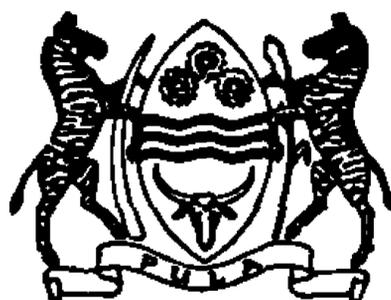


PENSION AND PROVIDENT FUNDS ACT, 1987.

No. 18



of 1987

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

Date of Assent: 2.9.87

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana

PART I *Preliminary*

Short title
and
commen-
cement

1. This Act may be cited as the Pension and Provident Funds Act, 1987, and shall come into operation to such extent and on such dates as the Minister may, by notice published in the Gazette, appoint.

Inter-
pretation

2. (1) In this Act, unless the context otherwise requires, —
“actuary” means —

- (a) a fellow of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland; or
- (b) such other person having actuarial knowledge as the Registrar may approve;

“appointed day” means the date fixed in terms of section 1 as the date upon which this Act shall come into operation;

“associated” in relation to an application for registration of a fund includes —

- (a) any company in which that fund has a managerial interest;
- (b) any person who is an employee or manager of that fund; or
- (c) if the fund is a company —

- (i) any director of that company;
 - (ii) any subsidiary of that company;
 - (iii) any director or employee of any such subsidiary;
- “Botswana member” means a member who is resident in Botswana;
- “court”, in relation to any offence under this Act, includes a magistrates court having jurisdiction in respect of that offence;
- “employee” includes a director of a company whose time, in the opinion of the Registrar, is wholly or almost wholly occupied in the service of the company;
- “existing funds” means a fund which was established and has been approved by the Commissioner of Taxes in terms of the Income Tax Act;
- “external fund” means a fund which has a head office outside Botswana;
- “fund” means any scheme or arrangement, other than an insurance company scheme but including a trust fund, the principal object of which is to provide benefits for persons who are or have been members of the scheme or arrangement upon their retirement on account of age or ill-health, or upon a person completing a fixed period of service, whether or not such scheme or arrangement —
- (a) also provides benefits for dependants or nominees of deceased members; or
 - (b) continues to admit members or to receive contributions; and includes any fund established by or in terms of any enactment:
- Provided that a scheme or arrangement which is established to benefit only one member or his dependants shall not be regarded as a fund;
- “head office”, in relation to a fund, means the office at which the main records of the fund are kept;
- “insurance company scheme” means a scheme which provides for the establishment and administration of a fund exclusively by an insurer;
- “insurer” means a person registered to transact long term insurance business in terms of the Insurance Industry Act, 1987;
- “internal fund” means a fund which has its head office in Botswana;
- “life insurer” means an insurer which carries on long term insurance business as defined in the Insurance Industry Act, 1987;
- “member”, in relation to a fund, means any person who is a member of that fund in terms of the rules thereof;
- “Minister” means the Minister to whom the President may from time to time assign the administration of this Act;

- “officer”, in relation to a fund, means any person who is employed by that fund or is otherwise concerned in the management of that fund;
- “participating employer”, in relation to a fund means any employer who contributes to that fund in terms of the rules thereof or who participates in the administration of that fund not being an insurance company scheme;
- “pension” includes an annuity acquired through a fund and a commuted lump sum not exceeding thirty four percent of the pension to which the person would be entitled on retirement;
- “pension fund” means any fund the principal object of which is to provide for the payment of a pension to a person, who is or has been a member of the fund, on his retirement;
- “principal officer”, in relation to a fund, means a person appointed in terms of section 13 to be the principal officer of that fund;
- “provident fund” means a fund which is not a pension fund;
- “provisionally registered”, in relation to a fund, means provisionally registered in terms of this Act;
- “registered”, in relation to a fund, means registered in terms of this Act;
- “registered office”, in relation to a fund, means the registered office of that fund referred to in section 12;
- “Registrar” means the Registrar of Pension and Provident Funds appointed in terms of section 3;
- “retirement” means the attainment of retiring age, whether or not there is a termination of employment;
- “retiring age” means that age, at which the member is, under the rules of the fund, expected to retire from employment;
- “return” includes —
- (a) all accounts required by section 15; and
 - (b) any report by the actuary or auditor of a fund; and
 - (c) any document which a fund is required by or in terms of this Act to furnish to the Registrar; and
 - (d) any other information which the Registrar requires a fund to submit to him;
- “rules”, in relation to a fund, means the rules applicable to that fund, including —
- (a) any document by or in terms of which the fund is established; and
 - (b) those provisions relating to the conduct of the business of the fund, the benefits which may be granted from the fund and the contributions which are payable to the fund;
- “self-administered fund” means a fund which is not an insurance company scheme.

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

3. (1) There shall be a Registrar of Pension and Provident Funds (in this Act referred to as "the Registrar") who shall be a public officer appointed by the Minister.

Appoint-
ment and
functions
of Registrar

(2) The Registrar shall, subject to the direction of the Minister, be responsible for the general administration of this Act.

(3) A person shall not be qualified to be appointed as the Registrar, or if already appointed shall become disqualified if —

(a) he or his spouse or dependant child is or becomes a director, officer or employee, whether directly or indirectly, of a Botswana registered pension or provident fund;

(b) he is adjudicated bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.

(4) Notwithstanding subsection (3), no act or omission by the Registrar done or omitted bona fide for the purposes of or in pursuance of this Act shall be invalidated by reason only of any defect in his appointment.

(5) There shall be appointed such other staff as may be necessary for the efficient administration of this Act.

(6) The expenses of and incidental to the administration of this Act shall be paid out of monies provided by Parliament for that purpose.

(7) The Registrar may, in relation to any function or matter or class of functions or matters, by writing under his hand, delegate any of his powers and functions under this Act (except this power of delegation), so that the delegated powers and functions may be exercised by the delegate with respect to the function or matter or class of functions or matters specified in the instrument of delegation.

(8) Every delegation under subsection (7) shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Registrar.

(9) No legal proceedings shall be instituted in any court against the Minister or the Registrar for anything done or intended to be done in good faith under this Act.

(10) No compensation shall be payable to any person for any loss, damage or harm directly or indirectly caused by anything done or intended to be done in good faith by the Minister or the Registrar or any person authorised by the Minister or Registrar under this Act.

(11) Subject to the provisions of this Act, the functions and duties of the Registrar shall include —

- (a) the registration and superintendence of the conduct of pension and provident funds;
- (b) the formulation and enforcement of standards in the conduct of the business of pension and provident funds with which the management of such funds must comply;
- (c) the recommendation to the Minister of regulations for the carrying out of Government policies relating to funds;
- (d) such other functions as are assigned to the Registrar by this Act or regulations made hereunder or such other duties as the Minister may assign to him.

(12) The Registrar shall, as soon as reasonably practical after each year ending on 31st December, furnish to the Minister a report on the working of the Act during that year together with copies or summaries and documents deposited with him under this Act during that year; and the Minister shall lay the report before the National Assembly as soon as reasonably practicable thereafter.

PART II *Registration and matters incidental thereto*

Funds to be registered

4. No person shall establish or carry on the business of a fund unless that fund is registered or provisionally registered.

Registration or provisional registration of fund

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

- (a) an application for registration in the prescribed form; and
- (b) if the application is for registration, two copies of printed, duplicated or typed rules providing for the matters referred to in section 7:

Provided that in the case of an application by an existing fund which is provisionally registered, one copy of the rules of the fund which has been approved by the Commissioner of Taxes may be submitted, together with any amendment for approval in terms of section 8.

(2) If, on receipt of an application in terms of subsection (1) —

(a) for registration, after considering the application, the rules accompanying such application and such further information as he may require, the Registrar is satisfied that —

- (i) the rules are not inconsistent with the provisions of this Act; and
- (ii) the fund is or will be based on sound financial principles; he shall register the fund;

(b) for provisional registration, the Registrar is satisfied that the fund is or will be based on sound financial principles, he may provisionally register the fund.

(3) The period of provisional registration of a fund in terms of

paragraph (b) of subsection (2) shall not exceed six months unless, in the case of any particular fund, the Registrar has, by notice in writing, extended the period of provisional registration of that fund, and any such fund shall cease to be provisionally registered when it is registered in terms of paragraph (a) of subsection (2).

(4) A fund which is provisionally registered in terms of paragraph (b) of subsection (2) shall, before its provisional registration lapses, submit an application, together with the rules, in terms of subsection (1) to the applicant for reconsideration or amendment;

(5) The Registrar —

(a) may at any time return the rules submitted in terms of subsection (1) to the applicant for reconsideration or amendment;

(b) shall, on the registration of a fund in terms of paragraph (a) of subsection (2) —

(i) return to the fund a copy of the rules endorsed by him;

(ii) issue to the fund a certificate of registration; and

(iii) if the fund was provisionally registered, require the return of the certificate of provisional registration;

(c) shall, on the provisional registration of a fund in terms of paragraph (b) of subsection (2), issue to the fund a certificate of provisional registration.

(6) On the provisional registration of a fund in terms of paragraph (b) of subsection (2), the provisions of section 6 shall, *mutatis mutandis*, apply in relation thereto and the provisions of this Act shall, *mutatis mutandis*, apply in relation to the provisionally registered fund as they apply in relation to a registered fund.

6. (1) On registration in terms of paragraph (a) of subsection (2) of section 5 —

(a) a fund shall, under the name by which it is so registered, become a body corporate capable of suing and being sued in its corporate name and of doing all such things as may be necessary or incidental to the exercise of its powers or the performance of its functions in terms of its rules;

(b) all the assets, rights, liabilities and obligations pertaining to the business of the fund shall, notwithstanding anything to the contrary contained in any law or in the memorandum, articles of association, constitution or rules of any body, corporate or unincorporate, having control of the business of the fund, be deemed to be assets, rights, liabilities and obligations of the fund to the exclusion of any other person, and no person shall have any claim on the assets or rights or be responsible for any liabilities or obligations of the fund, except in so far as the claim has

Effect of
registration
of fund

arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund;

- (c) the assets, rights, liabilities and obligations of the fund, including any assets held by any person in trust for the fund, as existing immediately before its registration, shall vest in and devolve upon the fund without any formal transfer or cession.

(2) Every director, manager, controller and principal officer of a fund shall be under the same civil liability, in relation to the administration of the affairs of the fund, as if he had been a trustee under a trust for the administration of the fund and as if the members of the fund had been beneficiaries of such a trust, unless the director, manager, controller or principal officer proves that the act causing pecuniary loss to the fund was not done by him and that he had no knowledge of the intention to do such act and that the exercise of due diligence by him did not or would not have made him aware of it.

Rules of
a fund

7. (1) The rules of a fund —

- (a) shall state the name of the fund; and
- (b) shall comply with such requirements as may be prescribed.

(2) Requirements prescribed for the purposes of paragraph (b) of subsection (1) may relate to —

- (a) the membership of the fund;
- (b) the contributions to be paid to the fund whether compulsory or otherwise;
- (c) the benefits to be payable from the fund;
- (d) the commutation of any pension;
- (e) the appointment or election of trustees to administer the fund and their powers and duties;
- (f) the dissolution of the fund, including the appointment and powers of a liquidator;
- (g) the amendment or replacement of the rules.

(3) Subject to the provisions of this Act, the rules of a registered fund shall be binding on —

- (a) the fund;
- (b) any participating employer and the members and officers of the fund; and
- (c) any person who claims under the rules or whose claim is derived from a person claiming under the rules of the fund.

Amendment
of rules
of a fund

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

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

(2) Where a resolution has been passed approving the amendment or replacement of the rules of a fund, the principal

officer of a fund shall, within one month of the passing of the resolution, submit two copies thereof to the Registrar, together with —

- (a) a certificate signed by the principal officer certifying that the rules of the fund applicable to the amendment or replacement have been complied with;
- (b) a statement setting out the reasons for the amendment or replacement; and
- (c) if the amendment or replacement affects the financial position of the fund, a certificate in connection with the financial soundness thereof by the actuary or, if the fund has no actuary, by the auditor.

(3) If the Registrar is satisfied that an amendment or replacement referred to in subsection (1) is not inconsistent with the provisions of this Act, he shall register such amendment or replacement and return to the principal officer of the fund a copy of the resolution with the date of registration endorsed thereon:

Provided that if any such amendment or replacement has the effect of reducing any benefit that has accrued to a member in respect of his service prior to the amendment or replacement, the Registrar may refuse to approve the amendment or replacement if he is of the opinion that it is unjust to any member or group of members or that it has not been approved by a majority of the members of the fund either in writing or at a meeting called for the purpose by the trustees administering the fund or the participating employers, as the case may be.

(4) If at any time the Registrar considers that the rules of a fund require to be amended for the purpose of ensuring compliance with the provisions of this Act, he shall direct the fund to effect such amendment within such period as he may specify and the fund shall comply with such direction.

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

Conclu-
siveness
of certificate
of
registration

10. (1) Subject to the provisions of this section, a registered fund —

Dissolution
of registered
fund

- (a) may be dissolved in accordance with the provisions of the rules of the fund; and
- (b) shall be dissolved where so directed by the Registrar in terms of section 19.

(2) Where the Registrar has in terms of section 19, directed that a registered fund be dissolved, a liquidator approved by the Registrar shall be appointed in the manner provided in the rules of the fund and the following provisions shall apply —

- (a) the liquidator, with the approval of the Registrar, shall determine the date of liquidation and the period of back-dating, if any, for the purpose of including in the calculations in connection with the liquidation those members who during that period resigned or were discharged solely because of the impending winding-up or liquidation of the business operations of a participating employer and who shall be deemed to be members for the purposes of the liquidation;
- (b) until the liquidation is completed, the provisions of this Act shall, as far as practicable, continue to apply to the fund as if the liquidator were the principal officer of the fund;
- (c) the liquidator shall, as soon as possible, lodge with the Registrar a list of the assets and liabilities of the fund certified by him as correct and a scheme setting out the manner in which he proposes to realize the assets of the fund, to discharge the liabilities to persons other than members and beneficiaries and to meet the expenses of liquidation;
- (d) the actuary shall submit to the liquidator a report showing the proportion of the amount available for distribution that the actuary recommends should be applied for the benefit of each beneficiary:

Provided that if the fund in terms of section 14 has not appointed an actuary the amount to be applied for the benefit of each beneficiary shall be determined by the liquidator;

- (e) the liquidator shall submit the report in terms of paragraph (d) to the Registrar with his estimate of the total amount available for distribution and his recommendation as to the manner in which the amount to be applied for the benefit of each member or beneficiary should be applied;
- (f) the documents submitted by the liquidator in terms of paragraph (e) shall lie open at the registered office of the fund for inspection by interested parties for a period of one month;
- (g) the Registrar shall, at the expense of the fund, cause to be published in the Gazette and in a newspaper circulating in the district in which the registered office of the fund is situated a notice which —
 - (i) specifies the period during which and the places at which the documents referred to in paragraph (f) shall lie open for inspection in terms of that paragraph; and
 - (ii) calls upon every interested person who has any objection to the method of distribution recommended by the liquidator to lodge his objection in writing with the

Registrar within such period as may be specified in the notice, being not less than one month from the last day on which the documents lie open for inspection;

- (h) if no objection is lodged with the Registrar in terms of paragraph (g), he shall direct the liquidator to complete the liquidation in accordance with the scheme recommended;
- (i) if any objection is lodged with the Registrar in terms of paragraph (g), the Registrar shall consider the objection and shall direct the liquidator to complete the liquidation in accordance with the scheme as recommended or as amended by the Registrar in such manner as he thinks fit after considering the objections received;
- (j) the Registrar may give to the liquidator such directions relating to the liquidation as he thinks fit and such directions shall, subject to the provisions of paragraph (k), be binding upon the liquidator;
- (k) within one month of receiving any direction from the Registrar in terms of paragraph (j), the liquidator shall post a copy thereof to every member, beneficiary and creditor of the fund and the liquidator or any person aggrieved by any such direction from the Registrar may apply by motion to the High Court within two months after the direction has been communicated to the liquidator for an order setting aside the direction or to make such other order as it thinks fit;
- (l) the Registrar shall direct the liquidator to complete the liquidation in accordance with his directions in terms of paragraph (j) or with any court order in terms of paragraph (k), as the case may be;
- (m) within one month after the completion of the liquidation of the fund, the liquidator shall lodge with the Registrar a final account signed and certified by him as correct showing the manner in which the assets of the fund have been realised and distributed;
- (n) every claim against the fund shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the High Court and the liquidator may require any claim to be made on affidavit.

11. (1) Where the Registrar has reasonable grounds for believing that —

- (a) a body which was registered as a fund was registered in error; or
- (b) a registered fund has ceased to exist or has been dissolved in terms of section 10;

he shall, if possible, serve notice on the fund concerned at its registered office that he proposes to cancel its registration, or

Cancellation
of
registration

where that is not possible he shall publish the same notice in three issues of the Gazette.

(2) If no appeal is lodged within one month of his compliance with subsection (1) the Registrar shall forthwith cancel the registration of the fund.

PART III *Management and Administration*

Registered
office

12. (1) Every registered fund shall have a registered office in Botswana, the address of which shall be notified by the fund in writing to the Registrar —

- (a) in the case of an existing fund, within one month after the appointed day;
- (b) in the case of any other fund, within one month after the registration of the fund.

(2) Any change in the address of the registered office of a registered fund shall be notified by the fund in writing to the Registrar within one month after the date of such change of address.

Principal
officer

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

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

(2) A registered fund shall notify the Registrar in writing of the name and address of its principal officer or a representative appointed in terms of subsection (1) —

- (a) in the case of an existing fund, within one month after the appointed day;
- (b) in the case of any other fund, within one month after its registration;

and shall notify the Registrar in writing of any change in the name or address of the principal officer or the representative within one month after such change.

(3) Where anything is required by or in terms of this Act to be done —

- (a) by a fund, it shall be the duty of the principal officer or representative appointed in terms of subsection (1) to ensure that the thing so required to be done is in fact done;
- (b) by the principal officer, it may be done by the representative appointed in terms of subsection (1).

Appoint-
ment
of auditor
and actuary

14. Every registered fund shall appoint in terms of its rules —

- (a) an auditor who shall not be an officer of the fund; and
- (b) an actuary:

Provided that it shall not be obligatory for a fund which has been exempted in terms of subsection (3) of section 16 from

compliance with the provisions of subsection (1) of that section to appoint an actuary.

PART IV *Financial requirements*

15. (1) Every registered fund shall maintain such books of account and other records as may be necessary for the purposes of the fund.

Accounts and holding of assets

(2) A registered fund shall, within six months after the end of its financial year, submit to the Registrar audited accounts and such other statements and reports as may be prescribed.

(3) If the Registrar is not satisfied with any audited accounts, statements or report submitted in terms of subsection (2), he shall reject the document or documents concerned and direct the fund to provide such explanation or do such other thing as he thinks fit, and the fund shall, within two months of receiving any such direction, comply with the terms thereof.

(4) All the assets of a registered fund, including any policy of insurance, shall be controlled and held in the name of —

(a) the fund; or

(b) a nominee which is a company registered under the Financial Institutions Act, 1986.

Act 28 of 1986

16. (1) Subject to the provisions of this section, a registered fund shall cause its financial condition to be investigated and reported upon by an actuary at such period and in such manner as may be prescribed and shall, within one month of receiving any report from the actuary, submit a copy thereof to the Registrar.

Investigations by actuary

(2) An actuarial report in terms of subsection (1) shall be lodged with the fund within one year of the date specified in that report as the actuarial valuation date.

(3) If the Registrar is satisfied that the financial methods adopted by a registered fund are such as to render periodical investigations by an actuary unnecessary, he shall, if so requested by the fund in writing, exempt the fund from compliance with the provisions of subsection (1), subject to such conditions as he thinks fit.

(4) The Registrar may at any time vary any conditions fixed in terms of subsection (3) or cancel any exemption granted in terms of that subsection.

(5) A registered fund shall be exempted from compliance with the provisions of subsection (1) if the rules thereof provide for the payment of a lump sum benefit, based on a return of contributions with interest and a share of profits which may be applied to the purchase of a pension from an insurer.

17. (1) Save with the prior express consent in writing of the Registrar, no fund shall invest or otherwise lend monies belonging to the fund outside Botswana.

Investments

(2) The provisions of subsection (1) shall not apply in relation to an external fund which has less than ten Botswana members.

(3) Save with the prior express consent in writing of the Registrar no fund shall borrow monies in excess of twenty five percent of the current value of its assets.

(4) Where any fund acts in contravention of subsection (3) every director, manager, controller and principal officer shall be and continue to be personally liable to pay such excess until such time as the total borrowings of the fund are reduced to the permissible level.

Minister
may
regulate
investments

18. (1) The Minister may by regulation —

(a) prohibit a fund from making investments of a certain class or description;

(b) require any one or all funds to realise the whole or part of a particular investment within a specified period;

(c) require any one or all funds to invest such percentage not exceeding fifty five percent of monies belonging to the fund or funds, as the case may be, accruing from contributions made in Botswana Government securities or such other securities in Botswana as may be specified by him; an investment made under this subsection may prescribe different percentages of such funds to be invested according to whether the fund is a local or external fund.

(2) Subject to the provisions of subsection (6), no registered fund shall invest whether by way of loans or otherwise —

(a) more than five per cent of the aggregate cost value of its assets in Botswana in the business of a participating employer or of an associate of a participating employer:

Provided that the Registrar may exempt, either wholly or in part, any fund established by a local authority or a statutory body from provisions of this subsection;

(b) its assets in any business referred to in paragraph (a) unless the return on such investment is reasonable and the investment is not prejudicial to the fund.

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

Provided that the loan shall not exceed —

(a) the amount of the benefit to which the member would be entitled if he resigned voluntarily on the date on which the loan was granted, together with fifty percent of the market value of the property; or

(b) if the employer of the member guarantees the fund that he will meet any shortfall between the amount referred to in paragraph (a) and the market value of the property, the market value of the property.

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

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

(a) any business undertaking for which a licence is required in terms of the Trade and Liquor Licencing Act, 1986; or

(b) any form of business not referred to in paragraph (a) unless the form of business has been prescribed for the purposes of this subsection or the Registrar has agreed in writing that such fund may carry on the business concerned and any terms and conditions fixed from time to time by the Registrar are complied with.

(6) Notwithstanding anything to the contrary in this section, if on the appointed day a fund is in contravention of the provisions of sections 17 or of subsection (2), (3) or (5) of this section, it shall be allowed a period of three years from the appointed day within which to comply with those provisions:

Provided that the Registrar may extend such three year period in any case where he considers that there are good reasons for so doing.

(7) The Minister may, by statutory instrument, order the Registrar to himself take or require a fund to take such action as appears to the Registrar appropriate to protect the members of the fund against the risk that the fund is, in the opinion of the Minister, being mismanaged, or may be unable to meet its liabilities or fulfill the reasonable expectation of its members.

(8) In this section —

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

“local authority” means a district, city or town council;

“Market value”, in relation to immovable property referred to in subsection (3), means the market value of the property concerned at the time of the grant of the loan in terms of that subsection, if a dwelling-house is to be erected on that property or has been erected but is to be improved, at the time of the completion of the erection or improvement, as the case may be;

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

Fund in
unsound
financial
condition

19. (1) If, after examining any return or report in terms of this Act in respect of a registered fund, the Registrar is of the opinion that the fund is not in a financially sound condition and a satisfactory scheme for bringing the fund into a sound financial condition within a reasonable time has not been submitted to him —

(a) the Registrar shall direct the fund to submit a scheme setting out arrangements for the purpose of bringing the fund into financially sound condition within a period which he considers to be reasonable in the circumstances; and

(b) the fund shall deposit such scheme with the Registrar within three months from the date directed by the Registrar in terms of paragraph (a), together with a report on the scheme by the actuary or, if in terms of section 14 the fund has not appointed an actuary a report on the scheme by the auditor.

(2) After considering a scheme deposited in terms of subsection (1), the Registrar may —

(a) approve the scheme either unconditionally or subject to such conditions as he thinks fit; or

(b) reject the scheme in which case the fund shall submit a new scheme in accordance with the directions of the Registrar, together with a report thereon by the actuary or auditor who reported on the scheme which has been rejected.

(3) If the Registrar is of the opinion that the financial condition of a registered fund is such that it is not possible or practicable to bring the fund into a financially sound condition within a reasonable time, he may direct that the whole or any part of the business of the fund shall be wound-up and that the provisions of section 10 shall apply, subject to such modifications as the Registrar considers it reasonable to impose in the circumstances.

(4) Notwithstanding any other law to the contrary, in the event of the liquidation or bankruptcy of a registered fund —

(a) secured creditors shall have preference to the extent of the percentage each individual borrowing bore to the total assets of the fund at the time of the borrowing, up to the limit of the borrowing permitted under section 17;

(b) the members of a fund shall have preference against all claimants in the distribution of such assets of the fund as remain after the claims of secured creditors have been met under paragraph (a).

PART V Inquiries by and other powers of Registrar

20. (1) The Registrar may at any time call for any documents and any other information from a registered fund or an officer of a

Inquiries

registered fund in relation to any matter connected with the business or transactions of that fund.

(2) Within one month, or such further period as the Registrar may allow, of receiving any inquiry in terms of subsection (1), the fund or officer to whom the inquiry is made shall reply in writing thereto and shall furnish any document called for.

21. (1) If at any time the Registrar, from information in his possession, is of the opinion that it is necessary or desirable to do so, he may investigate the affairs or any part of the affairs of a registered fund.

Investi-
gation
of affairs
of registered
fund

(2) In making an investigation in terms of this section, the Registrar may —

- (a) require from the fund the production of any of its securities, books or documents; and
- (b) examine on oath, which the Registrar may administer, any person in relation to the business of the fund.

(3) The Registrar shall have the same powers, rights and privileges as conferred upon a Commissioner by the Commissions of Inquiry Act.

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(4) The Registrar may, with the approval of the Minister, recover from the fund concerned all or part of the expenses necessarily incurred in connection with the investigation.

22. (1) The Registrar may, at any time before or during an investigation under section 21, by an order given under his hand —

Registrar
may
prohibit
dealings
with assets
pending
investigation

- (a) prohibit a fund from dealing in any manner whatsoever with all or a named portion of its assets;
- (b) prohibit any dealing which would result in a reduction of the value of the fund,

for such time as he shall consider necessary to conclude his investigation or any part of it.

(2) Save with the prior consent in writing of the Registrar, the assets covered by an order made under subsection (1) shall not be sold, mortgaged, pledged or otherwise encumbered in any manner whatsoever by any person.

(3) Every director, manager, controller or principal officer who, after an order has been made by the Registrar under subsection (1), purports to sell, mortgage, pledge or otherwise encumber any asset named in such order or reduces the value of the fund shall be guilty of an offence and liable, at the order of the Registrar, to a fine equivalent to twice the value of any loss or expense thereby caused to the fund and to the Registrar.

(4) Any sale, mortgage, pledge or other encumbrance purported to be made of or to any asset, named in any order made under subsection (1) while such order remains in force, shall be null and void and of no legal effect.

(5) Any fine imposed on any person under subsection (3) shall be recoverable as a fine imposed by a court under the provisions of subsection (1) to (4) of section 299 of the Criminal Procedure Code, and an affidavit sworn by the Registrar shall be sufficient proof of the lawful imposition of the fine to enable the court to issue a warrant under those provisions:

Provided that no warrant shall be issued until any appeal under section 30 has been heard and disposed of or until the time within which an appeal may be made thereunder has expired.

(6) An order made by the Registrar under subsection (1) shall be published in the Gazette as soon as practicable.

Registrar
may require
unregistered
fund to
provide
information

23. (1) The Registrar may, by notice in writing, require any person whom he has reason to suspect is carrying on the business of a fund which is not registered or provisionally registered to transmit to him, within such period as may be specified in the notice, a copy of the rules, if any, in terms of which the business concerned is being operated, together with a copy of the last annual accounts recorded by that person in relation to that business, and such other information in relation to the business carried on by that person as the Registrar may require.

(2) If any person who has been required in terms of subsection (1) to transmit any document or information fails to comply with the terms of the notice within the period specified therein, the Registrar may investigate the affairs or any part of the affairs of that person, and the provisions of subsections (2) to (4) of section 21 shall, *mutatis mutandis*, apply in relation to such investigation.

(3) If it appears from inquiries in terms of subsection (1) or an investigation in terms of subsection (2) that the person concerned is carrying on the business of a fund which is not registered, the Registrar —

(a) shall inform the person concerned accordingly by notice in writing sent by registered post; and

(b) may, if an application for registration of the fund is not received within one month of the sending of such notice, direct that the business of the fund shall be wound-up and that the provisions of section 10 shall, *mutatis mutandis*, apply as though the fund were a registered fund.

Minister may
grant
exemptions

24. Notwithstanding anything to the contrary in this Act, the Minister may by statutory instrument in the public interest exempt any fund from all of any of the requirements of this Act subject to such terms and conditions as he may think fit.

Extension
of time

25. (1) Where a registered fund or an applicant for registration under this Act is required or entitled to do or refrain from doing anything within a specified period of time, the Registrar may, at his discretion, on an application in writing by such fund or

applicant extend such time for a period of not more than three months.

(2) The provisions of this section shall apply notwithstanding that the specified period of time may have expired.

PART VI *General*

26. (1) A registered fund shall deliver to any member or pensioner on demand by that member or pensioner a copy of —

- (a) the rules of the fund;
- (b) the last audited income and expenditure accounts and balance sheet of the fund.

Right to obtain copies of or to inspect documents

(2) A member or pensioner of a registered fund shall be entitled at all reasonable times to inspect, without charge, at the registered office of the fund and to make extracts from —

- (a) the rules of the fund;
- (b) the last audited income and expenditure accounts and balance sheet of the fund;
- (c) the last report, if any, by an actuary in terms of section 16;
- (d) any scheme being carried out by the fund in accordance with the provisions of section 19.

27. (1) Subject to the provisions of this section —

- (a) two or more registered funds may, with the approval of the Registrar, amalgamate and become one registered fund;
- (b) registered fund may, with the approval of the Registrar, transfer all or any of its assets and liabilities to another registered fund.

Amalgamation and transfers

(2) Notice of any proposed amalgamation or transfer referred to in subsection (1) and the terms thereof, together with a copy of the scheme setting out details of the proposed amalgamation or transfer, including a copy of every actuarial or other statement taken into account for the purposes of the scheme, shall be submitted to the Registrar with the request for his approval for the purposes of subsections (1) and the Registrar may thereafter require such additional particulars, including any special report by an actuary or auditor, as he thinks fit.

(3) If, on receipt of the notice and other information required by or in terms of subsection (2), the registrar is satisfied —

- (a) that the proposed amalgamation or transfer would be in the interests of the members of the funds concerned;
- (b) that the proposed amalgamation or transfer would not render any fund that is a party thereto and which will continue to exist if the proposed amalgamation or transfer is completed unable to meet the requirements of this Act or to remain in a sound financial condition or, in the case of a fund that is not in a sound financial condition, to attain such a condition within a period deemed by the Registrar to be satisfactory; and

- (c) that the provisions of any rules of a fund that is a party to the proposed amalgamation or transfer which are applicable to the proposed amalgamation or transfer have been complied with or that adequate arrangements have been made to ensure that such provisions will be complied with at the appropriate time,

he shall forward a certificate to the funds concerned to the effect that the requirements of this subsection have been satisfied and that the funds concerned may amalgamate or transfer the assets and liabilities concerned, as the case may be.

(4) Upon the completion of an amalgamation in terms of this section of two or more funds —

- (a) the funds amalgamated shall be deemed to be dissolved;
- (b) the Registrar shall thereupon cancel their registration and shall register the new fund in terms of this Act; and
- (c) the assets of the funds so amalgamated shall vest in the new fund and the new fund shall assume the liabilities of the funds so amalgamated.

(5) Upon the completion of the transfer of all the assets and liabilities of a registered fund to another registered fund in terms of this section —

- (a) the former fund shall be deemed to be dissolved and the Registrar shall cancel its registration; and
- (b) if any change in the latter fund has been agreed upon, the Registrar shall enter such new name in his records in place of the former name and shall issue a certificate of registration to the fund concerned under its new name; and
- (c) the assets of the former fund shall be transferred to the latter fund and the latter fund shall assume the liabilities of the former fund.

(6) The amalgamation of two or more registered funds or the transfer of assets and liabilities in terms of this section shall not affect the rights of any creditor of a party to the transaction otherwise than in his capacity as a member of such party.

(7) The provisions of this section shall not apply to any transfer of assets and liabilities between two registered funds which is made by virtue of a change in employment of any member of a registered fund.

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

29. (1) Service of process in any legal proceedings against a registered fund may be effected at the principal office of the fund in Botswana.

Effect of
certificate
of Registrar
on
documents

Service of
process

report, account, statement or other document when required to do so in terms of this Act; or

- (c) fails or refuses to furnish information, or to produce documents or accounts, to lodge securities or to render other assistance to the Registrar when called upon to do so in terms of this Act; or
- (d) fails to comply with any terms and conditions fixed or direction given by the Registrar in terms of this Act; or
- (e) contravenes the provisions of section 4, 15, 16, 17, or 31; or
- (f) contravenes the provisions of section 32; shall be guilty of an offence.

(2) Any person who is guilty of an offence referred to in —

- (a) paragraph (a) of subsection (1) shall be liable to a fine not exceeding one thousand pula;
- (b) paragraph (b) of subsection (1) shall be liable to a fine not exceeding two thousand Pula;
- (c) paragraph (c) of subsection (1) shall be liable to a fine not exceeding three thousand Pula;
- (d) paragraph (d) or (e) of subsection (1) shall be liable to a fine not exceeding five thousand Pula;
- (e) paragraph (f) of subsection (1) shall be liable to a fine not exceeding ten thousand Pula; or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) If any person is convicted of an offence in terms of subsection (1) and thereafter continues to commit the offence, he shall be liable to a fine not exceeding two hundred Pula for each day that he continues to commit the offence or to imprisonment for a period not exceeding two years.

Regulatory
powers
of Minister

34. (1) The Minister may make regulations prescribing anything which under this Act is to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Regulations in terms of subsection (1) may provide for —

- (a) the form of any document referred to in this Act and the manner in which it shall be prepared, executed, registered, transmitted or delivered;
- (b) the fees to be charged in respect of any act, matter or thing to be done by or in relation to the Registrar;
- (c) the matters to be included in the document submitted with an application for the registration of a fund and the conditions and the procedures for such registration;
- (d) the appointment of an actuary or auditor and the matters to be included in any report by an actuary or auditor;
- (e) the submission to the Registrar of financial statements, reports, statistics, accounts and other documents;

(2) If a registered fund has no principal office in Botswana or it has ceased to exist, process in any legal proceedings against the registered fund may be served at the office of the Registrar, and service upon the Registrar, in such case, shall be deemed to be service upon the fund.

30. (1) A person aggrieved by a decision of the Registrar under this Act may, within one month from the date on which the decision is intimated to him, appeal therefrom, by petition in writing, to the Minister who may, subject to such terms and conditions as he may consider necessary, uphold, reverse, revoke or vary that decision.

Appeals from
Registrars
decisions

(2) Except as hereinafter provided, the decision of the Minister on appeal made to him under subsection (1) shall be transmitted in writing within two months of receipt of the petition of appeal and shall except on a question of law, be final and conclusive.

(3) A person aggrieved by a decision of the Minister made under subsection (1) may, if it involves a question of law, within one month from the date on which the decision is intimated to him, appeal therefrom to the High Court.

(4) A reference in this section to a question of law does not include a reference to a question whether there is sufficient evidence to justify a finding of fact.

31. No person shall, without the approval of the Registrar in writing, apply to any business carried on by him in Botswana a name which includes the words "pension fund", "provident fund" or "retirement annuity fund", or a name which indicates that he carries on the business of a fund unless the fund concerned is registered.

Improper
use of
certain
designations

32. (1) No person shall, in any statement, return, report, certificate, balance sheet or other document required by or for the purposes of this Act, willfully make a statement which is false in any material part knowing such statement to be false or not believing it to be true.

Offences
relating to
false
statements
or entries

(2) No person shall, with intent to defraud or deceive —

(a) destroy, mutilate, alter or falsify any books, papers or securities or other record maintained for or by any electronic retrieval system belonging to a registered fund;
or

(b) make or be a party to the making of any false or fraudulent entry in any register, book of account or other document or other record maintained for or by any electronic retrieval system belonging to a registered fund.

33. (1) Any person who —

(a) contravenes the provisions of section 8, 10, 12, 13, 14 or 26;
or

(b) fails to make a return or to transmit or deposit any scheme,

Offences and
penalties

report, account, statement or other document when required to do so in terms of this Act; or

- (c) fails or refuses to furnish information, or to produce documents or accounts, to lodge securities or to render other assistance to the Registrar when called upon to do so in terms of this Act; or
 - (d) fails to comply with any terms and conditions fixed or direction given by the Registrar in terms of this Act; or
 - (e) contravenes the provisions of section 4, 15, 16, 17, or 31; or
 - (f) contravenes the provisions of section 32; shall be guilty of an offence.
- (2) Any person who is guilty of an offence referred to in —
- (a) paragraph (a) of subsection (1) shall be liable to a fine not exceeding one thousand pula;
 - (b) paragraph (b) of subsection (1) shall be liable to a fine not exceeding two thousand Pula;
 - (c) paragraph (c) of subsection (1) shall be liable to a fine not exceeding three thousand Pula;
 - (d) paragraph (d) or (e) of subsection (1) shall be liable to a fine not exceeding five thousand Pula;
 - (e) paragraph (f) of subsection (1) shall be liable to a fine not exceeding ten thousand Pula; or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) If any person is convicted of an offence in terms of subsection (1) and thereafter continues to commit the offence, he shall be liable to a fine not exceeding two hundred Pula for each day that he continues to commit the offence or to imprisonment for a period not exceeding two years.

34. (1) The Minister may make regulations prescribing anything which under this Act is to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

- (2) Regulations in terms of subsection (1) may provide for —
- (a) the form of any document referred to in this Act and the manner in which it shall be prepared, executed, registered, transmitted or delivered;
 - (b) the fees to be charged in respect of any act, matter or thing to be done by or in relation to the Registrar;
 - (c) the matters to be included in the document submitted with an application for the registration of a fund and the conditions and the procedures for such registration;
 - (d) the appointment of an actuary or auditor and the matters to be included in any report by an actuary or auditor;
 - (e) the submission to the Registrar of financial statements, reports, statistics, accounts and other documents;

- (f) the fees for the inspection of any documents;
- (g) the deduction by an employer from the emoluments payable to his employee of contributions to be paid to a registered fund;
- (h) the maximum benefits that may be payable by a registered fund or funds;
- (i) the prohibition or control of the cession, pledging or hypothecation of benefits payable by a registered fund and the protection of such benefits on assignment or from attachment or execution under a judgment or order of a court;
- (j) the withholding of any benefits payable by a registered fund where the member concerned —
 - (i) has borrowed and not fully repaid money from the fund and has pledged his rights to benefits from the fund as security therefor; or
 - (ii) has been discharged because of dishonesty which has resulted in his employer suffering loss,

and the person to whom such benefits or portion thereof may be paid.

35. (1) Subject to the provisions of this section, every existing fund shall be provisionally registered by the Registrar with effect from the appointed day.

Provisional registration of existing funds

(2) The period of provisional registration of an existing fund shall not exceed two years unless, in the case of any particular fund, the Registrar has, by notice in writing, extended the period of provisional registration of that fund, and such fund shall cease to be provisionally registered when it is registered in terms of paragraph (a) of subsection (2) of section 5.

(3) On the provisional registration of an existing fund, the provisions of section 6 shall, *mutatis mutandis*, apply in relation to the provisionally registered fund as they apply in relation to a registered fund.

36. Notwithstanding anything to the contrary contained in this Act, where an authority by which a fund was established or which is responsible for the administration of a fund is required in terms of subsection (4) of section 8 to amend the rules of the fund in so far as they affect the rights of members or former members, that authority may, in making such amendment, limit its application to persons who become members of the fund after the date on which the amendment was required and the Registrar shall not regard the rules as so amended as being inconsistent with the provisions of this Act by reason only of the fact that the amendment so made does not apply to persons who were members of the fund before the said date.

Saving in respect of existing funds

PASSED by the National Assembly this 24th day of June, 1987.

C.G. MOKOBI,
Clerk of the National Assembly.