, regulations, scheme trust deed, rules and any other legal documents related to the fund and instrument of appointment of the administrator;
  - “defined benefit fund” means a fund other than a defined contribution fund;
  - “defined contribution basis of funding” means with reference to the manner in which the retirement benefit is determined, means that each member receives a retirement benefit which is not guaranteed and which has a value equal to the balance on the member’s retirement in that member’s individual account;
  - “defined contribution fund” means a fund in which –
    - (a) each member receives a retirement benefit which is not guaranteed and which has a value equal to the balance on the member’s retirement in that member’s individual account;

- (b) any pension payable on retirement must be fully secured either through an annuity policy owned by the fund or through an annuity policy purchased in the name of the member, after which purchase the fund has no obligation towards the member; and
- (c) no reserve accounts are maintained that will cause the Regulatory Authority to require actuarial valuation of the fund;

“fund return” means —

- (a) in relation to the assets of a fund, any income received or accrued and capital gains and losses realised or unrealised, earned on the assets of the fund, net of expenses and tax charges, associated with the acquisition, holding or disposal of assets; or
- (b) in relation to any portion of the assets of a fund if the assets are separately identifiable, any income received or accrued and capital gains and losses realised or unrealised, earned on those assets, net of expenses and tax charges, associated with the acquisition, holding or disposal of those assets;

Provided that where an asset is a policy of insurance, fund return means the growth rate or bonus rate as declared on that policy by the insurer, whether positive, negative or nil;

“liquidator” means the liquidator appointed by the Board of a fund, or authorised representative and whose appointment has been approved by the Regulatory Authority in terms of section 29 of the Act;

“member’s individual account” means, in relation to a defined contribution fund, an account to which the following amounts are credited —

- (a) any contributions paid by, or on behalf of the member, less such expenses as the board shall determine;
- (b) any transfer value received from another fund;
- (c) any amount which represents the member’s opening balance on conversion of the fund from a defined benefit to a defined contribution basis of funding, as determined by the actuary;
- (d) any shares of surplus, approved by the board;
- (e) fund return; and
- (f) such interest declared by the board from time to time and which is debited with any benefit payable, or any transfer of the balance in the account after payment of the benefit due to the member into a reserve account on exit of the member;

Provided that where such an accounting structure is not maintained by the fund, such amount as shall approximate what would have applied if such an accounting structure had been maintained;

“pensionable income” means the income of a member of a pension fund or provident fund on which the benefits payable from the fund are to be calculated, whether referred to as salary, pensionable salary, pensionable income or any similar term considered by the Regulatory Authority to be suitable;

“retirement annuity fund” means a pension fund —

- (a) established for the sole purpose of providing life annuities for the members of the fund or annuities for the dependants or nominees of deceased members;
- (b) whose rules satisfy the requirements of such a fund as defined in the Income Tax Act and in which no employer — employee relationship is required before a person is eligible to become a member;

- \* "sub-fund" means a fund established by a participating employer who contributes to a multi-employer fund and has been admitted to participate in the multi-employer fund under the multi-employer fund rules; and "trustee" means a board member of a fund.

PART II – *Licensing Requirements*

Application for retirement fund licence

3. An application for a retirement fund licence, shall be made to the Regulatory Authority in Form A set out in Schedule 1, and shall be accompanied by the following —

- (a) three copies of the rules of the fund;
- (b) an application letter from the employer, stating that it wishes to start a retirement fund;
- (c) a statement from the principal officer setting out the method of funding;
- (d) three year projection of the fund growth in terms of membership, assets including projected interest earnings;
- (e) proof of consent from members;
- (f) licensing fee as determined by the Regulatory Authority; and
- (g) any other information that the Regulatory Authority may deem necessary in determining the application.

Rules of fund

4. (1) The rules of a fund shall provide for the appointment of —
- (a) board members and their remuneration if applicable, as well as their duties, dismissal and their powers;
  - (b) the principal officer including compliance with fit and proper requirements as determined under regulation 16 (4) (a), and his or her remuneration and dismissal;
  - (c) the management committee in the case of a multi-employer fund and board member of the fund, its remuneration, duties and dismissal thereof;
  - (d) service providers of the fund, their payment, duties and termination;
  - (e) a valuator including the terms and conditions of their appointment;
  - (f) an auditor and administrator which shall be consistent with provisions of section 19 of the Act, and who shall have registered offices in Botswana; and
  - (g) an actuary and an investment advisor.

(2) Notwithstanding anything contained in the provisions of this regulation, the rules shall make reference to the following —

- (a) the full name of the fund;
- (b) a reference to any name changes that the fund might have undergone;
- (c) the date of commencement of the fund and the date of the first and subsequent financial year end;
- (d) the physical address of the licensed office of the fund;
- (e) the objects of the fund;
- (f) the type of fund;
- (g) a list of definitions, in alphabetical order, defining the terms which are frequently used in the rules;
- (h) the power of the board to elect and remove a board member;
- (i) the powers of investment of the retirement fund and the duty of the board of the fund to adopt, implement and communicate to members an investment policy appropriate to the nature and the circumstances of the fund;

- (j) that the investment strategy of a defined benefit fund shall be approved by the employer;
  - (k) provisions and conditions regarding actuarial investigations if the fund is subject to the provisions of section 25 of the Act, or alternatively the intention to seek exemption from the provision of section 25 of the Act; and
  - (l) the manner in which contracts and other documents binding the fund shall be executed.
- (3) The rules of a fund shall if it is a multi-employer retirement fund provide for —
- (a) a specific indication as to whether the fund is a multi-employer fund or is established for the participation of employees of a principal employer and its subsidiaries;
  - (b) the name of the sponsor and its registered address;
  - (c) the opening of a bank account in the name of the fund unless the fund operates wholly through a policy of insurance; and
  - (d) the types of accounts that the fund may operate internally to facilitate its administration.
- (4) The rules shall provide for a detailed exposition of the eligibility conditions for joining the fund and the circumstances under which membership shall cease, with specific reference to the following —
- (a) the class or classes of person who are, or may, in due course, become eligible to join the fund;
  - (b) whether membership shall be compulsory or not, as well as any period within which current employees may exercise a choice, if applicable;
  - (c) the conditions of membership relating to deferred pensioners if any; and
  - (d) mutual transfer arrangements with any other fund if any:
- Provided that the rules shall not contain any provision, the effect of which would be to render admission to membership subject to exercise of discretion by any person.
- (5) Without derogating from the provisions of this regulation, the rules shall also specify —
- (a) the definition of pensionable income applicable in relation to each category of member which shall include the basic income, salary or wage payable to the member, and may include the whole or part of any regular contractual commission or bonus payable to the member and of any other allowance considered by the employer to be suitable for inclusion;
  - (b) the rate of contributions which shall be expressed as a percentage of a member's pensionable income or, where it is not related to income, set out in a scale;
  - (c) if rules require a participating employer to make compulsory contributions to the fund, specify the basis of calculating contributions;
  - (d) where a participating employer deducts the contributions of a member from his or her remuneration, the employer shall pay to the fund that contribution, and the corresponding contribution referred to in regulation 26, within seven days from the end of the calendar month in respect of which the contributions are payable;

- (e) that if a participating employer fails to make the payment required in terms of regulation 26, the principal officer shall report the failure to the Regulatory Authority within seven days;
- (f) for the acceptance of sums without a maximum which are transferred to the fund by the principal officer on the instructions or at the request of a member from another fund:

Provided that a recipient fund shall not be required to comply with this subregulation if the fund is a fund the membership of which is not a condition of employment with a participating employer;

- (g) that a member may make additional voluntary contributions to the fund, in which case the maximum amount payable in each period shall be specified and it shall be stated whether the continuation of such voluntary contributions may be revoked by the member;
- (h) if pensionable income is reduced, the member may elect to contribute to the fund at an increased rate so that his or her contributions are not less than they would have been if his or her pensionable income had not been reduced:

Provided that where the rules require a participating employer to make compulsory contributions the rules shall provide that the consent of the member's employer shall be required for the payment of these increased contributions;

- (i) that a participating employer may make a special contribution to the fund in order to restore the fund to a financially sound condition;
- (j) the acceptance of sums without a maximum which are transferred to the fund by another fund on the instructions of or at the request of a member:

Provided that —

- (a) the member is a former member of that other fund; and
- (b) acquired a right to such sums as a benefit on the cessation of membership of that other fund;
- (c) a fund shall not be required to comply with this paragraph if membership of the fund is not a condition or benefit of the terms of employment of the member with a participating employer;
- (k) the normal retirement age for each category of member;
- (l) the nature, extent and method of calculation of every benefit granted by the fund, as well as the payment thereof to any member or other person entitled thereto, in respect of —

- (i) normal retirement, early retirement in good health, early retirement in ill-health, death before retirement, resignation, dismissal, retrenchment and redundancy:

Provided that individual retirement funds need not make provision for resignation, dismissal, retrenchment and redundancy, and

- (ii) if applicable, late retirement, deferred benefits and death after retirement:

Provided that —

- (aa) the rules shall not provide for differential rates of benefit within a single category,
- (bb) the board may increase a benefit defined in the rules subject to the consent of the employer and the Regulatory Authority,

- (cc) the rules shall not permit a member to participate in only part of the benefits unless he or she is subject to a medical restriction imposed in terms of the rules,
  - (dd) provision shall be included for the preservation of benefits on resignation, dismissal, retrenchment and redundancy, at the request of the member, through transfer to a preservation fund or another fund which the member has joined, and
  - (ee) on written application by the fund, the Regulatory Authority may authorise any variation of the benefits due to or in respect of a member not elsewhere provided for in this subregulation; and
  - (m) the protection of the fund and assets against any manner of insurable risk and financial loss arising out of any negligence, default or willful default on the part of any of its officers, trustees, administrator, manager or custodian either by way of a guarantee from the sponsor or by way of insurance of such amount as the trustees may deem adequate.
- (6) The rules may be altered and shall specify —
- (a) manner of altering, rescinding or adding to any rules;
  - (b) the manner in which any dispute between the fund and its members or between the fund and any other person whose claim is derived from a member shall be settled;
  - (c) the safe custody of title deeds or any other securities belonging to or held by the fund, in particular the use of a custodian independent of the fund and its sponsor to hold such title deeds and other securities;
  - (d) subject to the provisions of section 28 of the Act, the manner and circumstances under which the fund shall be terminated or dissolved, with specific reference to —
    - (i) total or partial dissolution,
    - (ii) the appointment of a liquidator, to be approved by the Regulatory Authority,
    - (iii) any transfers of participating employers to, or amalgamation of the fund with any other fund, and
    - (iv) the position of persons whose membership ceased during the 12 months period immediately prior to the date of liquidation;
  - (e) the transfer or amalgamation of the business of the fund, or any part thereof, with that of any other fund or person:
 

Provided that no provision may be so made for the transfer of such benefits from a pension fund to a provident fund or the receipt of such benefits by a provident fund from a pension fund;
  - (f) the manner in which unclaimed benefits shall be dealt with upon the —
    - (i) death of a member including a deferred pensioner,
    - (ii) liquidation of the fund, and
    - (iii) withdrawal of a member from the fund;
  - (g) approval by the employer where the board exercises its discretion in such a way as to impose a financial obligation on the employer.



- (h) that the principal officer may advise the Regulatory Authority where the employer refuses with its consent to pay a contribution rate recommended by the actuary to restore the fund to, or maintain the fund in, a financially sound condition; and
- (i) that a member who is over the age of 55 years shall not make a withdrawal benefit from a fund on resignation, dismissal or retrenchment from employment.

Amendment of  
rules of fund

5. (1) The rules of the fund shall state the procedure and reasons for an amendment or repeal of the rules.

(2) No amendment or repeal of the rules shall come into effect until the Regulatory Authority approves the amendment or repeal of such rules.

Special provision  
relating to  
preservation fund

6. The rules of the preservation fund shall comply with section 12 of the Act and regulation 32.

Special provision  
relating to  
beneficiary fund

7. The Regulatory Authority shall not licence a beneficiary fund unless it is satisfied that it meets the requirements as set out in section 11 of the Act.

Special provision  
relating to  
external fund

8. (1) The Regulatory Authority shall not licence an external fund to operate in Botswana unless it is satisfied that —

- (a) it meets the requirements as set out in section 10 of the Act; and
- (b) the rules of the fund provide a similar level of member protection to that provided under the Laws of Botswana.

(2) An application for licensing of an external fund shall be accompanied by the following —

(a) information —

- (i) the full name of the fund,
- (ii) the full name and address of the fund administrator,
- (iii) the full name and address of any supervisory authority to which the fund is subject in the jurisdiction in which the fund is established,
- (iv) the full name and address of the custodian,
- (v) the jurisdiction in which the fund is operated,
- (vi) the total membership of the fund divided in terms of the number of members resident in Botswana and the rest of the members,
- (vii) the full names and addresses of a representative or a principal officer and a representative of the fund members in Botswana, and
- (viii) the physical address where facilities will be maintained to enable the following —
  - (aa) members to obtain benefit statements and payment of pension benefits,
  - (bb) the rules of the fund and the annual and half yearly reports to be examined free of charge and copies to be obtained if required, and
  - (cc) complaints to be made for forwarding to the head office of the fund; and

(b) documentation —

- (i) application form,
- (ii) a statement or certificate from the supervisory authority of the fund, confirming that it has been authorised,

- (iii) a certified copy of the rules of fund and any amendments thereto,
  - (iv) the audited financial statements of the previous three years,
  - (v) exemption letter from the actuary where applicable,
  - (vi) the investment policy of the fund,
  - (vii) a compliance letter from the supervisory authority of the fund, and
  - (viii) a copy of any other document affecting the rights of the members in the fund.
- (3) Documentation submitted to the Regulatory Authority shall be in English.
- (4) Where an external fund which existed at the date of coming into operation of the Act has admitted members resident in Botswana, such fund shall have six months from the date of operation of these Regulation within which to obtain a licence, failing which those members resident in Botswana shall cease to be members of that fund.
9. (1) A person shall not carry on the business as a multi-employer retirement fund, or an individual retirement fund without a licence issued by the Regulatory Authority.
- (2) The Regulatory Authority may, on application made by a multi-employer or individual retirement fund, issue a license to carry on business as a multi-employer or individual retirement fund.
- (3) The Regulatory Authority shall satisfy itself that –
- (a) the sponsor of a multi-employer fund appoints an administrator approved by the Regulatory Authority and is in compliance with section 19 of the Act; and
  - (b) obligations of the employer are fully set out in the rules that provide defined benefits and employer contribution.
- (4) A multi-employer fund shall be licensed in terms of regulations 3.
- (5) No employer shall join a multi-employer fund prior to licensing and approval of such fund by the Regulatory Authority.
- (6) An employer that wishes to apply for a licence to join a multi-employer fund shall submit to the Regulatory Authority an application for licensing in Form B set out in the Schedule 1, and shall be accompanied by the following –
- (a) a covering letter, specifying the name of the fund administrator;
  - (b) a licensing fee as determined by the Regulatory Authority;
  - (c) proof of consent of members;
  - (d) cost to the members and employers;
  - (e) where applicable, a charter between the board and the management committee;
  - (f) a management committee shall consist of a minimum of three members; and
  - (g) three copies, to be read in conjunction with the main rules of the multi-employer fund, duly signed by a representative of the participating employer and the principal officer of the multi-employer fund.
- (7) The rules applicable to a sub-fund shall provide for the following –
- (a) full name of the participating employer, including reference to any prior changes of the name;
  - (b) date of commencement of participation of the employer in the fund;

Special provision relating to multi-employer and individual retirement fund

Application for  
licence as  
retirement fund  
administrator

- (c) a list of definitions, defining the terms which are frequently used in the rules, and which bear a special connotation;
- (d) registered physical address of the participating employer;
- (e) eligibility for membership;
- (f) contribution rates of both employer and employees;
- (g) retirement age encompassing normal, early and late retirement;
- (h) benefits disability and death;
- (i) mode of communication to members; and
- (j) any other information of importance specific to the sub-fund.

10. (1) An application for a retirement fund administrator's licence, or the renewal thereof, shall be made to the Regulatory Authority in Form C set out in Schedule 1, and shall be accompanied by the following documents —

- (a) contact details of parties assisting with the application;
- (b) particulars of the directors and senior managers;
- (c) questionnaire for directors and senior managers;
- (d) particulars of service providers;
- (e) questionnaires for service providers;
- (f) risk management plan;
- (g) business plan which shall contain, amongst others, the following —
  - (i) business strategy and objectives of the fund administrator,
  - (ii) the services to be rendered,
  - (iii) financial projection, and
  - (iv) implementation plan;
- (h) certified copies of incorporation documents;
- (i) structural chart of the company group, where applicable;
- (j) organisational chart of the fund administrator;
- (k) sample contract and service level agreement to be used in respect of a client pension or provident fund;
- (l) copy of the fund administrator's professional indemnity insurance policy;
- (m) copy of report by an insurance professional advising on the amount of professional indemnity cover to be held;
- (n) overview of administration system, controls and reporting capabilities of the administrator;
- (o) declaration from the auditors that the systems and controls have been investigated and have been found to be appropriate for a fund administrator or a qualified declaration that identifies the issues that the fund administrator may have to address;
- (p) disaster recovery plan;
- (q) the latest three years audited accounts and management letters of the applicant company, where applicable;
- (r) ownership structure of the applicant in columnar format showing the name and profession, business of proposed investors, address, percentage shareholding, qualifications and resume of a shareholder;
- (s) the non-refundable application fee as determined in the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations;
- (t) board resolution permitting the institution to undertake fund administration services;
- (u) application for approval of board members and their qualifications; and

(v) attestation that the applicant or its subscribers, directors or officers have never mismanaged, either fully or partially, any fund.

(2) An organisation wishing to be licensed to carry on the business of a retirement fund administrator shall satisfy the following requirements, and shall submit evidence that it —

- (a) is a limited liability company duly incorporated under the Companies Act;
- (b) shall not engage in any business other than the management of retirement funds;
- (c) has the professional and technical capacity to manage retirement funds and administer retirement benefits;
- (d) has satisfied all requirements determined by the Regulatory Authority, other relevant laws or any such additional requirements or conditions as may be determined from time to time by the Regulatory Authority; and
- (e) possesses appropriate information and communication technology that could adequately cater for online real-time transactions in addition to keeping proper accounting records.

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(3) Where a company is seeking to be licensed as a fund administrator, the minimum paid up share capital including unimpaired reserves of the company shall be P500 000 or such value as the Regulatory Authority may from time to time determine.

(4) A company rendering administration services to a fund shall at all times have in its senior management at least four persons who are academically and professionally qualified in matters relating to administration of retirement funds, and at least one person in any of the following disciplines —

- (a) insurance;
- (b) law;
- (c) accounting;
- (d) actuarial science;
- (e) economics;
- (f) banking;
- (g) finance; or
- (h) investment of scheme funds.

### PART III – Governance of Funds

11. (1) Any person who wishes to become a board member of a retirement fund shall apply to the Regulatory Authority.

(2) An applicant referred to in subregulation (1) shall —

- (a) understand the rules of the fund, and his or her duties as a board member and shall be aware of applicable financial services laws and any other relevant legislation that may affect his or her actions as a board member; and
- (b) appreciate his or her duties in relation to the annual financial statements, the returns required by the Regulatory Authority, and the communication to fund members.

(3) The Regulatory Authority may prescribe the level of skill and training that a board member shall attain to be deemed fit and proper.

Minimum  
standard of  
board member

(4) The Regulatory Authority shall give the existing board members 12 months from the date of the commencement of these Regulations to attain the necessary skills.

(5) No person may be appointed or elected as a board member if that person –

- (a) is below 18 years of age;
- (b) is mentally incompetent or otherwise incapable of performing the duties required;
- (c) is disqualified from being a director in terms of a court order issued under the Companies Act;
- (d) is an unrehabilitated insolvent;
- (e) has been removed from an office of trust on account of misconduct; or
- (f) has been convicted and sentenced either to imprisonment without the option of a fine or to a fine exceeding P100 for any one of the following offences –
  - (i) theft,
  - (ii) fraud,
  - (iii) forgery or uttering a forged document,
  - (iv) perjury,
  - (v) any offence involving dishonesty, or
  - (vi) any offence in connection with the promotion, formation or management of a company.

(6) A person who is appointed as an independent specialist trustee shall –

- (a) not be an employee, agent, director or shareholder of any service provider;
- (b) have extensive experience in the retirement fund industry;
- (c) have the experience of a trustee not limited to retirement funds but shall have a general understanding of the industry;
- (d) have good communication skills; and
- (e) provide general retirement fund expertise to the board.

(7) A principal officer shall design and implement an appropriate training programme for the board members after assessing their training needs.

Duties of board

12. (1) The board –

- (a) may delegate its functions, if it elects to do so, to a person or committee, subject to any conditions as the board may decide.
- (b) shall ensure the delegation is in writing and is in line with the system of delegation laid out in the rules of the fund.
- (c) shall act in accordance with the rules that require the board to ratify any decision or action taken by a delegate or committee where such rules exist;
- (d) is not relieved of its functions once delegated and remains responsible for any decisions taken by the delegate or committee; and
- (e) may in writing, withdraw the delegation at any time.

(2) A trustee shall –

- (a) inform the Regulatory Authority, in writing, of any information relating to the affairs of the fund, which in the trustee's opinion may seriously prejudice the financial soundness of the fund or its members as soon as the trustee becomes aware of any such information;
- (b) act independently and exercise powers in a manner that is impartial and not influenced by inappropriate considerations;

- (c) ensure that the fund is financially sound, responsibly managed and governed in accordance with its rules and the Act;
- (d) ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, duties and benefits; and
- (e) submit a report where he or she resigns voluntarily or where his or her term of office expires.

13. (1) A multi-employer fund, preservation fund or retirement annuity fund may apply to the Regulatory Authority to be granted an exemption from having fund members elect board members for the fund.

Exemption from requirement that fund member have right to elect board member

(2) A multi-employer fund, preservation fund or retirement annuity fund which applies for exemption under subregulation (1) shall have at least three board members and one independent board member.

(3) The quorum for a meeting shall be three members including the independent member.

(4) The independent board member shall not be an employee of a retirement fund, the administrator or the sponsor of the fund.

(5) The independent board member shall not provide any other services to the fund or the employer or sponsor.

(6) Any variation from exemptions shall be stipulated in writing when the relevant rules or rule amendments are submitted to the Regulatory Authority for registration.

(7) The applicant shall satisfy the Regulatory Authority that –

- (a) the standard of record keeping, payment of benefits and general fund administration shall not be affected by the exemption;
- (b) the fund shall have sufficient expertise to manage and invest its assets; and
- (c) the fund shall have sufficient internal controls.

(8) The Regulatory Authority shall issue an exemption on a case by case basis and may call for such further information as it deems fit, having regard to the particular circumstances of the fund.

(9) Exemption granted by the Regulatory Authority shall be for a period not exceeding three years on condition that should the conditions upon which the fund was exempted change materially, the fund shall disclose these changes to the Regulatory Authority within seven days of the change.

(10) The fund may apply for an extension of the exemption three months before the date of expiration.

14. (1) The board of a fund shall have an assessment carried out annually, by an independent expert to monitor its performance, processes and procedures and report his or her findings to the Regulatory Authority.

Assessment of board of fund

(2) The assessment shall cover the following –

- (a) the composition of the board in terms of its compliance with the rules and the Act, and the skills and experience of the board members;
- (b) adequacy of the governance structures for the fund;
- (c) effectiveness of board meetings in dealing with the most important issues;
- (d) ability of the board to interact freely, express their own opinions, and operate effectively as a team;
- (e) board packs provide adequate and timeous information;
- (f) board minutes are accurate and produced on time;

- (g) the chairperson conducts his or her mandate effectively;
- (h) financial control is adequate, including budgeting and monitoring variances across the year;
- (i) board members engage in continuing education on trusteeship and changes in the industry;
- (j) board member understands his or her duties, and the code of conduct;
- (k) any conflict of interest is avoided, or, where unavoidable, is declared and managed;
- (l) proper records are kept;
- (m) proper internal control system is employed;
- (n) adequate and appropriate information is communicated to stakeholders;
- (o) contributions are collected timeously and contributions in arrears are reported to the Regulatory Authority;
- (p) the board obtains expert advice on matters where it lacks sufficient expertise;
- (q) the board ensures that rules, operations and administration of the fund comply with legislation;
- (r) the board ensures that adequate fidelity insurance cover is maintained;
- (s) the board ensures that investment is maintained in accordance with a written investment policy statement that is communicated to stakeholders;
- (t) the board ensures that an appropriate risk management strategy is implemented; and
- (u) the board ensures that effective strategic planning is carried out.

Code of  
conduct for  
board of fund

15. (1) Every trustee and any other person involved in the administration of a fund shall sign a code of conduct as described in subregulation (2).

(2) A code of conduct for a board of a fund shall contain provisions relating to the following —

- (a) management of the fund in accordance with the licensed fund's rules;
- (b) acting with honesty, in good faith and with the highest standard of care, diligence and skill expected of a person dealing with the assets of another person;
- (c) management of conflicts of interest, ensuring that any actual or perceived conflicts are fully disclosed, with the board members recusing themselves from any discussion of such matters in respect of which they are, or may be perceived by stakeholders of the fund to be conflicted;
- (d) acting with impartiality in respect of remaining members and former or transferring members when a fund is terminated, when members cease to be eligible to be members, or when members are moved from one fund to another;
- (e) obtaining expert advice where the fund lacks sufficient expertise and the discretion of the board when dealing with such expert advice;
- (h) identification and management of risks related to the fund, in terms of a risk management policy, and to review that policy at least once biannually;
- (i) establishment of such other policies as may be required by legislation, such as the investment policy and communication policy;
- (j) use or disclosure of confidential information; and
- (k) how gifts or courtesies to the board members may be disclosed and the procedure for such disclosure.

(3) If a board member acts in contravention of any of the responsibilities imposed on him or her in terms of the rules, the remaining board members may by simple majority vote to take disciplinary action and impose a sanction on such member as provided for in the code of conduct.

**16.** (1) A fund shall not appoint a principal officer without the approval of the Regulatory Authority.

Principal officer  
of licensed fund

(2) The principal officer shall be appointed in terms of section 17 of the Act and shall complete a declaration in Form D set out in Schedule 1.

(3) A fund that is starting up shall submit the required documentation of the proposed principal officer with the application for licensing of that fund, except where the fund is participating in a multi-employer fund.

(4) When appointing a person as a principal officer, the fund shall ensure that the person —

- (a) is fit and proper;
- (b) submits to the Regulatory Authority a police and security vetting clearance form;
- (c) has sufficient education, experience and skill to hold the office of principal officer; and
- (d) submits to the Regulatory Authority, his or her qualifications and experience.

(5) No fund shall employ as its principal officer any person who —

- (a) has been adjudged an undischarged bankrupt or insolvent in any country;
- (b) has made an assignment to or arrangement or composition with creditors which has not been rescinded or set aside;
- (c) has been convicted by any court in any country of an offence involving dishonesty or of an offence in terms of the Act, for which the applicant was imprisoned without the option of a fine;
- (d) does not meet the experience and qualification requirements determined by the Regulatory Authority; or
- (e) is in the opinion of the Regulatory Authority, an unfit person to hold the office.

(6) The rules of the fund shall provide that if the principal officer is for any reason unable to discharge any duties imposed upon him or her, under the Act for a period of a month or more, an acting principal officer shall be appointed with the approval of the Regulatory Authority, and the Regulatory Authority shall be notified of the reasons why the principal officer cannot discharge his or her duties.

(7) When a principal officer of a retirement fund resigns or his or her contract of employment is terminated, he or she shall notify the Regulatory Authority in Form E set out in Schedule 1.

**17.** (1) A board of a fund shall have an investment policy document for the fund, and the investment policy shall include an investment strategy.

Investment  
policy

(2) The investment policy document shall be submitted to the Regulatory Authority —

- (a) at least once every three years, and
- (b) at anytime notwithstanding (a), where there is any material change made to the investment policy.

(3) The board shall consult experts with sufficient skill and experience to advise the board on an appropriate investment strategy, unless the board itself includes members with sufficient skill and experience to perform such a function.



(4) The board shall establish an investment strategy that shall take due account of –

- (a) the investment objectives of the fund;
- (b) the nature and term of the liabilities of the fund;
- (c) the funding methods used in the fund, including, in the case of a defined contribution fund, any smoothing of investment returns accrued to individual member accounts;
- (d) the effect of taxation on the investment return earned;
- (e) the need to diversify the assets of the fund; and
- (f) the risks to which the assets and the liabilities of the fund will be exposed.

(5) Where the strategy does not restrict pooled investment portfolios offered through insurance policies or collective investment undertakings –

- (a) the strategy shall set out what percentages of the total fair value of the assets of the fund may be invested in each of the various classes and categories of assets, and powers the investment manager will have to diverge from the agreed allocations with, or without, the consent of the board, subject to the limits set out in terms of the administrative rules in section 52 of the Act;
- (b) the strategy document shall include the criteria upon which investment managers shall be selected and the manner in which, and the frequency with which, their performance shall be assessed;
- (c) if performance assessment requires the use of a benchmark, such benchmark shall be included in the strategy document; and
- (d) where the fund will be investing only in pooled investment portfolios offered through insurance policies or collective investment undertakings, the strategy document shall set out the criteria with which such investment portfolios shall be selected and the manner in which, and the frequency with which, their performance shall be assessed.

(6) An actuary shall issue a certificate referred to in subregulation (7) confirming that he or she is satisfied that the strategy is consistent with the objectives of the fund and the management of the risks to which the fund is exposed, and that the strategy will result in an appropriate relationship between the assets and the liabilities of the fund.

(7) The actuary shall issue a certificate referred to in subregulation (6) to this effect whenever the investment strategy is changed to a material extent, or, failing such a change, at least once every three years:

Provided that if the fund is –

- (a) exempt from actuarial valuation, or application is to be made for such exemption, such a certificate shall accompany the request for exemption or renewal of this exemption; or
- (b) not exempt from actuarial valuation, such certificate shall accompany the report on the valuation submitted in terms of section 25 of the Act.

(8) Where the fund is holding investments registered in its own name, the board shall select an investment advisor who it considers to be competent to carry out its strategy.

(9) Where the fund invests in either a collective investment undertaking or a policy of insurance, the board shall select a collective investment undertakings or insurance policy which will satisfy their strategy, after satisfying itself that the manager of the collective investment undertakings or insurer is competent to carry out the stated mandate for that collective investment undertaking or insurance policy and the fund may enlist the advice of an investment adviser in this regard.

(10) A board member and any advisor assisting in selecting an investment manager, collective investment undertakings, or insurance policy, shall disclose any actual or potential conflict of interest that he or she may reasonably be expected to have knowledge of, including any benefit that he or she will derive personally or that will be derived by their employer as a result of the actual or potential placement of the investments of the fund.

(11) The board shall monitor the performance of the investment manager, insurance policy or collective investment undertakings including any comparison of performance to the benchmark identified in the strategy document, where appropriate, using the methods and frequency set out in the strategy document.

(12) The board shall review the investment strategy either when there is a material change to the fund or in anticipation of a major change, or, failing such a change, on at least an annual basis.

(13) For the purpose of this subregulation, a material change to the fund includes —

- (a) a change of 20 per cent or more in the membership of the fund;
- (b) a change in the benefit structure which will change the value of the accrued liabilities by 20 per cent or more;
- (c) a change in the asset and, or liability values by more than 20 per cent as a result of movement in the market;
- (d) the transfer of at least 20 per cent of the assets or liabilities into or out of the fund ; or
- (e) a change in valuation assumptions which has resulted in a change of more than 20 per cent to the actuarial values of either the assets or the liabilities.

(14) The board shall report to the Regulatory Authority at the end of each financial year of the fund, providing the following information —

- (a) the split of assets by class of asset distinguishing between local investments and foreign investments, with an explanation where the asset composition is not in accordance with the strategy, if this is applicable; and
- (b) a statement signed by the chairperson of the board that the —
  - (i) investments are being managed in accordance with the strategy document,
  - (ii) board is monitoring the performance of the investment managers, or the pooled investment portfolio, in accordance with the strategy document, and
  - (iii) board has reviewed the strategy with their professional advisors who may be members of the board, or employees of the fund or employees of the sponsoring employer, including the actuary to the fund.

(15) The board shall report annually to members, the strategy in summary form and in such manner as shall be determined by the board which may differ between active members, pensioners and deferred pensioners, in such a way that a typical member may be able to understand the —

- (a) objectives set for the investment manager, where investment is in assets other than pooled investment portfolios offered through policies of insurance or collective investment schemes, and reconcile these objectives with the overall investment strategy set by the board; or

(b) strategy behind the selection of the particular pooled investment portfolio.

(16) The Regulatory Authority may, on the written application by a fund, exempt that fund from any provisions of the administrative rules referred to in section 27 (2) of the Act subject to such terms and conditions as it may impose:

Provided that —

- (a) a fund may be exempted from the quantitative limits set out in the standard where the pension fund demonstrates to the Regulatory Authority that the fund is of sufficient size and has access to appropriate expertise to enable it to determine and manage its own investment strategy; and
- (b) where an individual retirement fund is established for the benefit of employees who are non-citizens and employed in Botswana in terms of limited period contracts on the expiry of which they intend to leave Botswana, the fund may be exempted from the requirement that a certain proportion of the assets be invested in Botswana.

Communication  
policy

18. (1) A retirement fund shall have a communication policy which shall cover the following —

- (a) what information will be provided to each class of stakeholders covering all members, participating employers and beneficiaries;
- (b) such communication shall meet standards set down by the Regulatory Authority;
- (c) the language in which communication is provided shall ensure that the average member is able to understand the communication; and
- (d) the medium of communication and the time frame within which such communication is provided.

(2) The policy shall ensure the confidentiality of information owned by the fund and clarify what information may be given to members, employers, board members and service providers, subject to the code of conduct regulating the use and disclosure of confidential information under regulation 15(2) (k).

Risk management  
policy

19. (1) A retirement fund shall have a risk management policy which shall describe how a risk of the fund may be managed and who shall take responsibility for its management.

(2) A retirement fund shall establish a risk management committee which shall have a risk matrix to —

- (a) identify the major risks to which the fund is exposed, note the potential impact on the fund of each risk and the likelihood of the risk occurring after such mitigating actions as the board of the fund deems reasonable;
- (b) rank the risks according to priority for attention by the board, and note the mitigating actions that the board of the fund or service providers will take to manage the risk;
- (c) identify who takes responsibility of managing risks;
- (d) be reviewed each time the board meets with attention being given specifically to any high risk items and to any new risks identified since the board met previously; and
- (e) be available to the Regulatory Authority on request

(3) The risk management policy shall be reviewed biannually or in cases where there is a need to make modifications in the existing policy to bring it in line with the requirements of the prevailing legislation.

PART IV – *Financial Reports*

20. (1) A fund shall, within four months after the end of its financial year, prepare and send to the Regulatory Authority under cover of a letter signed by the chairperson of the board and the principal officer of the fund, a copy of the audited annual financial statements of the fund together with a report signed by the auditor and such other reports that the Regulatory Authority may require.

Financial  
statements  
by funds

(2) The financial statements and reports shall be presented in a format determined by the Regulatory Authority.

(3) The name of the fund and the financial year or date to which the document relates shall be shown on each of the documents submitted in terms of subregulation (1).

(4) In the case of a multi-employer fund, the sub-fund shall, within four months after the end of its financial year, prepare and send to the Regulatory Authority under cover of a letter signed by the representative of the management committee and the principal officer of the sub-fund, a copy of audited abridged annual financial accounts of the sub-fund.

(5) The minimum requirements of the financial accounts shall be —

- (a) total contributions;
- (b) unremitted contributions;
- (c) benefit payments;
- (d) returns on investments; and
- (e) expenses of the fund;

(6) In the case of an external fund, the Regulatory Authority may accept documents in a format other than that required in subregulation (1) if the information referred to in subregulation (1) is contained therein.

(7) Where the auditor is unable to sign a report in the form required by subregulation (1) without qualification, the auditor shall amend that report in such form as he or she considers appropriate provided the matters shown in that form are addressed, and include the reasons why he or she is unable to sign the report without qualification.

21. (1) The report on the financial condition of a fund, made after an investigation under section 25 (1) of the Act shall include —

Report on  
financial  
condition of  
fund

- (a) a summary of the membership of the fund, stating numbers of active members, deferred members and pensioners, pensionable income, and pensions in receipts;
- (b) a reconciliation of the membership at this valuation with the number at the previous valuation, summarised by type of membership change such as resignations, deaths or retirements;
- (c) a description of the steps taken by the actuary to confirm if the data is sufficient to perform the valuation and the actuary's conclusions regarding that sufficiency;
- (d) a comparison of the accrued liabilities, being the present value of the fund's obligations towards its members in respect of past pensionable service together with the value of any contingent liabilities of the fund that are susceptible to actuarial valuation, with the value of the assets determined on a consistent basis to the basis used to value the liabilities;
- (e) where the fund holds contingency reserve accounts, these balances may be added to the accrued liabilities to the extent that the actuary deems prudent;

- (f) if the accrued liabilities plus the desired level of contingency reserves exceeds the value of the assets that is, there is an actuarial deficit, the additional contribution may be required to amortise the deficit over a period acceptable to the Regulatory Authority;
- (g) a statement of the contributions required to meet the cost of future service benefits according to the funding method selected by the actuary, together with a consistent estimate of the administration and other costs of the fund:

Provided that such funding method is acceptable to the Regulatory Authority and provided further that such statements reflect the situation before and after any actuarial surplus in respect of past pensionable service is taken into account;

- (h) a statement of the assumptions used by the actuary to value the assets and the liabilities;
  - (i) a summary of the benefits and contributions valued;
  - (j) a statement of the causes of change in the financial position of the fund and their financial impact on the actuarial surplus in respect of past service; and
  - (k) a statement as to whether, in the actuary's opinion, the fund is financially sound or not, and, if not, the steps that should be taken to restore the fund to a financially sound condition.
- (2) The Regulatory Authority may make rules regarding the valuation of assets and liabilities and the establishment of reserve accounts.
- (3) Notwithstanding subregulation (1) and (2), the Regulatory Authority may accept a valuation report in respect of an external fund that does not comply with subregulation (1) and (2).
- (4) The actuary shall state the information required in subregulation (1) (a), (b) and (d) in respect of the members normally resident in Botswana in a supplementary letter.

22. A fund administrator shall, within four months after the end of its financial year furnish to the Regulatory Authority the following annual returns, in accordance with section 22 of the Act —

- (a) audited financial statements;
- (b) the annual return for a fund administrator.

23. (1) The investigation and report in terms of section 25 (1) of the Act shall be conducted and made at least once every three years as at the end of a financial year or, if so required or permitted by the Regulatory Authority, as at any other date.

(2) The fund shall submit the report to the Regulatory Authority within 30 days of receiving such report.

(3) A licensed fund shall submit to the Regulatory Authority with the report of the actuary following the investigation, a certificate signed by the principal officer that —

- (a) to the best of his or her knowledge and belief the information furnished to the actuary or person conducting the investigation for the purposes of his or her investigation was correct and complete in every material respect; and
- (b) every participating employer has been given details of all amounts paid by an insurer to any agent or broker in respect of the fund since the commencement date of the investigation or the last investigation in terms of section 25 of the Act, as the case may be.

Financial  
statements by  
fund  
administrator

Investigation  
and report by  
actuary

(4) In the case of an existing fund, the first investigation referred to in subregulation (1) shall be made —

- (a) as at the end of the fund's financial year that commences first after the commencement date of the investigation or, if that fund so elects, the financial year during which the commencement date falls; or
- (b) if a date other than the end of the financial year has been fixed in terms of subregulation (1), as at the date so fixed.

(5) An existing fund may, with the written permission of the Regulatory Authority, defer the investigation in terms of this subregulation for such period, not exceeding three years, as the Regulatory Authority may authorise upon written request by the fund.

(6) A fund with any of the following accounts shall not be exempt from actuarial valuation —

- (a) reserves in the fund;
- (b) surplus funds in the fund; and
- (c) pensions paid from fund.

24. (1) If, after an investigation such as is referred to in section 25 (1) of the Act, the actuary conducting the investigation is of the opinion that the fund is in an unsound financial condition, he or she shall together with the fund consider methods by which the fund may be made financially sound.

Consideration  
of methods to  
make fund  
financially  
sound

(2) After the consideration required by subregulation (1), the principal officer shall report to the Regulatory Authority on any methods adopted for the purpose of making the fund financially sound, unless the actuary or person conducting the investigation has reported in his or her report and the principal officer has certified that the recommendations of the actuary have been adopted by the board of the fund, and where applicable, the participating employers.

25. (1) The rules shall specify that, when apportioning actuarial surplus between the members, former members and the employer as the case may be, the board may consider the financial history of the fund, particularly the origin of the surplus and past uses of surplus to improve benefits or reduce contribution rates before deciding on a fair apportionment of the actuarial surplus between members, former members and the employer.

Actuarial  
surplus  
rules

(2) The rules shall specify that surplus allocated to members and former members shall be applied immediately to improve their current benefits or the benefits previously paid to them or transferred on their behalf.

(3) The rules shall provide that actuarial surplus allocated to the employer shall be credited to an employer reserve account, defined in the rules, which can be used at the request of the employer to improve benefits for all stakeholders on a fair and equitable basis, to meet any employer contributions that fall due, or a fair and equitable share of such surplus may be transferred to another pension or provident fund to which members of the former fund are transferred to another pension or provident fund in which the employer participates.

(4) Such transfer may only be performed if a majority of the current members agree to the transfer.

#### PART V – *Miscellaneous Provisions Relating to Funds*

26. (1) Where a participating employer deducts the contributions of a member from his or her remuneration, the participating employer shall pay to the fund that contribution, and any contributions payable by it in respect of that member in terms of the rules, within seven days from the end of the calendar month in respect of which the contributions are payable.

Payment of  
contributions

(2) If a participating employer fails to make the payment required in terms of subregulation (1), the principal officer shall report the failure to the Regulatory Authority immediately after the seven days have elapsed.

Discretion of board in benefits in excess of amount defined in rules

27. The rules of a fund shall empower the board or any other person to exercise discretion in determining the amount of any benefit where the —

- (a) board, with the consent of the employer and the Regulatory Authority, may increase any benefit payable in terms of the rules, after enhancement to any minimum benefit that may be determined:

Provided that the cost of such increase in benefit payable is borne by the employer or by the credit balance in a reserve account established for such purpose;

- (b) board shall apportion any lump sum benefit payable in terms of the rules on the death of a member including a pensioner amongst the member's dependants and nominated beneficiaries in terms of section 39 of the Act;
- (c) deceased member has left surviving dependant children, the rules of the fund provide for a pension to the surviving dependant children, and the rules of the fund do not specify how the pension may be distributed amongst the children, the board shall apportion the pension between the surviving dependant children; and
- (d) rules of the fund specify that the amount of the benefit shall be determined subject to actuarial guidance.

Payment of pension

28. (1) A pension shall be payable for the lifetime of the —

- (a) beneficiary if the beneficiary is the member, or
- (b) survivor of the member or his or her spouse if the pension is a joint-life pension.

(2) A pension shall not be payable to a child until he or she attains the age of 18 years.

(3) A pension may be outsourced through the purchase of an annuity policy, provided the policy adheres to subregulations (1), (2), (4), (5) and (6), and shall transfer all obligations from the fund in respect of the retiree to the insurer and the fund shall have no further obligations in respect of the retiree.

(4) The member may select the type of annuity policy, guarantee period, any provisions for pensions payable to a surviving spouse after the death of the member, the provision for pension increases, and the insurer from which the policy is purchased.

(5) The member shall be informed of the expenses involved in the particular annuity policy, including any commission payable to any person by the insurer before making his or her selection in terms of subregulation (4).

(6) The retiree shall have a 21 day period after signing the application in which he or she can require the annuity policy to be cancelled and all moneys paid to another retirement annuity fund within 30 days of cancellation.

(7) Where the annuity policy is effectively a draw-down facility in which the capital less any expenses involved in the purchase of the annuity policy is invested and the retiree is able to select the amount to be drawn down within limits specified by the Regulatory Authority, the Regulatory Authority may publish rules governing the purchase and operation of such an annuity, including a requirement that at least a certain amount shall be taken in the form of an annuity payable for the lifetime of the member and his or her surviving spouse, with increases at a specified guaranteed level.

29. (1) Subject to subregulation (2), a fund shall require its members to complete beneficiary nomination forms on entry to the fund, when the member's dependants change, or when the member changes his or her desired distribution amongst dependants.

Payment of  
lump sum  
death benefits

(2) The member shall identify, on the beneficiary nomination form, each dependant and any desired beneficiaries who are not dependants whom the member wishes to receive a proportion of any lump sum benefit payable, and shall state what proportion of any lump sum death benefit should be awarded to each dependent or beneficiary, and the member may give reasons as to why that particular distribution is his or her preferred distribution.

(3) If the board is satisfied that there are no dependants other than those stated on the most recent beneficiary nomination form and that the member's desired distribution amongst beneficiaries is reasonable, the board may accept the direction given by the beneficiary nomination form.

(4) If, prior to distribution, the board becomes aware of any minor dependants that were not stated on the deceased member's most recent beneficiary nomination form, or the board considers the member's desired distribution amongst minor beneficiaries to be unreasonable, the board shall in its discretion in exceptional circumstances, distribute the lump sum amongst the member's dependants and nominated beneficiaries in such proportion as the board determines to be reasonable.

(5) In distributing such moneys, the board shall take into account –

- (a) the degree of dependency;
- (b) the age of the dependant or beneficiary;
- (c) the likely duration of dependency;
- (d) the relationship to the deceased;
- (e) information provided in the member's beneficiary nomination form; and
- (f) any distribution made by the deceased member in his or her will.

30. (1) Subject to the provision of subregulation (2), the rules of a pension fund may provide for the commutation of a pension which is payable to a member on retirement, retrenchment or resignation or to a former member, or to the surviving spouse, dependants or nominated beneficiaries of a member or former member following the death of the member or former member, of –

Commutation  
of pension

- (a) all of the pension if the remaining pension after computation of one-third, in case of retirement and retrenchment, or one quarter in case of resignation, is less than such amount as determined by the Income Tax Act; or
  - (b) one-third of the pension in case of retirement and retrenchment or one quarter in case of resignation,
- (2) Subregulation (1) (a) shall not apply where the member retires from a retirement annuity fund and has previously retired from the same or another retirement annuity fund.

(3) When a pensioner dies within a period for which a pension is guaranteed, and no pension is payable to a surviving spouse or dependants, the fund may compute the pension payable for the balance of the guaranteed period and pay it as a lump sum to the beneficiaries in terms of section 39 of the Act.

31. (1) The rules of a fund may provide that a member be permitted to retire before attaining retirement age if satisfactory medical evidence is submitted to the fund showing that he or she is permanently incapable of performing duties under his or her normal gainful employment or any similar employment or any other occupation for which he or she is reasonably suited by education training or experience.

Disability rules



(2) The rules of a fund may provide that a member receive an income during a period within which he or she is temporarily incapable of performing duties under his or her normal gainful employment or any similar employment or any other occupation for which he or she is reasonably suited by education training or experience, such income to cease on the earliest of recovery, death or attainment of normal retirement age provided that such income benefit is fully insured.

(3) While in receipt of this income, the member may continue to accrue retirement benefits in the fund.

PART VI – *Amalgamations and Transfers*

Transfers to or from other funds other than involuntary transfer

32. (1) Subject to the provision of regulation 37 (1); the rules shall enable —
- (a) the transfer to another fund of the benefits of a member on termination of that member's membership in the fund, at the written request of the member, provided that the transfer value shall give full recognition to the member's rights and reasonable expectations in respect of service prior to the transfer date, which in the case of a defined benefit fund is determined by the actuary; and
  - (b) the fund to receive any transfer value on behalf of a member from another fund, at the written request of the member, and must apply that transfer value for the benefit of the member concerned granting such benefits as the actuary determines to be financially neutral to the fund in the case of a defined benefit fund.

(2) The rules shall enable transfer between preservation funds in which employees who leave their employer owing to dismissal, retrenchment or resignation or in the event of the dissolution of the employees' pension and provident fund.

(3) The special rules of a multi-employer fund shall enable the transfer of the fund from —

- (a) one multi-employer fund to another multi-employer fund; and
- (b) a multi-employer fund to a stand alone fund.

(4) The rules of the fund shall allow a retiring member to request the board of the fund to purchase an annuity policy from an insurer licensed in terms of the Insurance Industry Act on retirement.

Act No. 10 of 2015  
Certificate for amalgamation or transfer

33. (1) A certificate for an amalgamation or transfer of a fund shall be issued by the Regulatory Authority once it has been furnished with such evidence as it may require that the provisions of the said fund, in so far as they are applicable, comply with the rules of every licensed fund which is a party to the transaction or that adequate arrangements have been made to carry out such provisions at such times as may be required by the said scheme.

(2) The transferee or the transferor fund shall make an application through a duly signed cover letter which has been addressed to the Regulatory Authority, with —

- (a) a scheme of transfer of the members of the fund detailing member values and membership information at the date of transfer;
- (b) financial accounts of the fund from the previous financial year until the date of actual transfer of assets;
- (c) a specific transfer date proposed;
- (d) a consent letter indicating that the members of the fund have been informed;

(e) an actuarial valuation if the fund is not exempt in terms of section 33 of the Act and the conditions for exemption from actuarial valuation in the administrative rules; and

(f) such additional particulars, including any special report by an actuary or auditor as the Regulatory Authority may require.

34. (1) There shall be no transfer of benefits from a pension fund to a provident fund or the receipt of such benefits by a provident fund from a pension fund.

Conditions for  
amalgamation  
or transfers

(2) The assets and liabilities shall be transferred within 30 days of the effective date of transfer.

(3) Any assets transferred shall be increased or decreased with such interest addition as declared by the transferee fund from the effective date until the final date of transfer.

(4) The records of any transaction effected in terms of section 33 of the Act shall be maintained for seven years after the date of transaction by both funds and be made available to the Regulatory Authority upon request or inspection.

(5) No proposed transaction in terms of section 33 of the Act will be of any force or effect if, in the Regulatory Authority's view, the transaction effected does not comply with the provisions of the Act or the conditions determined.

(6) The principal officer shall within 30 days of the transfer of assets apply for cancellation of the licence of the transferor fund.

(7) The Regulatory Authority may withdraw or amend a certificate issued in terms of section 35 of the Act, in circumstances where the Regulatory Authority is satisfied that —

(a) there is no compliance with this regulation,

(b) the scheme or information provided in terms of section 34 of the Act was so inaccurate that it would not have granted such certificate had it been aware of the actual facts; or

(c) the certificate contains a *bona fide* error.

35. (1) The accrued retirement benefits of a member of a pension fund shall be retained in a preservation fund until retirement or death whichever comes earlier.

Provisions  
relating to  
preservation  
funds

(2) Retirement benefits may be transferred from —

(a) an employer's pension fund or another preservation fund into the preservation fund; or

(b) an employer's provident fund or preservation provident fund to another preservation provident fund.

(3) The benefits from a pension or provident fund may only be transferred into the preservation fund if —

(a) an employee leaves the service of a participating employer through resignation, dismissal or retrenchment;

(b) the pension or provident fund is dissolved completely;

(c) an employer's business is taken over by another employer;

(d) a member of a preservation fund chooses to transfer to another preservation fund;

(e) a member of a pension fund, or the member's dependent does not claim the benefits within 12 months of becoming entitled to them;

(f) the benefit is reduced as a result of the provisions of section 37 of the Act;

(g) a transfer from a preservation fund to an employer pension and provident fund is not allowed;

(2) The rules of a fund may provide that a member receive an income during a period within which he or she is temporarily incapable of performing duties under his or her normal gainful employment or any similar employment or any other occupation for which he or she is reasonably suited by education training or experience, such income to cease on the earliest of recovery, death or attainment of normal retirement age provided that such income benefit is fully insured.

(3) While in receipt of this income, the member may continue to accrue retirement benefits in the fund.

#### PART VI – *Amalgamations and Transfers*

Transfers to or  
from other funds  
other than  
involuntary  
transfer

32. (1) Subject to the provision of regulation 37 (1); the rules shall enable —

- (a) the transfer to another fund of the benefits of a member on termination of that member's membership in the fund, at the written request of the member, provided that the transfer value shall give full recognition to the member's rights and reasonable expectations in respect of service prior to the transfer date, which in the case of a defined benefit fund is determined by the actuary; and
- (b) the fund to receive any transfer value on behalf of a member from another fund, at the written request of the member, and must apply that transfer value for the benefit of the member concerned granting such benefits as the actuary determines to be financially neutral to the fund in the case of a defined benefit fund.

(2) The rules shall enable transfer between preservation funds in which employees who leave their employer owing to dismissal, retrenchment or resignation or in the event of the dissolution of the employees' pension and provident fund.

(3) The special rules of a multi-employer fund shall enable the transfer of the fund from —

- (a) one multi-employer fund to another multi-employer fund; and
- (b) a multi-employer fund to a stand alone fund.

(4) The rules of the fund shall allow a retiring member to request the board of the fund to purchase an annuity policy from an insurer licensed in terms of the Insurance Industry Act on retirement.

Act No. 10 of  
2015  
Certificate  
for amalgamation  
or transfer

33. (1) A certificate for an amalgamation or transfer of a fund shall be issued by the Regulatory Authority once it has been furnished with such evidence as it may require that the provisions of the said fund, in so far as they are applicable, comply with the rules of every licensed fund which is a party to the transaction or that adequate arrangements have been made to carry out such provisions at such times as may be required by the said scheme.

(2) The transferee or the transferor fund shall make an application through a duly signed cover letter which has been addressed to the Regulatory Authority, with —

- (a) a scheme of transfer of the members of the fund detailing member values and membership information at the date of transfer;
- (b) financial accounts of the fund from the previous financial year until the date of actual transfer of assets;
- (c) a specific transfer date proposed;
- (d) a consent letter indicating that the members of the fund have been informed;

(e) an actuarial valuation if the fund is not exempt in terms of section 33 of the Act and the conditions for exemption from actuarial valuation in the administrative rules; and

(f) such additional particulars, including any special report by an actuary or auditor as the Regulatory Authority may require.

34. (1) There shall be no transfer of benefits from a pension fund to a provident fund or the receipt of such benefits by a provident fund from a pension fund.

Conditions for  
amalgamation  
or transfers

(2) The assets and liabilities shall be transferred within 30 days of the effective date of transfer.

(3) Any assets transferred shall be increased or decreased with such interest addition as declared by the transferee fund from the effective date until the final date of transfer.

(4) The records of any transaction effected in terms of section 33 of the Act shall be maintained for seven years after the date of transaction by both funds and be made available to the Regulatory Authority upon request or inspection.

(5) No proposed transaction in terms of section 33 of the Act will be of any force or effect if, in the Regulatory Authority's view, the transaction effected does not comply with the provisions of the Act or the conditions determined.

(6) The principal officer shall within 30 days of the transfer of assets apply for cancellation of the licence of the transferor fund.

(7) The Regulatory Authority may withdraw or amend a certificate issued in terms of section 35 of the Act, in circumstances where the Regulatory Authority is satisfied that —

(a) there is no compliance with this regulation,

(b) the scheme or information provided in terms of section 34 of the Act was so inaccurate that it would not have granted such certificate had it been aware of the actual facts; or

(c) the certificate contains a *bona fide* error.

35. (1) The accrued retirement benefits of a member of a pension fund shall be retained in a preservation fund until retirement or death whichever comes earlier.

Provisions  
relating to  
preservation  
funds

(2) Retirement benefits may be transferred from —

(a) an employer's pension fund or another preservation fund into the preservation fund; or

(b) an employer's provident fund or preservation provident fund to another preservation provident fund.

(3) The benefits from a pension or provident fund may only be transferred into the preservation fund if —

(a) an employee leaves the service of a participating employer through resignation, dismissal or retrenchment;

(b) the pension or provident fund is dissolved completely;

(c) an employer's business is taken over by another employer;

(d) a member of a preservation fund chooses to transfer to another preservation fund;

(e) a member of a pension fund, or the member's dependent does not claim the benefits within 12 months of becoming entitled to them;

(f) the benefit is reduced as a result of the provisions of section 37 of the Act;

(g) a transfer from a preservation fund to an employer pension and provident fund is not allowed;

- (h) a transfer between two preservation pension funds or two preservation provident funds respectively is allowed; or
  - (i) the benefits relate to employees of an employer whose business was taken over by another employer in terms of section 33 of this Act.
- (4) The benefits of members or dependants who do not claim their fund benefits within 12 months of becoming entitled to do so will be transferred to a preservation fund as determined by the board of trustees.
- (5) A member's accrued benefit in a specific provident or pension fund may not be transferred to more than one preservation fund, but the benefits may be divided between a preservation fund and a retirement annuity fund.
- (6) The member may transfer a portion of his or her benefits in a preservation pension fund to a retirement annuity fund.
- (7) A portion of a member's benefit in a preservation fund may be paid to a non-member in terms of a divorce order, or in terms of a maintenance order.
- (8) Employees whose retirement scheme changes from a pension fund to a provident fund will not be able to transfer accrued pension benefits to a preservation pension fund in the event of such restructuring, except if the pension fund in question is dissolved completely.
- (9) A member of a preservation fund may be allowed to make a withdrawal of a maximum of 25 per cent of the preserved benefits prior to reaching retirement age, subject to the approval of the trustees and payment of tax where applicable after a period of 12 months membership if such member remains unemployed or if the member becomes disabled or suffers ill health.
- (10) The balance of any benefit remaining after a member has made a withdrawal in terms of subregulation (9) shall not be available for any other withdrawal until the member's retirement.
- 36.** (1) The board of a beneficiary fund may make regular payments to the beneficiary as it considers it appropriate.
- (2) The regular payments may be made to beneficiaries on a monthly, quarterly, bi-annual or annual basis.
- (3) The board may vary the amount of the regular payments but may, from time to time, determine a minimum amount that will be paid to beneficiaries as a regular payment.
- (4) The board may make *ad hoc* payments for purposes of the beneficiary's education, maintenance, and wellbeing at the request of the beneficiary.
- (5) *Ad hoc* payments under subregulation (4) may be made on a once-off basis or on a repeated basis upon the request of the beneficiary.
- (6) The board may make *ad hoc* payments to the beneficiary or to a third party, including an educational or medical institution, subject to the following —
- (a) the beneficiary shall be informed of any payment made to such a third party;
  - (b) if a payment request is received from a third party directly such as the educational institution that a beneficiary is attending, the fund shall satisfy itself as to the legitimacy of the request before making payment; and
  - (c) written or electronic confirmation of any third party payment shall be sent by the fund to the beneficiary.
- (7) Upon termination of membership, the credit balance in the member's account shall be paid in accordance with procedures determined by the board.

Payment from  
beneficiary  
funds

(8) Any unclaimed benefit must be identified as such and maintained in the fund until such time that the fund is liquidated or the licence cancelled following the transfer out of all its members, or until it is paid to a fund that is established for the purpose of holding unclaimed benefits or, if no such fund has been established, to the guardian's fund.

(9) A member or beneficiary may have no further claim on the fund if they fail to claim in accordance with subregulation 8.

(10) The board may pay the unclaimed monies to a major member or beneficiary if that person produces sufficient evidence to the board of his or her right to such monies.

37. (1) The fund is entitled to make reasonable requests, as it deems necessary, of any beneficiary for satisfactory evidence of the beneficiary's age and existence.

Information  
required from  
beneficiaries

(2) If the fund does not receive satisfactory evidence of the existence of a beneficiary, it shall be entitled to stop benefit payments to or in respect of such a person until such time as it is satisfied as to the existence of that person.

(3) Every beneficiary shall make available any information reasonably required by the fund.

38. (1) The fund shall keep records of all amounts due to the beneficiaries until these have been paid to them or until these amounts have been transferred to another fund in which case the records may be transferred to that other fund to which the amounts were transferred.

Information for  
beneficiaries

(2) The beneficiary shall be furnished with a certificate of membership and an explanatory note containing a descriptive summary of the rules and information relating to the name, and address of the fund.

(3) The fund shall send annual benefit statements to all beneficiaries within six months of the end of the financial year and may also send to them an annual summary of any amendments that have been made to the rules of the fund.

(4) All notices and communication issued by the fund or the administrator to any beneficiary shall be sent using the last known contact details of that beneficiary.

#### PART VII – *Termination and Winding Up*

39. (1) The rules shall specify in what circumstances and the manner in which the fund may be terminated in terms of section 28 (1) of the Act, or the participation of a particular participating employer in a multi-employer fund, may be terminated.

Termination of  
fund or partial  
termination of  
a multi-employer  
fund

(2) The period stated in section 28 (1) (c) of the Act shall not be more than 36 months.

(3) A former member who withdrew from the fund in circumstances other than retirement at normal retirement age as defined in the rules, or death, shall be included in the liquidation as if he or she was an active member, with account being taken of any benefit paid to the member when he or she left the service.

(4) Where a member, to whom an amount is payable from the fund, has not made a claim, and after every reasonable effort to and after every reasonable effort to locate the member has failed, that amount together with interest earned, shall within 24 months after the date of liquidation, be transferred to an unclaimed benefits fund.

(5) The unclaimed benefits fund shall have a responsibility to administer the money transferred into it and shall trace and pay the member or his or her beneficiaries or estate, inclusive of any fund return earned in the unclaimed benefits fund and after deduction of any expenses in administering the money transferred and tracing the member or his or her beneficiaries or estate.

(6) Notwithstanding anything in the rules, any reserve accounts other than the employer account shall be applied first to meet the rights and reasonable expectations of members as follows –

- (a) the assets backing the liabilities of the fund and all reserve accounts other than an employer reserve account shall be distributed amongst the members participating in the distribution;
- (b) if the assets in paragraph (a) are not sufficient to satisfy the rights and reasonable expectations of the members and former members participating in the distribution, then so much of the employer reserve account as is required may be transferred out of the employer reserve account in order to satisfy such requirements, subject to the approval of the Regulatory Authority; and
- (c) any remaining credit balance in an employer reserve account may thereafter be paid out to the employer less any tax payable.

Winding up  
of fund

**40.** (1) Where a fund wishes to be wound up, the application for the approval of the appointment of the liquidator shall be accompanied by a certified copy of the resolution by the board of management appointing the liquidator including an indication of the rule in terms of which the fund is to be wound up.

(2) No amendment to the rules of a fund, submitted after the liquidator has been approved, will be considered for approval by the Regulatory Authority, unless so ordered by a competent court.

Revocation of  
licence of fund  
administrator

**41.** (1) Where a fund administrator's licence is revoked due to voluntary winding up, the fund administrator shall submit with the application for approval of the appointment of a liquidator the following information –

- (a) a questionnaire completed by the liquidator regarding his or her appointment as such; and
- (b) a declaration by liquidator.

(2) The application for appointment of a liquidator shall be accompanied by a certified copy of the resolution of the board of management of the fund administrator appointing the liquidator, and an indication of the justification for the liquidation.

Withdrawal of  
licence of fund  
administrator

**42.** (1) Where an administrator contravenes any provision of these Regulations, the Regulatory Authority shall forthwith notify the administrator in writing to require the administrator to furnish it with reasons as to why his or her licence as an administrator shall not be withdrawn within 30 days of the date of the notice.

(2) The Regulatory Authority may, where no satisfactory reasons have been furnished within the specified period, after giving a notice in writing, withdraw the licence of the administrator.

(3) Where the administrator otherwise ceases to render administration services, perform administration business, or the business of the administrator is dissolved or liquidated, the licence of an administrator by the Regulatory Authority shall be deemed to have lapsed, without prejudice to any legal obligations incurred by such administrator under the Act.

## PART VIII – General

43. When appointing a service provider, the board of the fund shall satisfy itself that –

Appointment  
of service  
provider

- (a) where the service provider is licensed by the Regulatory Authority under the Act, the service provider is so licensed to perform the services required by the fund;
- (b) the contract and service level agreement with the service provider is comprehensive, and includes –
  - (i) the services to be provided to the fund,
  - (ii) all information provided by members, participating employers of the fund, all records relating to the administration of the fund such as contribution receipts, benefit payments and expense payments remains with the fund and the contract includes provisions for the return to the fund of member and financial records at the termination of the contract, within a reasonable period of that termination,
  - (iii) the fee charged for the services provided, including any fees on termination of the contract,
  - (iv) the power of the board to terminate the contract,
  - (v) specified deliverables and performance measures, and
  - (vi) the contents of any reports that the service provider prepares in relation to the activities of the fund and its performance in terms of the contract, the periods over which performance is reported, and the times within which the report is delivered after the end of the reporting period;
- (c) the board shall satisfy itself that the service offered by the service provider and the fees charged are competitive; and
- (d) the service level agreement shall contain a dispute resolution mechanism.

44. (1) The minimum information that shall be communicated by a retirement fund to members shall include an explanatory pamphlet on admission and a benefit statement to be provided at least once a year thereafter, which will include the following –

Provision of  
information to  
stakeholders

- (a) details of the fund name, contact person and registration number;
  - (b) details of benefits payable to the member;
  - (c) rate of contribution by the member and the employer;
  - (d) general information such as where to inspect the rules and financial statements;
  - (e) a projection of the likely benefits on retirement in current purchasing power terms assuming realistic rates of expenses and investment return in excess of inflation; and
  - (f) the rates of expense and investment return in excess of inflation and any other relevant assumptions must be stated in the projection document.
- (2) A notice shall be given to members, or beneficiaries, on specific events such as –
- (a) fund restructuring, communicating the nature of the restructuring and its impact on the members; and
  - (b) claim, including retirement, resignation, dismissal, retrenchment and death, communicating the benefit due, information required by the fund before the claim can be settled, and to whom that information is to be supplied.



Records

**45.** A fund which is required to comply with the provisions of section 25 (1) of the Act shall keep such records as are necessary to enable the actuary to make an investigation in terms of that section at any time after the effective date of the previous investigation.

Inspection of documents

**46.** (1) Any person may, upon payment of the P100 inspect any document lodged with the Regulatory Authority in terms of section 42 of the Act.

(2) Any person may, upon payment of the P10 per copy, take extracts from any document referred or in subregulation (1) obtain a copy thereof.

