



**DPF**  
DEBSWANA · PENSION · FUND



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*01-06-2020*

# RULES OF THE DEBSWANA PENSION FUND

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*Certified that these are the Rules of Debswana Pension Fund were amended and approved by the Board of Trustees on the 11th October 2018*

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Principal Executive Officer

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Chairman of the Board of Trustees



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## I. GENERAL

### I.1 Details of the Fund

I.1.1 Debswana Pension Fund "hereby referred to as the Fund or DPF" was established as at the Establishment Date, 01 October 1984. The Fund is licensed in terms of the Retirement Funds Act and is capable in law of suing and being sued and of acquiring, holding, encumbering, mortgaging and alienating property movable and immovable in its own name.

I.1.2 The Principal Office of the Fund is Main Mall, Plot 1188-1196, Debswana House, 5th Floor, Gaborone, Botswana.

### I.2 Purpose

I.2.1 The principal objective of the Fund is to provide for the optimised payment of pensions to persons, who are Members of the Fund, on retirement on account of age or ill health.

I.2.2 The secondary objective of the Fund is to provide benefits to eligible Dependants and Beneficiaries of deceased members in line with the Fund Rules.

### I.3 Binding Nature of the Rules

These Rules bind the Fund, the Trustees, the Members, Dependants, Beneficiaries and the Employers.

## 2. DEFINITIONS

Where employed in these Rules, and subject to applicable law, the following words and expressions bear the meanings herein assigned to them and:

- unless inconsistent with the context, all words and expressions indicating the masculine gender shall include the feminine;
- words signifying the singular shall include the plural and vice versa;
- any reference to legislation means such legislation as amended or substituted from time to time;
- if a word or phrase is defined in the Act, then it is similarly defined in the Rules unless the Rules provide a different definition:



<b>“Account”</b>	means the Member Account, the Pensioner Account, the Data Reserve Account, the Processing Error Reserve Account, the Expense Reserve Account, the Solvency Reserve Account or the Unclaimed Benefits Account, according to the context;
<b>“Act”</b>	means the Retirement Funds Act, 2014 as amended, the regulations and any other subordinate legislation thereto;
<b>“Active Member”</b>	means an Eligible Employee who has been accepted as a Member, for as long as he remains an Eligible Employee.;
<b>“Actuary”</b>	means an associate or fellow of a professional actuarial body that is a member of the International Actuarial Association, or such other body as may be approved by the Regulatory Authority;
<b>“Additional Contribution”</b>	means a payment by an Active Member, or a Deferred Member, to the Fund, which must be credited to his Member Account;
<b>“Administrator”</b>	means a person who provides administration or similar services to the fund;
<b>“Annuity ”</b>	means a regular payment (which may be monthly or less regularly but at least once a year) for- a. a fixed period b. a period defined in the contract or the Rules c. the balance of the lifetime of one or more beneficiaries;
<b>“Auditor”</b>	means an Auditor registered with Botswana Institute of Chartered Accountants under the Accountants Act;
<b>“Beneficiary”</b>	means a nominee of a member or a dependant who is entitled to a benefit as provided for in the Rules;
<b>“Beneficiary Fund”</b>	means a fund which is established with the object of receiving, administering, investing and paying benefits on behalf of beneficiaries;



<b>“Compliance Officer”</b>	means the person responsible for ensuring compliance with statutory and regulatory requirements, for ensuring that decisions of the board of trustees are implemented and all issues related to Anti-Money Laundering/ Combating of Financing of Terrorism;
<b>“Chairman”</b>	means a person appointed as per these Rules who presides over the board or committee meetings, ensuring that meetings run smoothly and remain orderly, and works at achieving a consensus in board decisions;
<b>“Child”</b>	means a person below the age of 18 years
<b>“Adopted Child”</b>	means, in respect of a Member, his biological child (whether or not his parents were Married), and including a posthumous child, stepchild and a child recognised under Botswana law as being legally adopted by a member;
<b>“Code of Conduct”</b>	means the code of conduct approved by the Trustees as per these Rules;
<b>“Constituencies”</b>	means the Fund’s geographical constituencies determined by the Trustees from time to time in accordance with these Rules. It is recorded that as at the Revision Date the Constituencies are known as Morupule Coal Mine, Orapa Letlhakane & Damtshaa Mines, Jwaneng Mine, and Gaborone campus;
<b>“Consultants”</b>	means professionals appointed by the Trustees in accordance with these Rules to provide expert advice to the Fund;
<b>“Contribution”</b>	means any amount paid to the Fund by a deferred member and or by an Employer in respect of or on behalf of an Active Member;
<b>“Custodian”</b>	means an entity which holds the property or any asset of the Fund on behalf of the Fund, and which Custodian is licensed by the Regulatory Authority to carry out this function;



- “Data Reserve Account”** means the Account referred to as defined under Rule 12.3;
- “Deferred Member”** means a person who:
- was an Active Member
  - has not reached Retirement Age;
  - has a deferred Fund Credit with the Fund.
- “Dependant”** in relation to a Member, means-
- a) any person to whom the Member is liable for maintenance;
  - b) a factual dependant;
  - c) a person to whom the Member is not legally liable for maintenance, but who:-
    - i. in the opinion of the Trustees, was dependent on the member for maintenance at the time of death of the member;
    - ii. is the Spouse of the Member; or
    - iii. is the Child of the Member including a posthumous child, or
  - d) is a person in respect of whom the Member would have become legally liable for maintenance had the Member not died;
- Save for the purposes of Rule 5.3.4 and 5.3.5, the Dependant was nominated at the time that the Active Member or Deferred Member became a Pensioner.
- “Early Retirement Age”** means any age from 50 to 59 years as notified by the Employer to the Fund;
- “Effective Date”** means the date the Rules are approved by Regulator;
- “Eligible Employee”** means a person in the permanent employment of an Employer; and includes a person employed in terms of a fixed term contract which is more than one (1) year; but excluding an employee who:



- i. is remunerated by means of fees or allowance;
- ii. is employed under contract which expressly provides for the payment of a lump sum upon expiry thereof;
- iii. in terms of his employment contract is exempt from being required to be a Member;
- iv. has attained his Normal Retirement Date, unless his Employer has notified the Fund that this does not apply;

**“Employer”**

means an employer participating in the Fund by contributing to the Fund in terms of the Rules, or participating in the administration of the Fund.

It is recorded that at the Revision Date the Employers are:

- Debswana Diamond Company
- De Beers Holdings Botswana
- De Beers Global Sightholder Sales
- Diamond Trading Company Botswana
- Morupule Coal Mine
- Debswana Pension Fund (Secretariat);

**“Employer Trust”**

means a Trustee appointed as such in terms of these Rules;

**“Establishment Date”**

means 1st October 1984;

**“Expense Reserve Account”**

means the Account referred to under Rule 12.3;

**“Factual Dependant”**

means a person who was financially dependent on the member at the time of the member’s death;

**“Financial Year”**

means a period of twelve (12) months commencing on 1st January and ending on 31st December of each year or such other twelve month period as may be agreed by the Trustees with the approval of the Regulatory Authority;





<b>“Fund”</b>	means DEBSWANA PENSION FUND;
<b>“Fund Credit”</b>	means the amount to the credit of the Member Account in respect of an Active Member or a Deferred Member at a particular point in time;
<b>“Gaborone Campus”</b>	means all the Employers whose principal place of business is located in Gaborone;
<b>“Guardian”</b>	means a person who has the charge of or control over a Child or a person appointed according to the law to be the guardian of the child;
<b>“Income Tax Act”</b>	means the Income Tax Act Cap 52:01 and any subordinate legislation thereto;
<b>“Independent Trustee / Specialist”</b>	means a person who meets the requirements set down by the Regulatory Authority for appointment to the board, as independent specialist;
<b>“Insurer”</b>	means a long-term insurer registered in terms of the Insurance Industry Act;
<b>“International Actuarial”</b>	Association” refers to the worldwide association of professional actuarial association;
<b>“Investment Policy Statement”</b>	means a document drafted between a portfolio manager and the Fund that outlines general rules for the manager. This statement provides the general investment goals and objectives of the Fund and describes the strategies that the manager should employ to meet these objectives;



**“Investment Return”**

means any income (received or accrued) and capital gains and losses (realized or unrealized) attributable to the assets of the Fund, net of expenses and tax charged associated with the acquisition, holding or disposal of those assets; provided that where such income, capital gains and losses can be attributed to the assets backing the amount to the credit of any Account then such Investment Return must be attributed to that Account. Where such income, capital gains and losses cannot be attributed to the assets backing the amount to the credit of an Account then such income, capital gains and losses must be allocated amongst the Accounts on such basis as the Trustees consider equitable after taking account of the advice of the Actuary;

**“Late Retirement Date”**

means the actual date of retirement of an Active Member from the employment of an Employer after his Normal Retirement Date, provided the Employer has notified the Fund prior to the Normal Retirement Date that he remains an Eligible Employee after his Normal Retirement Date, and that the actual date of retirement is notified to the Fund by the Employer or Active Member prior to the actual date of retirement;

**“Married”**

means in a state of lawful marriage recognised under the law of Botswana including a customary union;

**“Member”**

means an Active Member or a Deferred Member in respect of whom there is a Fund Credit, or a Pensioner;

**“Member Account”**

means the Account reflecting the Fund Credit of an Active Member or a Deferred Member, as referred to under Rule 12.3;

**“Member Trustee”**

means a Trustee elected by the members of the fund and appointed as such in terms of Rule 11.5;



<b>“Minor”</b>	refers to a person who does not have the capacity to act and make decision on their own. This may be due to age, mental incapacity or physical disability;
<b>“Nominee”</b>	means a person, other than a dependant, nominated by a member as a beneficiary under the Fund;
<b>“Normal Retirement Date”</b>	means the date on which an Active Member or Deferred member attains the age of 60;
<b>“Pension”</b>	includes an annuity acquired through the Fund and a commuted lump sum not exceeding one third of the pension benefits of which the person would be entitled on retirement;
<b>“Pensioner”</b>	means a member who receives a pension from the Fund in line with the Rules;
<b>“Pension Date”</b>	means the date the member starts to receive a pension;
<b>“Pensioner Account”</b>	means the Account referred to under Rule 12.3;
<b>“Pensioner Trustee”</b>	means a Trustee elected by the Pensioners and appointed as such in terms of Rule 11.5;
<b>“Pensionable Earnings”</b>	means such amount as defined in the Active member's agreement of service with his employer as representing the annual earnings of the member. It is recorded that the determination of what constitutes annual pensionable remuneration is as communicated by an Employer to the Fund, and may vary from Employer to Employer;
<b>“Principal Office”</b>	means the principal place of doing business of the Fund and where records of the Fund are kept;



<b>“Principal Officer”</b>	means the person responsible for the daily management of a principle office of a licensed fund in Botswana (including an Acting Principal Officer) and is referred to in section 17 of the Act and regulation 16 of the Regulations;
<b>“Processing Error Reserve Account”</b>	means the Account referred to under Rule 12.3;
<b>“Regulations”</b>	means Regulations under the Income Tax Act, Retirement Funds Act and any other applicable regulations promulgated from time to time;
<b>“Regulatory Authority”</b>	means the Non-Bank Financial Institutions Regulatory Authority appointed in terms of section 3 of the Non-Bank Financial Institutions Regulatory Authority Act, 2006 as amended from time to time;
<b>“Retirement Date”</b>	means the date upon which the member retires;
<b>“Rules”</b>	means these Rules and such alterations as may at any time be in force;
<b>“Secretariat”</b>	means officials or office entrusted with the management of the Fund and under the leadership of the Principal Officer;
<b>“Solvency Reserve Account”</b>	means the Account referred to under Rule 12.3;
<b>“Spouse”</b>	means a person who is lawfully married (including by customary union) to a Member;



**“Superannuation Fund”** means a pension fund or a provident fund licensed as such under the Act;

**“Trustees”** means those persons who are appointed to the Board as such in terms of the Rules;

**“Unclaimed Benefits Account”** means the Account referred to under Rule 22;

### 3. MEMBERSHIP

Membership is open to Eligible Employees who will be admitted to the Fund in line with these Rules. Admission into the Fund shall be by way of the eligible employee, through their Employer, furnishing the Fund Secretariat with such details as required by the Fund and in the prescribed format.

Membership does not include any person or former member who has received all the benefits due to him from the Fund and whose membership has been terminated in terms of the Rules.

The Fund's Membership includes Active Members, Deferred Members and Pensioner Members in line with these Rules.

### 4. CONTRIBUTIONS

#### 4.1 Contributions by each Employer

Each Employer must contribute monthly in respect of each Active Member an amount equal to 20% of his Pensionable Earnings, or such other amount as such Employer is able to demonstrate to the Fund has been agreed with their Members.

a) **Debswana Diamond Company**

Contribution rate 20%:

- i. Pensionable Earnings for an Active Member on the A to C band salary scale which includes Basic Salary, the annual holiday leave allowance and any sum paid on the encashment of outstanding leave; and excludes all fees, honoraria, bonuses or other allowances and other remuneration of any nature whatsoever.



- ii. Pensionable earnings for an Active Member who is GBF 6 band and above is based on his total remuneration package which comprise a range between 40% to 60% of his total package

**b) De Beers Holdings Botswana**

**Contribution rate 20%:**

Pensionable Earnings comprise 20% of 60% of each Active Member's total remuneration package prevailing at any given time. An active member may choose to make additional contribution as a percentage of their pensionable earnings and or each tax year as a lump sum.

**c) The Fund (in respect of the Secretariat employees)**

**Contribution rate 20%:**

- i. Pensionable Earnings for Active Members in A to C band is calculated as 20% of 70% of total package and excludes all fees, honoraria, bonuses or other allowances and other remuneration of any nature whatsoever.
- ii. Pensionable Earnings for an Active Member D band and above is calculated as 20% on 60% of total package and excludes all fees, honoraria, bonuses or other allowances and other remuneration of any nature whatsoever.

**d) Diamond Trading Company Botswana**

**Contribution rate 20%:**

Pensionable Earnings comprises basic salary only; but which excludes all fees, honoraria, bonuses or other allowances and other remuneration of any nature whatsoever; provided that an Active Member who is on permanent part time (as notified by the Employer to the Fund) has an option to elect either 10% or 20% of the Pensionable Earnings based on the total remuneration package, which package comprises the cash equivalent of salary, pension benefit, medical benefit and any additional earnings as determined from time to time by the Employer; but which excludes all fees, honoraria, bonuses or other allowances and other remuneration of any nature whatsoever.



e) **DeBeers Global Sightholder Sales**  
Contribution rate 20%:

Pensionable Earnings comprises the total remuneration package being the cash equivalent of salary, pension benefit, medical benefit, and any additional earnings as notified by the Employer to the Fund from time to time; but which excludes all fees, honoraria, bonuses or other allowances and other remuneration of any nature whatsoever; provided that an Active Member who is on permanent part time (as notified by the Employer to the Fund) has an option to elect either 10% or 20% of the Pensionable Earnings based on the total remuneration package, which package comprises the cash equivalent of salary, pension benefit, medical benefit and any additional earnings as determined from time to time by the Employer; but which excludes all fees, honoraria, bonuses or other allowances and other remuneration of any nature whatsoever.

f) **Morupule Coal Mine**  
Contribution rate 20%:

- i. Pensionable Earnings for an Active Member on the A to C band includes the annual holiday leave allowance, any market allowance included in the annual earnings, and any sum paid on the encashment of outstanding leave; and excludes all fees, honoraria, bonuses or other allowances and other remuneration of any nature whatsoever.
- ii. Pensionable earnings for an Active Member who is D band and above is based on his total remuneration package which comprises 60% of his total package (benefit value); car allowance, housing benefit, pension benefit, medical benefit, holidays leave allowance and where applicable, a market allowance; but excludes all fees, honoraria, bonuses or other allowances and other remuneration of any nature whatsoever. In addition, an active D Band and above employee may opt to have his Employer contribute either 15 or 20% of his/her 60% of Total Package. The option for 15% must be made in writing by the member since it's not the automatic 20% contribution.



- 4.2 An Active Member or a Deferred Member may pay one or more Additional Contributions to the Fund in order to increase his Fund Credit. Such Contributions must be credited to his Fund Credit. The minimum and maximum amounts of an Additional Contribution, and the frequency with which it may be paid over a Financial Year, may be determined from time to time by the Trustees.
- 4.3 Contributions payable in terms of Rule 4.1 and 4.2 must be paid to the Fund within 7 days after the end of the calendar month in respect to which such Contributions relate. A schedule setting out the pensionable salary and Contribution so paid in respect of each Active Member must be delivered by the Employer to the Fund within the same 7 days period.
- 4.4 All contributions including Additional Voluntary Contributions for a Members shall be paid through a legal and verifiable source in line with the Anti-Money Laundering Policy. It is recorded that:
- 4.4.1 the Fund is only liable to each Active Member in respect of his Fund Credit, and that the Fund is not liable to an Active Member in respect of a Contribution or Additional Contribution not received. The Fund is also not liable to an Active Member in respect of any Contribution not received by the Fund which the Fund is unable to verify that it relates to that Active Member;
- 4.4.2 the Fund is not required to verify that the amount of the Contribution in respect of an Active Member reflects the correct amount of the Contribution in terms of the Active Member's Pensionable Earnings.
- 4.5 Any failure by an Employer to forward within reasonable time the Contributions or schedule referred to in Rule 4.1 must be reported forth with to the Regulatory Authority by the Principal Officer.

## 5. RETIREMENT BENEFITS

### 5.1 Amount of Benefit

The benefit on retirement of an Active Member or Deferred Member is either:

- 5.1.1 a pension payable by the Fund to an Active Member or Deferred Member on his retirement, of such amount as is determined by the Trustees acting on the advice of the Actuary, according to the amount of his Fund Credit at the time of retirement after commutation in terms





of Rule 5.4 and after account is taken of the election made or deemed to be made in terms of Rule 5.3; or

- 5.1.2 an annuity purchased in his name with the amount of his Fund Credit on such terms and from such Insurer as he may decide, after commutation, if any, in terms of Rule 5.4.

## 5.2 Date of Retirement

- 5.2.1 An Active Member or a Deferred Member must retire on his Normal Retirement age, unless prior to reaching his Normal Retirement Date, the Fund is notified in writing of his Late Retirement Date.
- 5.2.2 An Active Member may retire upon reaching Early Retirement Age or may at his election retire between age 50 and Normal Retirement Date, but must retire at Normal Retirement Date unless he requests his Employer in writing to be permitted to retire at any time after Normal Retirement Date. The terms of normal retirement, as set out in the other provisions of this Rule 5, apply to retirement in terms of this Rule.
- 5.2.3 An Active Member or Deferred Member may retire on the grounds of ill health, before Early Retirement Date, if satisfactory medical evidence is submitted to the Fund showing that he is permanently incapable of performing his normal gainful employment or any similar employment or any other occupation for which he is reasonably suited by education, training or experience. An application for ill health retirement by an Active Member must be supported by his Employer. The terms of normal retirement, as set out in the other provisions of Rule 5, apply to retirement on the grounds of ill health.

## 5.3 Pension Payable by Fund

In the event that a pension is payable in terms of Rule 5.1.1 the Pensioner may elect that the pension benefit be one of the following:

- 5.3.1 A pension guaranteed for 5 (five) years and thereafter payable for life. In terms of this option should the Pensioner die before the end of the five year period after retirement, an amount equal to the monthly pension payment (based on the pension at the time of death) over the remainder of the 5 (five) year period, as determined by the Trustees



acting on the advice of the Actuary, is payable in such amounts to his Dependants as determined by the Trustees. If there are no Dependants this amount is payable to the Pensioner's estate. If the Pensioner dies after the lapse of the guaranteed period, no death benefits are payable to the Dependants.

5.3.2 In the event that a commutation has been made, the election required to be made in terms of Rule 5.3 must be made utmost 21 (twenty-one) days after the day of retirement. Should the Active member or Deferred Member fail to make an election timeously then he is deemed to have elected the option in Rule 5.3.1.

5.3.3 A pension guaranteed for 10 (ten) years and thereafter payable for life. In terms of this option should the Pensioner die before the end of the ten year period after retirement, an amount equal to the monthly pension payments (based on the pension at the time of death) over the remainder of the ten, year period, as determined by the Trustees acting on the advice of the Actuary is payable in such amounts to his Dependants as determined by the Trustees. If there are no Dependants this amount is payable to the Pensioner's estate. If the Pensioner dies after the expiry of the guaranteed period, no death benefits are payable to the Dependants.

5.3.4 A joint life pension. In terms of this option a pension is payable for the life of the Pensioner and upon his death as elected by the Pensioner at retirement, his Spouse receives 50% of his pension for the rest of her life, his Child receives up to 25% of his pension until the age of 25 (twenty-five) years and any other Dependants receive up to 10% of his pension for life; provided that:

- the Spouse, Child and/or Dependants who benefit after the Pensioner's death must have been specified at the time of the Pensioner's retirement;
- the total pensions payable after the Pensioner's death may not exceed 100% of the pension payable to the pensioner immediately before his death;
- if after providing for a pension for a Spouse, there are two Children then each may receive a pension equal to 25% of his pension, and if there are more than two Children then each Child



receives a pension in such proportions as indicated by the member at the time of retirement to the total not exceeding 50% of the Pensioner's pension date of death;

- if a Spouse, Child or Dependant predeceases the Pensioner, or dies after the Pensioner's death but before their expected longevity, there is no amount which accrues from the Fund for the benefit of the estate of the Pensioner, Spouse, Child or Dependant concerned; and
- if the Dependant is physically or mentally incapacitated, based on medical evidence to the satisfaction of the Trustees, a pension continues to be payable to such Minor beyond the age of 25 years for the rest of his life or until such incapacity no longer exists, whichever first occurs, in an amount equal to 10% of the pension that would have been to the Pensioner for such period as this pension is payable to such incapacitated Minor.

5.3.5 A life pension with a surviving Child and/or Dependant but no Spouse.

- In terms of this option a pension is payable for the life of the Pensioner and upon his death as elected by the Pensioner at retirement, his Principal Dependant receives 50% of his pension for the rest of his life, any other surviving Child receives up to 25% of his pension until the age of 25 (twenty-five), and any other Dependant receives up to 10% of his pension for life subject to the provision in 5.3.4.
- For the avoidance of doubt, a Principal Dependant in this context refers to an individual nominated by the member in place of a spouse as surviving child or dependant.

5.3.6 A Pensioner may not transfer to an Insurer or a Superannuation Fund once he is in receipt of a pension from the Fund.

#### 5.4 Commutation

At least 21 days before the day of retirement of the Active Member or Deferred Member, he may elect to commute a portion of his pension into a lump sum:



5.4.1 subject to the approval of the Botswana Unified Revenue Services (BURS), if his pension does not exceed the limit set by legislation from time to time, the whole pension; or

5.4.2 if his pension exceeds the amount in 5.4.1, not more than one third of his pension, or such maximum amount as may be determined by legislation from time to time.

### 5.5 Fund Pension Provisions

5.5.1 The amount of each pension payable in terms of these Rules is determined by the Trustees acting on the advice of the Actuary according to accepted actuarial principles; provided that the same principles must apply, subject to the type of pension benefit in Rule 5.4, to all Pensioners

5.5.2 The Trustees must determine the pension increase policy from time to time and communicate this to the Pensioners, Active and Deferred Members.

5.5.3 In the event that the assets to the credit of the Pensioner Account backing the Pensioner liability are not sufficient to support that liability, then the pension increase policy must be adjusted by the Trustees on the advice of the Actuary to ensure that the liability is reduced; and if this is not sufficient to ensure that the Pensioner liability does not exceed the corresponding assets, then the pensions must be reduced by such amount as the Actuary calculates will enable the match of the corresponding assets. In the event that the Trustees act in terms of this Rule then when the assets recover the Trustees must adjust the pension increase policy, as necessary in stages, so that it can revert to what it was before it was previously adjusted.

5.5.4 It is recorded that no Employer owes the Fund, specifically in respect of the Fund's Pensioner liability, a balance of cost obligation.

5.5.5 In the event that a Member defers their full fund credit upon exit, the Member shall be entitled to a once off commutation at any time up to date of retirement.



## 6. DEATH BENEFITS ACTIVE AND DEFERRED MEMBERS

### 6.1 Benefits

When an Active Member or Deferred Member dies, a lump-sum equal to his Fund Credit at the time of his death is payable as a death benefit by the Fund. The amount of this lump sum must be disinvested and reduced to cash as soon as it is reasonably practical for the Fund once it has been notified in writing of the death.

### 6.2 Payment of Benefit

6.2.1 When a death benefit is payable in terms of Rule 6.1, it is payable to those persons who are the Dependants and/or Nominees of the Member. If after a period of twelve (12) months the Board does not become aware of any Dependants or Nominees, and the Member has not designated a Nominee, payment shall be made to the estate of that Member. If the Member has designated a Nominee, the designation is to receive only a portion of the benefit, the balance of the benefit after payment of the portion to the Nominee shall be made to the Member's estate.

6.2.2 In terms of the Act only Trustees of the Fund are mandated to determine who is to benefit and in what proportions from a death benefit in the event that there are Dependents of a deceased Member. In the event that there are no Dependants then the death benefit must be paid to the Nominees of the deceased Member. If there are both Dependants and Nominees, then the death benefit must be paid for the benefit of the Dependants up to the level of their dependency on the deceased Member and taking account of the nomination by the deceased and thereafter to the Nominees.

6.2.3 If the Trustees are 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, then the Board of Trustees may accept the direction given by the beneficiary nomination form.

6.2.4 Payment of the death benefit may be in one or more of the following ways:



- 6.2.4.1 In cash, after tax if payable, to the Beneficiary unless such Beneficiary is under the age of 18 years or in accordance with the provisions of 6.2.4.2 below apply.
- 6.2.4.2 If the Beneficiary is under the age of 18 years then a pension is payable to such Beneficiary until they attain the age of 18. The amount of the pension is determined by the Trustees according to the needs and circumstances of the Beneficiary; provided that ad hoc payments may be made by the Fund to or for the benefit of the Beneficiary, and provided further that if any balance remains of the benefit allocated to such a Beneficiary when he attains the age of 18 years then this must be paid to him
- 6.2.4.3 If the Beneficiary is incapacitated (which for the purposes of this Rule is if he is, in the opinion of the Trustees, unable to manage his affairs for reasons of physical, mental or emotional infirmity at the time of the award of the benefit) then the benefit shall be in the form of a pension salary for life, and the amount of the pension is determined by the Trustees acting on the advice of the Actuary according to the quantum of the benefit balance and the expected period over which the pension will be paid. In the event that such an incapacitated Beneficiary subsequently becomes, in the opinion of the Trustees, capable of managing his affairs then the remaining benefit must be paid to him as a lump sum. The transfer of all or part of the benefit payable to any legally registered Trust or Superannuation Fund, provided the Beneficiary (or his legal representative) consents thereto.
- 6.2.5 The Trustees may at their discretion make advance payment(s) to any Beneficiary where such payments are required for, inter-alia, the burial of the Member or to protect any financial interest of such Beneficiary.
- 6.2.6 The Trustees may make payment of a benefit (including a pension) due to a Beneficiary who is incapacitated or under the age of 25 years to or for the benefit of such Beneficiary, or to his guardian, guardian fund, legal representative or caregiver.

## 7. TERMINATION OF SERVICE



If an Active Member who is not qualified to retire in terms of Rule 5.2 ceases to be an Eligible Employee, then he is entitled to either of the following:

**7.1 On Resignation or, Dismissal**

Where the accumulated Fund Credit is above the amount prescribed by the Income Tax Regulations, he has the option to withdraw a lump sum not exceeding 25% of his Fund Credit, with the balance retained in his Fund Credit as a Deferred Member.

**7.2 On Retrenchment**

Where the accumulated Fund Credit is above the amount prescribed by the Income Tax Regulations, he has the option to withdraw a lump sum up to one third of his Fund Credit, with the balance retained as his Fund Credit as a Deferred Member.

**7.3 Low Pension Credit**

If the amount of the Fund Credit of a Deferred Member, or an Active Member at the time he ceases to be an Eligible Employee, is less than that prescribed by legislation, then the full amount of his Fund Credit may, on request by him, be paid to him after the deduction of any applicable tax.

**7.4 On Redeployment/Transfers**

Benefit withdrawals are not permitted for re-deployments, secondment or the compulsory transfer of employment unless there is actual termination of employment.

## 8. PAYMENTS OF CLAIMS

- 8.1 In the event that a Member Beneficiary is overpaid by the Fund, the amount of such overpayment shall be recoverable by the Fund from such Member or Beneficiary on such terms as the Trustees determine in consultation with the Member or Beneficiary.
- 8.2 In the event that a Member or Beneficiary is underpaid by the Fund, the amount of such underpayment shall be recoverable by the Member or Beneficiary from the Fund on such terms as the Trustees determine in consultation with the Member or Beneficiary.

## 9. TRANSFERS

**9.1 Transfers into the Fund**



If a person who prior to becoming an Active Member was a member of another Superannuation Fund, and chooses to transfer their benefit from that Superannuation Fund to the Fund, then if the rules of that Superannuation Fund permit such a transfer the amount so transferred shall be credited to his Member Account.

A Deferred Member may transfer any benefit from another Superannuation Fund to the Fund if the rules of that Superannuation Fund permit such a transfer; and upon transfer the amount of that benefit must be credited to his Member Account)

### 9.2 Transfers out of the Fund

An Active Member upon ceasing to be an Eligible Employee, or a Deferred Member at any time up to date of retirement, may by notice in writing to the Fund, require that his Fund Credit be transferred to a Superannuation Fund of which he is a member or of which he is about to become a member; or an individual retirement fund. Upon such transfer he shall have no further claim against the Fund. An active member or deferred member has the option to encash a to sum not exceeding one quarter (1/4) of his Fund credit and transfer the remainder other Superannuation or individual Retirement Funds.

## 10. TERMINATION OF THE FUND

### 10.1 Liquidation of the Fund

Should the Fund be wound up whether voluntarily or compulsorily, a Member is entitled to lodge a claim in respect of his benefits in the liquidated estate of the Fund.

10.2 Where the Fund is liquidated and its assets are to be distributed amongst stakeholders, the Trustees must appoint a liquidator subject to approval by the Regulatory Authority.

10.2.1 A liquidator shall, determine the date of liquidation and the period of Backdating, if any, for those members who during that period, resigned or were discharged solely because of the impending winding-up of the business operations of the fund as their employer, who shall be deemed members for the purposes of liquidation.

### 10.3 Liquidation of an Employer

In the event of an Employer being liquidated an Active Member, employed by such Employer (in liquidation), is entitled to terminate his membership and demand payment of his benefits in line with Rule 7.2 and 7.3 as at the





date of such liquidation.

#### 10.4 Liquidation of Participating Employers

In the event of a winding up, whether voluntary or otherwise, of all the Employers (excluding for this purpose the Fund), or if all such Employers cease to carry on business, the Trustees appoint a liquidator who must terminate the Fund and, on the advice of the Actuary:

- 10.4.1 pay to an approved Superannuation Fund or Insurer the capital sum necessary to purchase a pension for each Pensioner which accords, as closely as possible, in all respects with his pension from the Fund; and
- 10.4.2 divide the remainder of the sum realised by the assets of amounts the Fund among the Active Members and Deferred Members in proportionate to the credit of their respective Fund Credit and apply each such amount to the purchase from an Insurer of an annuity which incorporates life cover to the date of commencement of payment of the pension and which provides for commencement of the pension from a date to be selected by the annuitant between the ages of 50 (fifty) years and 60 (sixty) years; provided that
  - a) if the amount available to purchase an annuity for any Member is less than the amount prescribed by legislation which may be taken as a lump sum on termination of employment with an Employer then such amount shall be paid to the Member in full;
  - b) if the amount to be so divided exceeds the Fund Credit of each then such excess shall be surplus which shall be distributed, after deduction of any costs associated with its distribution, amongst the Active Members, Deferred Members and Pensioners in the ratio of the Fund's liability to each; and
  - c) any amount payable to an Active Member or Deferred Member pursuant to the above provision which remains unclaimed for a period of 6 months, shall be deposited in a registered trust with the Master of the High Court to the credit of the Member and there after the Member shall have no claim in respect thereof against his Employer or the Fund.

## II. MANAGEMENT OF THE FUND

### 11.1 Trustees

The Trustees are responsible for directing, controlling and overseeing the



operation of the Fund in accordance with all laws which are applicable to the Fund and in accordance with these Rules.

**11.2** When they direct, control and oversee the operation of the Fund, the Trustees must:

- 11.2.1 act with due care and diligence and in the best interests of the Fund;
- 11.2.2 take all reasonable steps to protect the interests of the Members;
- 11.2.3 act in good faith towards the Employers and any other stakeholder in the Fund;
- 11.2.4 avoid conflicts of interest; and
- 11.2.5 act with impartiality toward all Members and Beneficiaries.

The Trustees exercise the Fund's powers referred to in the Rules. In addition, the Trustees have the power at their sole discretion to make arrangements for the administration of the Fund as long as these arrangements are not inconsistent with the Act and the Rules.

**11.3 The Trustees must:**

- 11.3.1 ensure that proper accounts, registers and records of the operations of the Fund are kept. These records include proper minutes of all meetings and of all resolutions passed by the Trustees;
- 11.3.2 ensure that true and full accounts of the Fund are kept in accordance with generally accepted accounting practice and any guidelines issued by the Auditor from time to time. Those accounts must be made up to the Financial Year end and must be a fair representation of the Fund's financial state of affairs and position and must be audited by the Auditor;
- 11.3.3 ensure that proper controls are used to protect the assets of the Fund and the confidentiality of Member and Employer data.
- 11.3.4 ensure that adequate and appropriate information is given to the Members regarding their rights, benefits and obligations in terms of the Rules;
- 11.3.5 take all reasonable steps to ensure that Contributions are paid to the Fund on time and that the Contributions are deposited into the Fund's bank account as soon as reasonably possible.
- 11.3.6 obtain expert advice when they lack sufficient expertise within the Board. The Board must not simply and unquestionably accept that



advice. The Board must apply their independent discretion and must question and clarify expert advice until they are comfortable to take a decision on the matter.

- 11.3.7 ensure that the Fund operates and is administered in accordance with the Rules, the Act and any other applicable laws and that the Rules are compliant with these laws;
- 11.3.8 ensure that every title deed and other document which is purported to prove ownership of any particular property is kept in an appropriate safe-keeping arrangement; and
- 11.3.9 ensure that only people who have been duly authorized by the Trustees by way of a resolution to sign on behalf of the Fund, do sign cheques, contracts or other documents on its behalf.
- 11.4 The Trustees shall establish a Code of Conduct to which they are subject, and as prescribed in terms of the Regulations, and such other policies as may be required by legislation. The Code of Conduct shall prescribe appropriate conduct of Trustees, individually and collectively and also for the suspension or expulsion of a Trustee or such other sanction as may be appropriate in the event of a breach of the Code of Conduct.
- 11.5 For the Board of Trustees to be properly constituted, it must comprise at all times:
- a minimum of (5) five and a maximum of eleven (11) Trustees;
  - at least 1 (one) Independent Trustee;
  - at least 50% Member Trustees;
  - and the balance Employer Trustees.
- 11.6 If at any time the Trustees are not properly constituted as required in terms of Rule 11.5 then the Trustees have the power to fill such vacancies in office as to ensure that there is compliance with the requirements of Rule 11.5.
- 11.7 A Trustee may receive remuneration for acting as such in accordance with policies and limitations set by the Trustees from time to time.
- 11.8 Trustees shall receive from the Fund a refund of all expenses reasonably incurred by them in the course of carrying out functions of the Fund in accordance with policies and limitations set by the Trustees from time to time.
- 11.9 Disqualification for holding office as Trustee
- A person is disqualified from being nominated, appointed or continuing in office as a Trustee if that person:



- 11.9.1 was previously a Trustee and was found by the Trustees to have been in breach of the Fund's Code of Conduct, or has been previously removed from an office of trust on account of misconduct, unless the Trustees agree to the contrary; or
- 11.9.2 is under 18 (eighteen) years of age; or
- 11.9.3 is mentally or physically incapable of discharging his or her duties in terms of these Rules and/or the Act; or;
- 11.9.4 has had his or her estate sequestrated or surrendered or assigned in favour of creditors and has not been rehabilitated by a court; or
- 11.9.5 has been convicted by a court of theft, fraud, forgery or any offence involving dishonesty; or
- 11.9.6 has been discharged by a court from any office of trust on account of misconduct; or
- 11.9.7 has been convicted by a court on any charge and sentenced to a prison term without the option of a fine; or
- 11.9.8 does not have, as minimum educational qualification, a Botswana O' level pass or equivalent; or
- 11.9.9 does not meet the fit and proper requirements of a Trustee in the opinion of the Regulator.

#### **11.10 Vacation of Office**

##### **A Trustee vacates office:**

- 11.10.1 on furnishing the Fund with his resignation in writing as a Trustee; or
- 11.10.2 if an independent investigation finds that a Trustee is not a fit and proper person to hold office and provided that not less than  $\frac{3}{4}$  (three quarters) of the Trustees in office agree with this finding irrespective of whether or not there has been a breach of the Fund's Code of Conduct, subject to the Trustees having heard representations in the matter by the Trustee concerned, or his representative, before accepting or rejecting the finding; or



- 11.10.3 if a Trustee, within 30 (thirty) days of appointment or election as a Trustee, fails to sign the acceptance of trust form, incorporating the Code of Conduct, together with any annexure thereto, the contents of which acceptance of trust form and any such annexure must have been agreed by the Trustees; or
- 11.10.4 if a Trustee fails to comply with the minimum meeting attendance requirement of attendance at 75% (seventy-five per cent) of all Trustee meetings, including meetings of any sub-committee of which the Trustee is a member; or if a Trustee fails to attend 3 (three) consecutive Trustee meetings or 3 (three) consecutive sub-committee meetings of which the Trustee is a member. This applies regardless of whether that Trustee has tendered an apology. A Trustee's meeting attendance is measured according to the number of meetings of the Fund held during each calendar year. Failure to comply with the minimum attendance requirement may be condoned after good cause has been shown by the Trustee concerned and if granted by a majority of 2/3rd (two-thirds) of the Trustees after considering submissions made by the Trustee concerned; or
- 11.10.5 if any of the grounds listed in Rule 11.2 becomes applicable to a Trustee while in office, in which case he is disqualified from remaining a Trustee;
- 11.10.6 if being an Employer Trustee appointed by an Employer:
- 11.10.6.1 is no longer in the employment of the Employer which appointed him, unless that Employer advises the Fund to the contrary in writing.
  - 11.10.6.2 the Employer which appointed the Trustee by notice to him and the Fund withdraws the appointment, which it can do for any reason



### 11.11 Employer Trustees

- a. Debswana Diamond Company is entitled to appoint two (2) Employer Trustees;
- b. Diamond Trading Company Botswana is entitled to appoint one (1) Employer Trustee;
- c. The remaining Employers are entitled to appoint one (1) Employer Trustee, provided that if they cannot agree within 30 days of the vacancy arising then the Board of Trustees must appoint the Employer Trustee.

11.11.1 If there is any vacancy in the office of an Employer Trustee, then his place must be filled as soon as is reasonably possible by that Employer; provided that if that Employer fails to fill such vacancy within 30 days of being so requested to do so in writing by the Fund then the Trustees must fill such vacancy on such terms as they decide with such person so filling this vacancy holding office only until that Employer fills the vacancy. The term of office of an Employer Trustee is 5 (five) years.

11.11.2 Notwithstanding any other provision of the Rules, no Employer Trustee shall serve more than 2 (two) consecutive terms of office.

### 11.12 Member Trustees

11.12.1 The Active Members have the right to elect 4(four) Member Trustees by way of an election to be held within each 5 (five) year cycle coinciding with the Trustee appointment Date. A Member Trustee whose term of office comes to an end according to this Rule may be re-elected, but no Member Trustee shall serve more than 2 (two) successive terms of office.

11.12.2 Each Active Member may vote at such an election in their constituency for a Member Trustee. The elections may take place in such manner as the Trustees decide but must include voting via, at the discretion of the Trustees, either manual or internet or by postal vote (which postal vote may, at the discretion of the Trustees, be either a vote posted or sent by fax). Subject to Rule 11.5.4 and the other provisions of these Rules, the nominees receiving the highest number of votes become the Trustees. Any candidate in an election who fails to abide by these provisions shall be, disqualified from being appointed as a Member Trustee unless the Trustees decides otherwise. The Trustees shall establish the Elections guidelines.



11.12.3 The membership of the Fund is divided into such Constituencies from time to time as the Trustees may determine according to the geographical area in which participating employers operate or are grouped together.

**11.13 Independent Trustees/Specialist**

The Trustees shall appoint an Independent Trustee. An Independent Trustee shall serve a 3 (three) year term in office and may be reappointed as such, but may not serve more than 2 (two) successive terms of office. An Independent Trustee shall not be an employee, agent, director or shareholder of any service provider or of the Fund; have a spouse, child, parent or sibling who provides a service to the Fund; have extensive experience in the retirement funds industry; have the experience of a Trustee not limited to retirement funds but shall have a general understanding of the industry; have good communication skills; and provide general retirement fund expertise to the Board.

**11.14 Pensioner Trustee**

The Pensioners have the right to elect a Pensioner Trustee, who is not required to be a Pensioner to act as such. The provisions of Rule 11.5 apply in the same way to the appointment of a Pensioner Trustee.

**11.15 Chairman, Meetings of and Decision-Making by the Trustees**

11.15.1 The Trustees must appoint a Trustee to act as the Chairman. The Trustees must appoint the deputy Chairman who shall assume the office of the Chairman in his absence. The Chairman holds office for a period of 3 (three) years, or until his term of office as Trustee terminates, whichever is the earlier. The Chairman may, after his term of office ends, be reappointed as Chairman provided he is a Trustee. However, a Trustee may not serve more than two (2) successive terms of office as Chairman.

11.15.2 The Trustees must meet as often as they consider necessary or desirable for the proper conduct of the business of the Fund, provided this is at least 4 (four) times per year. Each Trustee must be given reasonable notice of a Trustee meeting.

11.15.3 Subject to Rule 11.6, for a meeting to be properly constituted when it is first scheduled to take place, a quorum shall be constituted if there are present two thirds of the Trustees in office and at least one half of those Trustees present comprise the Member Trustees (which for the purposes of this Rule 11.14 includes a Pensioner Trustee) and at least one half of those Trustees present comprise the Employer Trustees. A Trustee is present if able to participate in a meeting by telephone or video-conference. The meeting will not be rescheduled if a quorum is constituted and



it was advertised well before time.

- 11.15.4 The Chairman may convene a special meeting of the Trustees if he deems it necessary.
- 11.15.5 Subject to Rule 11.15.2 the Principal Officer, failing whom the Chairman, must give the Trustees reasonable notice of each Trustee meeting. The notice must specify the time, date and place of the meeting and the general nature of the issues to be discussed at the meeting. Unless a majority of the Trustees agree that other matters may be discussed at the meeting, only those issues indicated in the notice may be discussed.
- 11.15.6 A special meeting must be held within 10 (ten) working days of it being requested in writing by at least 4 (four) Trustees who have given the Principal Officer or Board Secretary—
- 11.15.6.1 written notice of the issues to be discussed at the special meeting; and
- 11.15.6.2 written reasons why the Trustees should not wait to discuss these issues at their next ordinary meeting.
- 11.15.7 Each Trustee meeting must be chaired by the Chairman or, if he is unable to do so, by the Deputy Chairman or if he is also unable to do so, another Trustee selected for that purpose by those Trustees present at the meeting and constituting a quorum. The person chairing the meeting shall be responsible for ensuring that it is conducted in an orderly fashion. He may exclude from the meeting any Trustee or other person on reasonable grounds in consultation with other members who deliberately ignores instructions from the Chairman regarding the way that the meeting is to proceed or who makes it difficult for the Trustees to function in an orderly fashion.
- 11.15.8 The Chairman must ensure that minutes are taken of each meeting. Those minutes must be distributed in draft form to the Trustees by no later than 2 (two) weeks after the meeting of the Trustees
- 11.15.9 Any decision of the Trustees shall be valid –
- 11.15.9.1 if it was taken in a meeting which complies with Rule 11.15.3 and 50% (fifty per cent) plus 1 (one) of the Trustees present must have voted in favour of the decision.
- 11.15.9.2 if the decision was not taken in a meeting but was taken by "round robin resolution" instead, the voting must be





unanimous.

- 11.15.10 if the Trustees reach a deadlock on any issue then the Chairman has a casting vote.
- 11.15.11 A Trustee who has any direct or indirect personal financial interest, other than his interest as a Member, in a decision to be taken by the Trustees must disclose that interest as soon as he is aware of the agenda item or at the beginning of the meeting or at the very latest before the decision is taken. He must recuse himself from the room and must not vote on the matter.
- 11.15.12 a decision taken by "round robin resolution" must be noted at the next ordinary meeting of the Trustees and included in the Fund's minute book.
- 11.15.13 The Trustees may decide on a general policy to govern any aspect of the business of the Fund and may record that policy in a "practice note". The Trustees must review its policies as per Regulatory requirement.

#### **11.16 Other appointments**

The Trustees shall appoint:

- 11.16.1 an administrator who shall;
  - 11.16.1.1 administer the fund in a responsible manner,
  - 11.16.1.2 maintain the membership records of the Fund, must further keep a complete record of all necessary particulars of the Members and any other persons entitled to benefits and of all other matters essential to the operation of the Fund.
  - 11.16.1.3 collect contributions on behalf of the Fund,
  - 11.16.1.4 pay benefits, and
  - 11.16.1.5 remit any excess moneys to the investment managers when appropriate,
  - 11.16.1.6 maintain books of accounts of a fund and other records as maybe necessary for purposes of administering a fund,



- 11.16.1.7 submit to the Regulator audited financial statements of the fund and such other statements and reports after end of financial year within the stipulated time lines in the relevant Act. The audited financial statements must be submitted within the stipulated time lines in the relevant Act.
- 11.16.1.8 Maintain adequate financial resources to meet its commitment to the Fund; and
- 11.16.1.9 identify and manage the risks to which the Fund may be exposed
- 11.16.2 an Auditor, an Actuary, a Custodian, an Insurer and Asset Managers, and may withdraw any such appointment and make another appointment in its place at any time;

#### 11.16.3 Principal Officer

The Principal Officer shall:

- 11.16.3.1 be employed by the Fund on such terms and remunerated at such rate as the Trustees shall determine in writing;
- 11.16.3.2 be required to carry out such duties as are required of a principal officer in terms of the Act;
- 11.16.3.3 be required to be an ex-officio member of each committee established in terms of Rule 11.19 but without voting rights, unless the Trustees stipulate otherwise;
- 11.16.3.4 ensure that the decisions of the Trustees are implemented;
- 11.16.3.5 ensure that the Fund complies with all relevant statutory requirements of the Act and the Regulatory Authority;
- 11.16.3.6 liaise with the management of the Secretariat, Consultants and service providers to the Fund on behalf of the Trustees.
- 11.16.3.7 provide a full disclosure of the affairs, risk and opportunities of the fund to the Trustees timeously
- 11.16.3.8 ensure that recommendations made to the Trustees are meaningful,





have relevant supporting documents and give Trustees enough time to make meaningful decisions

11.16.3.9 ensure that all concerns raised by Trustees are responded to timeously

11.16.3.10 where the Principal Officer is for any reason unable to discharge his duties for a period of 1 (one) month or more, an acting Principal Officer shall be appointed by the Board and approved by the Regulator:

11.16.3.11 The Trustees may appoint Consultants on such terms as they may determine, and may withdraw any such appointment in accordance with the terms of appointment.

## 11.17 Insurance

### Indemnification of Officers of Fund and Insurance

11.17.1 The Fund indemnifies and holds harmless each Trustee, the Principal Officer and any person employed by the Fund in the Secretariat against any loss whatsoever he may suffer in respect of any claim, proceeding or action arising out of or in connection with the exercise of his duties as such, save where the claim arises out of or in consequence of the fraudulent or negligent act or omission of any such person.

11.17.2 The Trustees must insure the Fund against loss or harm resulting from the fraudulent or negligent act or omission of any person employed in the Management of the Fund.

### 11.17.3 Insurance of Benefits

The Trustees may in their absolute discretion insure any or all of the benefits granted by the Fund to which a Member may become entitled from the Fund with an Insurer and may make payment of premiums for such reinsurance out of the assets or income of the Fund or the Contributions received by the Fund, as the Trustees may decide.

## 11.18 Committees

11.18.1 The Trustees must establish the following committees to assist in their responsibilities:

- Investment and Finance Committee, the functions of which are to provide direction, oversight and advice to the Trustees regarding the Fund investments, including formulation of investment policies, Statement of Investment Principles and investment implementation strate-



gies. The Committee will also be responsible for providing oversight over financial reporting.

- Benefits and Communications Committee, the functions of which are to devise a suitable communication strategy and benefits process to the Trustees, and that systems are in place to carry this out.
- Nominations and Remunerations Committee, the functions of which are to ensure that there is a formal, rigorous and transparent process for the appointment of Member Trustees and Independent Trustees; to make recommendations regarding the appropriate composition of Trustee committees; and to establish the human resources policies and practices in respect of the secretariat.
- Audit and Risk Committee, the functions of which are to ensure that best corporate governance practice is applied to the Fund; there is; the management of risks affecting the Fund including risks pertaining to the Fund's investment portfolios; the integrity of internal control systems; the provision of assurance on the reporting to the Trustees and stakeholders; and management of issues on anti-money laundering.

11.18.2 The Trustees may also establish any other committee, whether on an ad-hoc or permanent basis; and may also terminate the existence of any such other committee.

11.18.3 Each committee established in terms of this Rule, whether one referred to in Rule 11.23.1 or 11.23.2, must:

11.18.3.1 Be in writing and set out the purpose of each committee.

11.18.3.2 Comprise, as voting members only, one or more Trustees and, unless the Trustees decide otherwise, the Principal Officer as a non-voting member;

11.18.3.3 Set out in its terms of reference the powers and responsibilities of that committee, which must include a duty to report on its activities at each Board meeting.

11.18.3.4 A committee may invite such Consultants or other persons to assist it, but only Trustees who are members of a committee may vote on a matter before that committee.

11.18.3.5 A decision taken by a committee acting within its authority binds the Fund and must be noted at the next Trustee meeting.



### 11.19 Meetings with Members

The Trustees may arrange such meetings with Members as will facilitate the communication between the Trustees and the Members concerning the affairs of the Fund. The agenda for such a meeting shall be determined by the Trustees, and no resolution of Members at such a meeting shall bind the Trustees or the Fund.

## 12. FINANCIAL PROVISIONS

### 12.1 Investments

All monies received on account of the Fund must be paid into a banking account opened in the name of the Fund with a registered bank.

The Trustees have the power:

- 12.1.1 to develop and implement an Investment Policy Statement in line with Regulation 17 (5) (a) to (d);
- 12.1.2 to invest all surplus cash in accordance with the prescribed classes of assets as approved by the Trustees as contained in the Fund's statement of investment principles and as prescribed by law;
- 12.1.3 to borrow monies upon or without security from a registered bank to meet any short term cash flow shortage, at such rate of interest and on such terms and conditions as they may deem fit, and if upon security, may secure repayment, of the monies so borrowed with the interest thereon by mortgage, pledge or bond over any of the movable or immovable property or other assets of the Fund; provided that the Trustees may not, without the express consent in writing of the Regulatory Authority, borrow monies in excess of twenty five per cent (25%) of the current value of the Fund's assets.
- 12.1.4 save with the prior express consent in writing of the Regulatory Authority invest or keep invested more than five (5%) of the aggregate value of the Fund's assets in the business of a Participating Employer or any associate of such Participating Employer.

### 12.2 Expenses

All expenses directly related to the running of the Fund must be borne by the



Fund and debited, as the Trustees may decide from time to time on the advice of the Actuary, from the Investment Return and/or Contributions; provided that the Trustees must ensure that the treatment of expenses is attributed equitably within the bounds of practicality amongst the Fund membership. The Expense Reserve Account shall meet unexpected expenses, and shall be funded in such amount from time to time as the Trustees decide on the advice of the Actuary from the Investment Return.

### 12.3 Actuarial Valuations

The Trustees shall cause the Fund to undergo an actuarial valuation at such frequency as the Trustees may decide, but at least at such intervals as required by law, by the Actuary for the purposes of determining whether it continues to meet its liabilities as specified in the Rules. Such a valuation shall be carried out according to the requirements of the Act and the Regulator and must also comply with the requirements of this Rule 12.3. In a valuation carried out in terms of Rule 12.3:-

- 12.3.1 To the extent that the assets backing the Pensioner liability exceed this liability, the excess must be applied to meet any underfunding of the Solvency Reserve Account;
- 12.3.2 A surplus only arises in the Pensioner Account or the Solvency Reserve Account if both of these Accounts are fully funded in terms of such a valuation, and there are assets sufficiently in excess of either or both of these Accounts to warrant the apportionment of that, if the Trustees so decide after taking account of the costs involved. Any such surplus may only be applied for the benefit of the Pensioners in such manner as the Trustees decide.
- 12.3.3 To the extent that the assets to the credit of the Data Reserve Account exceed what the Trustees decide should be the amount to the credit of this Account, then such surplus must be allocated equitably by the Trustees between the Member Accounts on the one hand and the Pensioner Account on the other hand. Similarly, if there is a deficit in the Data Reserve Account then the deficit must be met from the Member Accounts on the one hand and the Pensioner Account on the other hand in a way that the Trustees decide is equitable.
- 12.3.4 To the extent that the assets to the credit of the Processing Error Reserve Account exceed what the Trustees decide should be to the credit of this Account, then this excess constitutes surplus which must be applied apportionately to each Member Account. Similarly, if the Processing Error Reserve Account is in deficit then this deficit must be met proportionately from the Member Accounts.



### 13. AMENDMENT OF RULES

- 13.1 The Trustees may in writing amend these Rules at any time.
- 13.2 No amendment to the Rules which results in increased Contributions or a different Normal Retirement Date may be made without the written consent of each Employer.
- 13.3 The Regulatory Authority and the Botswana Unified Revenue Service (BURS) must be notified of all amendments to these Rules and no amendment is valid until it has been approved and registered in the first instance by the Regulatory Authority and by BURS.
- 13.4 If the registration of any Rule amendment takes place after the effective date of the Rule amendment, the amendment nevertheless takes effect from its effective date

### 14. INTERPRETATION OF RULES

- 14.1 The decision of the Trustees as to the meaning of or interpretation of these Rules or of any particular Rule or part of a Rule is final and binding on every Employer, Member and Beneficiary.
- 14.2 In deciding on any question of fact, the Trustees may act upon such evidence and advice as they deem adequate.
- 14.3 In arriving at a decision, the Trustees may receive representations orally or in writing or in any such manner and on such terms as they may determine.

### 15. MISCELLANEOUS/GENERAL PROVISIONS

- 15.1 The Rules do not constitute conditions of service.
- 15.2 No person shall have any claim against the Fund as Member or Beneficiary, except in accordance with the Rules and where there is a case registered with the Courts that may impact on the eligibility of the beneficiary and or distribution of the benefits, the Trustees may put on hold the claim until such matter is resolved by the Courts.
- 15.3 Every Pensioner and Deferred Member must notify the Fund in writing of his contact and such other details as the Trustees determine from time to



time, including his place of residence, postal address, and telephone number, and of any change of such details when they occur.

- 15.4 The Fund requires every Pensioner to provide proof of his existence every year in such manner as the Trustees may decide. If any Pensioner does not provide such proof then his pension shall be suspended by the Fund until such proof is provided to the Fund. If a Pensioner fails to provide such proof of existence for a continuous period of seven (7) years despite being requested to do so in writing addressed to his last address known by the Fund then the Pensioner shall be deemed, unless the Trustees may decide to the contrary for any reason, to have died in the month which coincides with the seventh anniversary of the request for proof of his existence, and the pensions unpaid to him at that date revert to the Fund
- 15.5 Nothing in the Rules restricts in any way the right of an Employer to terminate the employment of an Active Member:
- 15.6 If, in the opinion of the Trustees any person otherwise entitled to benefits under these rules:
- 15.6.1 is owing to proven disease, mental disorder or defect, not responsible for his actions or is incapable of managing his affairs;
  - 15.6.2 is proven addicted to the excessive use of any habit forming drug or of intoxicating liquors or is otherwise of intemperate habits; and
  - 15.6.3 is proven prodigal, or under age; has failed on account of imprisonment, desertion, divorce or any other cause, to support persons dependent upon him for maintenance, the Trustees may in their discretion pay such benefits -
    - (i) To a Trust, in which case the Board may determine the age at which the remaining capital is paid out to the Beneficiary;
    - (ii) To a person recognised by law or appointed by court as the person responsible for managing the affairs of that Beneficiary; or
    - (iii) To a beneficiary fund licensed under the Act in each instance there by discharging the Fund's liability to that person.
- 15.7 Where under these Rules payments are to be or may be made by the Trustees to Dependants, the Trustees, in their absolute discretion:
- 15.7.1 may determine who the Dependants are, of the person concerned; and under these Rules, payments to be made and in what propor-





tions; and

15.7.2 may make payment of the benefits by instalments and they shall add to the part retained by them, interest at such rate as they may from time to time determine.

## 16. PAYMENT CURRENCY

All payments due to, or in respect of Members, Dependants or Beneficiaries are made in the currency of the Republic of Botswana.

## 17. CESSATION OF ACTIVE MEMBERSHIPS

If a Member has ceased active membership and has unallocated Contributions, the Contributions when allocated must be credited to his Member Account. If the Member has upon resignation opted to exit the Fund, such monies must after taxation thereon, if payable, be refunded to the Member.

## 18. TAX AND TRUSTEES LIABILITY

Should the Fund become liable at any time to account to any tax authority for any income or other tax on any payment to a Member, a sum equivalent to the amount for which the Fund may be so liable shall be deducted from the Member's payment.

## 19. DISPUTES

Any dispute between the Fund and any Member or any person whose claim is derived from a Member shall be referred to the Trustees whose decision thereon, shall be final and conclusive. A Member so aggrieved by the decision of the Trustees shall apply to the Non-Bank Financial Institutions Regulatory Authority for adjudication.

## 20. LOW PENSION CREDITS

Notwithstanding anything contained in these Rules, if the Trustees consider that a pension payable is too small to justify its payment as a pension, the Trustees may, in their absolute discretion, commute such pension, either at



the time it is granted or later, for a lump sum and the payment of such lump sum, the amount of which shall be decided upon by the Trustees acting upon the advice of the Actuary to that pensioner, shall relieve the Fund of all liability in respect of the pension which has been so commuted. Provided further; however, that not more than one third of the pension may be commuted under this Rule, except where the pension is less than P5000 (five thousand Pula) per annum or such other amount laid down in the Regulations.

## 21. UNCLAIMED BENEFITS

Any benefit which is unclaimed for a period of six (6) months must be credited to the Unclaimed Benefits Account. Any unclaimed benefit must be identified as such and maintained in the Unclaimed Benefits Account until such a time when the Fund is liquidated or the license cancelled following the transfer out of its Members, or until it is paid to a fund that is established for the purpose of holding unclaimed benefits.

If such an unclaimed benefit remains unclaimed after 5 (five) years from when it first became payable it may, at the discretion of the Trustees, and provided they have taken all necessary measures to locate the beneficiaries including placement of advertisements in the newspapers, be cancelled and revert to the Fund; provided that an unclaimed benefit which originates from a death benefit which was distributed in terms of Rule 6 must after such time as the Trustees consider appropriate be redistributed in such proportions as the Trustees consider appropriate amongst the original surviving and traced Beneficiaries to whom that death benefit was awarded.



