South Africa

Pension Funds Act, 1956

Act 24 of 1956

Legislation as at 19 April 1996

FRBR URI: /akn/za/act/1956/24/eng@1996-04-19

There may have been updates since this file was created.

PDF created on 21 February 2024 at 21:12.

Check for updates

About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from LawLibrary and is presented in collaboration with the African Legal Information Institute, the Judicial Institute for Africa and the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.lawlibrary.org.za | info@lawlibrary.org.za

www.laws.africa | info@laws.africa

There is no copyright on the legislative content of this document.
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Pension Funds Act, 1956
Contents

Chapter I – Administration and application of Act and interpretation of terms 2
1. Definitions 2
2. Application of Act 5
3. Registrar and Deputy Registrar of Pension Funds 6
3A. *** 6
3B. Pension Funds Advisory Committee 6
Chapter II – Registration and incorporation 7
4. Registration of pension funds 7
4A. Registration of pension funds to which State contributes financially 8
4B. Effect of registration of pension fund referred to in section 4A 8
4C. Transfer to pension fund referred to in section 4A of its assets held by another 9
5. Effect of registration of pension fund 9
6. Allocation of assets and liabilities between pension fund organization and other associated business 10
Chapter III – Manner of administration and powers of registered funds 11
7. Registered office 11
7A. Board of fund 11
7B. Exemptions 12
7C. Object of board 12
7D. Duties of board 12
7E. Application of certain sections 13
8. Principal officer 13
9. Appointment of auditor 13
9A. Appointment of valuator 14
10. Business which may be carried on 14
11. Requirements for rules 14
12. Amendment of rules 14
13. Binding force of rules 15
13A. Payment of contributions to pension funds 15
13B. Restrictions on administration of pension funds 15
14. Amalgamations and transfers 15
Chapter IV – Documents to be deposited with registrar 16
15. Accounts 16
16. Investigations by a valuator 17
17. Modifications where investigations by a valuator are unnecessary 18

18. Fund not in a sound financial condition 19
19. Investments 20
20. Requirements in regard to documents to be deposited with registrar 23
21. Registrar may require additional particulars in case of certain applications and returns 23
22. Inspection of documents 24
23. Effect of registrar's certificate on documents 24
Chapter V – Enquiries by registrar, applications to court, cancellation or suspension of registration and dissolution of funds 24
24. Enquiries 24
25. Powers of inspection 24
26. The court may alter the basis of management of a fund 24
27. Cancellation or suspension of registration 25
28. Voluntary dissolution of fund 25
29. Winding-up by the court 27
30. Special provisions relating to liquidation of funds 28
Chapter VA – Consideration and adjudication of complaints 28
30A. Submission and consideration of complaints 28
30B. Establishment of Office of Pension Funds Adjudicator 28
30C. Appointment of Adjudicator 28
30D. Main object of Adjudicator 29
30E. Disposal of complaints 29
30F. Opportunity to comment 29
30G. Parties to complaint 30
30H. Jurisdiction and prescription 30
30I. Time limit for lodging of complaints 30
30J. Procedure for conducting investigation 30
30K. Legal representation 31
30L. Record of proceedings 31
30M. Statement by Adjudicator regarding determination 31
30N. Interest on amount awarded 31
30O. Enforceability of determination 31
30P. Access to court 31
30Q. Powers of Adjudicator 32
30R. Funds of Adjudicator 32
30S. Remuneration and terms and conditions of employment of Adjudicator and employees 32

30T. Accountability 33
30U. Report of Adjudicator 33
30V. Offences and penalties 33
30W. Limitation of liability 33
30X. Liquidation 34
Chapter VI – General and miscellaneous 34
31. Carrying on business of unregistered pension fund organization and use of designation “pension fund” 34
32. Registrar may require unregistered funds to furnish information 34
32A. Certain practices or methods of conducting business prohibited 35
33. Registrar may extend certain periods 35
34. Annual report by registrar 35
35. Right to obtain copies of or to inspect certain documents 35
36. Regulations 36
37. Penalties 37
37A. Pension benefits not reducible, transferable or executable 38
37B. Disposition of pension benefits upon insolvency 38
37C. Disposition of pension benefits upon death of member 39
37D. Fund may make certain deductions from pension benefits 40
38. Exemption from Act No. 57 of 1988 41
39. Amendment of Act 27 of 1943 41
40. Act in certain respects, and certain rules, binding on State 41
41. Short title and date of commencement 41

South Africa

Pension Funds Act, 1956

Act 24 of 1956

Published in Government Gazette 5679 on 11 May 1956

Assented to on 28 April 1956

Commenced on 1 January 1958 by Pension Funds Act, 1956: Commencement

[This is the version of this document as it was from 19 April 1996 to 10 November 1996.]

[Amended by Finance Act, 1957 (Act 81 of 1957) on 9 July 1957]
[Amended by Finance Act, 1959 (Act 80 of 1959) on 6 July 1959]
[Amended by Inspection of Financial Institutions Act, 1962 (Act 68 of 1962) on 20 June 1962]
[Amended by Second Finance Act, 1966 (Act 58 of 1966) on 28 October 1966]
[Amended by Financial Institutions Amendment Act, 1968 (Act 65 of 1968) on 26 June 1968]
[Amended by Financial Institutions Amendment Act, 1969 (Act 80 of 1969) on 25 June 1969]
[Amended by Financial Institutions Amendment Act, 1970 (Act 23 of 1970) on 9 March 1970]
[Amended by Financial Institutions Amendment, 1972 (Act 91 of 1972) on 28 June 1972]
[Amended by Financial Institutions Amendment Act, 1976 (Act 101 of 1976) on 1 August 1976]
[Amended by Financial Institutions Amendment Act, 1977 (Act 94 of 1977) on 1 July 1977]
[Amended by Financial Institutions Amendment Act, 1978 (Act 80 of 1978) on 21 June 1978]
[Amended by Financial Institutions Amendment Act, 1979 (Act 103 of 1979) on 13 July 1979]
[Amended by Financial Institutions Act, 1980 (Act 99 of 1980) on 1 August 1980]
[Amended by Financial Institutions Amendment Act, 1982 (Act 82 of 1982) on 9 June 1982]
[Amended by Corporation for Public Deposits Act, 1984 (Act 46 of 1984) on 31 March 1984]
[Amended by Financial Institutions Amendment Act, 1984 (Act 86 of 1984) on 18 July 1984]
[Amended by Financial Institutions Amendment Act, 1986 (Act 50 of 1986) on 28 May 1986]
[Amended by Financial Institutions Amendment Act, 1988 (Act 51 of 1988) on 20 May 1988]
[Amended by Financial Institutions Second Amendment Act, 1989 (Act 54 of 1989) on 30 June 1989]
[Amended by Financial Institutions Amendment Act, 1989 (Act 53 of 1989) on 1 October 1989]
[Amended by Legal Succession to the South African Transport Services Act, 1989 (Act 9 of 1989) on 6 October 1989]
[Amended by Financial Institutions Amendment Act, 1990 (Act 64 of 1990) on 1 September 1990]
[Amended by Financial Services Board Act, 1990 (Act 97 of 1990) on 1 April 1991]
[Amended by Financial Institutions Amendment Act, 1991 (Act 54 of 1991) on 30 May 1991]
[Amended by Financial Institutions Second Amendment Act, 1991 (Act 119 of 1991) on 23 August 1991]
[Amended by Financial Services Board Amendment Act, 1992 (Act 41 of 1992) on 1 May 1992]
[Amended by Financial Institutions Amendment Act, 1993 (Act 7 of 1993) on 1 June 1993]
[Amended by Financial Institutions Second Amendment Act, 1993 (Act 104 of 1993) on 1 July 1993]
[Amended by Financial Institutions Amendment Act, 1992 (Act 83 of 1992) on 15 December 1993]
[Amended by Financial Institutions Amendment Act, 1992 (Act 83 of 1992) on 1 April 1996]
[Amended by Pension Funds Amendment Act, 1996 (Act 22 of 1996) on 19 April 1996]

ACT

To provide for the registration, incorporation, regulation and dissolution of pension funds and for matters incidental thereto.

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Chapter I
Administration and application of Act and interpretation of terms

1. Definitions

(1) In this Act, unless the context indicates otherwise—

"**actuary**" means any Fellow of the Institute of Actuaries of England or of the Faculty of Actuaries in Scotland or of the Society of Actuaries of America or of any other institute, faculty, society or chapter of actuaries approved by the Minister;

[definition of "actuary" substituted by section 21(a) of Act No 104 of 1993]

"**Adjudicator**" means the Pension Funds Adjudicator appointed under section 30C(1);

[definition of "Adjudicator" inserted by section 1(a) of Act No 22 of 1996]

"**board**" means the board of a fund contemplated in section 7A of this Act;

[definition of "board" inserted by section 1(a) of Act No 22 of 1996]

"**complainant**" means—

(a) any person who is, or who claims to be—

(i) a member or former member of a fund;

(ii) a beneficiary or former beneficiary of a fund;

(iii) an employer who participates in a fund;

(b) any group of persons referred to in paragraph (a)(i), (ii) or (iii);

(c) a board of a fund or member thereof; or

(d) any person who has an interest in a complaint;

[definition of "complainant" inserted by section 1(a) of Act No 22 of 1996]

"**complaint**" means a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging—

(a) that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;

(b) that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;

(c) that a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant; or

(d) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund;

but shall not include a complaint which does not relate to a specific complainant;

[definition of "complaint" inserted by section 1(a) of Act No 22 of 1996]

"**court**" means a provincial or local division of the Supreme Court of South Africa;

[definition of "court" substituted by section 14(b) of Act No 83 of 1992]

"**dependant**", in relation to a member, means—

(a) a person in respect of whom the member is legally liable for maintenance;

(b) a person in respect of whom the member is not legally liable for maintenance, if such person —

(i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;

(ii) is the spouse of the member, including a party to a customary union according to Black law and custom or to a union recognized as a marriage under the tenets of any Asiatic religion;

(iii) is a child of the member, including a posthumous child, an adopted child and an illegitimate child;

(c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died;

[definition of "dependant" inserted by section 21(a) of Act No 101 of 1976, substituted by section 10 of Act No. 80 of 1978, amended by section 38 of Act No. 99 of 1980, substituted by section 3 of Act 51 of 1988 and by section 20 of Act 54 of 1989, and amended by sections 1(b) and 6 of Act No 22 of 1996]

"**financial year**", in relation to a fund, means—

(a) each period of twelve months, at the end of which the balance of accounts is required to be struck in terms of its rules; or

(b) such other period as may on any particular occasion be determined by the registrar at the written request of the fund, on such conditions as the registrar may impose; or

(c) in the case of a fund which is registered at the commencement of the Financial Institutions Amendment Act, 1977, and which notifies the registrar in writing before 1 January 1979 that it intends changing the date on which its financial year ends from 31 December to another date, the period exceeding from its last financial year, which ends on 31 December, to such other date, provided such period does not exceed eighteen months.

[definition of "financial year" substituted by section 9 of Act No 94 of 1977]

"**fund**" means a pension fund organization;

"***Gazette***" *[definition of "Gazette" deleted by section 14(a) of Act No 83 of 1992]*

"**member**", means, in relation to—

(a) a fund referred to in paragraph (a) of the definition of 'pension fund organization', any member or former member of the association by which such fund has been established;

(b) a fund referred to in paragraph (b) of that definition, a person who belongs or belonged to a class of persons for whose benefit that fund has been established,

but does not include any such member or former member or person who has received all the benefits which may be due to him from the fund and whose membership has thereafter been terminated in accordance with the rules of the fund;

[definition of "member" substituted by section 21(b) of Act No 101 of 1976]

"**Minister**" means the Minister of Finance;

"**officer**", in relation to a fund, means any member of a board, any manager, principal officer, treasurer, clerk or employee of the fund, but does not include an auditor appointed under section 9 or a valuator appointed under section 9A;

[definition of "officer" substituted by section 1(c) of Act No 22 of 1996]

"**pension fund**" means a pension fund organization;

"**pension fund organization**" means—

(a) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching their retirement dates, or for the dependants of such members or former members upon the death of such members or former members; or

(b) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons,

and includes any such association or business which in addition to carrying on business in connection with any of the objects specified in paragraph (a) or (b) also carries on business in connection with any of the objects for which a friendly society may be established, as specified in section 2 of the Friendly Societies Act, 1956, or which is or may become liable for the payment of any benefits provided for in its rules, whether or not it continues to admit, or to collect contributions from or on behalf of members;

[definition of "pension fund organization" substituted by section 21(c) of Act No 101 of 1976]

"**person**" *[definition of "person" deleted by section 1(d) of Act No 22 of 1996]*

"**Policy Board**" means the Policy Board for Financial Services and Regulation established by section 2 of the Policy Board for Financial Services and Regulation Act, 1993 (Act No. 141 of 1993);

[definition of "Policy Board" inserted by section 1(e) of Act No 22 of 1996]

"**prescribed**" means prescribed by or under this Act;

"**principal officer**" means the officer referred to in section eight;

"**registered**", in relation to a fund, means registered or provisionally registered under section four, and "registration" has a corresponding meaning;

"**registered office**" means the registered office referred to in section seven;

"**registrar**" means the Registrar or the Deputy Registrar of Pension Funds mentioned in section 3;

[definition of "registrar" substituted by section 21(d) of Act No 101 of 1976 and by section 29 of Act 97 of 1990]

"**regulation**" means a regulation made and in force under this Act;

"**retirement date**" means the date on which a member becomes entitled in terms of the rules of a fund to the grant of an annuity or the receipt of a lump sum payment on account of age, ill-health or retrenchment of staff;

[definition of "retirement date" inserted by section 21(e) of Act No 101 of 1976]

"**rules**" means the rules of a fund, and includes—

(a) the act, charter, deed of settlement, memorandum of association, or other document by which the fund is constituted;

(b) the articles of association or other rules for the conduct of the business of the fund; and

(c) the provisions relating to the benefits which may be granted by and the contributions which may become payable to the fund;

"**this Act**" includes any regulation;

[definition of "this Act" inserted by section 21(b) of Act No 104 of 1993]

"**Territory**" *[definition of "Territory" deleted by section 14(a) of Act No 83 of 1992]*

"**Union**" *[definition of "Union" deleted by section 14(a) of Act No 83 of 1992]*

"**valuator**" means an actuary or any other person who, in the opinion of the registrar, has sufficient actuarial knowledge to perform the duties required of a valuator in terms of this Act.

(2) For the purpose of the application of the provisions of this Act in relation to an organization which is a pension fund organization in terms of paragraph (b) of the definition of "pension fund organization" in subsection (1), any reference in this Act to a fund shall be construed as a reference to that fund or to the board of that fund, as circumstances may require.

[subsection (2) substituted by section 1(f) of Act No 22 of 1996]

2. Application of Act

(1) The provisions of this Act shall not apply in relation to any pension fund which has been established in terms of an agreement published or deemed to have been published under section 48 of the Labour Relations Act, 1956 (Act No. 28 of 1956), except that such fund shall from time to time furnish the registrar with such statistical information as may be requested by the Minister.

[subsection (1) amended by section 13 of Act 103 of 1979 and by section 22 of Act 104 of 1993]

(2) (a) The provisions of this Act, other than section three and sub-sections (1) and (2) of section four, shall not apply in relation to a pension fund if the head office of the association which carries on the business of that fund, or, as the case may be, of every employer who is a party to such fund, is outside the Republic, provided—

(i) the registrar is satisfied that the rules of the fund applicable to members resident in the Republic are not less favourable than those applicable to members resident outside the Republic, taking into consideration differences in the conditions of service;

(ii) the registrar is satisfied that adequate arrangements exist for ensuring the financial soundness of the fund; and

(iii) the fund furnishes such security as the registrar may from time to time require for the payment of any benefits which may become payable to members resident in the Republic who are South African citizens, or otherwise satisfies the registrar that it will be able to pay such benefits.

(b) The registrar may from time to time require any person carrying on the business in the Republic of a pension fund referred to in paragraph (a), to submit to the registrar such returns and information in connection with that business as the registrar may specify, and if at any time the registrar is no longer satisfied as regards any of the matters specified in paragraph (a) he may advise the person accordingly by notice transmitted to him by registered post, and thereupon the provisions of this Act shall apply in relation to such fund.

[subsection (2) amended by section 30 of Act 104 of 1993]

(3) (a) The registrar may in his discretion and subject to such conditions as may be prescribed by regulation exempt in writing any pension fund from the provisions of section 5(2), 9 or 9A, as well as from any other provision of this Act which, in his opinion, is connected with any such exemption.

[paragraph (a) amended by section 10(a) of Act 94 of 1977, by section 36(6) of Act 9 of 1989 and substituted by section 15(a) of Act 83 of 1992]

(aA) (i) The provisions of sections 37A, 37B and 37C shall as from the commencement of the Financial Institutions Amendment Act, 1977, apply also with reference to any registered fund to which those provisions did not apply immediately before the said commencement.

(ii) Any provision inserted in this Act by, or after the commencement of, the Financial Institutions Amendment Act, 1977, shall apply with reference to all registered funds, including any fund previously exempted in terms of this subsection, except in so far as any exemption may have been granted from any such provision in terms of this subsection.

(iii) *[subparagraph (iii) deleted by section 15(b) of Act 83 of 1992]*

[paragraph (aA) inserted by section 10(b) of Act 94 of 1977]

(b) The registrar may at any time by notice in writing to the fund withdraw, wholly or in part and on any ground which he deems sufficient, any exemption granted under paragraph (a).

[paragraph (b) substituted by section 10(c) of Act 94 of 1977]

3. Registrar and Deputy Registrar of Pension Funds

The executive officer and a deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, (Act No. 97 of 1990), shall also be the Registrar and the Deputy Registrar of Pension Funds, respectively.

[section 3 substituted by section 29 of Act 97 of 1990 and by section 9 of Act 41 of 1992]

3A. ***

[section 3A added by section 4 of Act 51 of 1988 and deleted by section 29 of Act 97 of 1990]

3B. Pension Funds Advisory Committee

(1) There is hereby established an advisory committee to be known as the Pension Funds Advisory Committee (in this Act referred to as the advisory Committee).

(2) (a) The advisory committee consists of the registrar as chairman and such other members—

(i) as the Minister may from time to time designate;

(ii) who in the opinion of the Minister have special knowledge regarding matters relating to pension funds;

(iii) who represent associations and organizations which in the opinion of the Minister have an interest in matters relating to pension funds.

(b) A member of the advisory committee shall hold office for such period as the Minister may determine and shall be eligible for reappointment upon the expiration of his period of office.

(c) The Minister may at any time terminate the membership of any member if in the opinion of the Minister a sufficient reason exists therefor.

(3) The advisory committee may from time to time conduct an investigation and advise or make recommendations to the registrar, or make recommendations to the Minister, regarding any matter relating to pension funds, and shall advise the Minister on any such matter referred to the advisory committee by the Minister.

(4) For the purposes of any investigation by the advisory committee the Commissions Act, 1947 (Act No. 8 of 1947), shall apply to the advisory committee and witnesses and their evidence as if the advisory committee were a commission to which the said Act applied and the chairman of the advisory committee were the secretary of such a commission.

(5) The registrar may submit to the advisory committee any information which is in his possession or which he may obtain and which is relevant to any matter which is being investigated or considered by the advisory committee.

(6) (a) The first meeting of the advisory committee shall be held at a time and place determined by the chairman, and thereafter the advisory committee shall meet at a time and place determined by the advisory committee.

(b) The chairman may at any time convene an extraordinary meeting of the advisory committee to be held at a time and place determined by him.

(c) The chairman shall determine the procedure at a meeting of the advisory committee.

(d) The quorum for a meeting of the advisory committee shall be a majority of its members.

(e) The decision of a majority of the members of the advisory committee present at any meeting thereof shall constitute the decision of the advisory committee, and in the case of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(7) (a) The advisory committee may nominate one or more subcommittees, which may, subject to the instructions of the advisory committee, perform those functions of the advisory committee that the advisory committee may determine.

(b) Such a subcommittee shall consist of so many members of the advisory committee or so many other persons as the advisory committee may deem necessary, and the advisory committee may at any time dissolve or reconstitute such a subcommittee.

(c) The advisory committee shall designate one of the members of the subcommittee as chairman thereof, and if any such chairman is absent from any meeting of the subcommittee, the members present shall from among themselves elect a person to preside at such meeting.

(d) The advisory committee may make rules regarding the manner in which meetings of any subcommittee shall be convened, the procedure at, the functions of, and the quorums for, such meetings and the manner in which minutes of such meetings shall be kept.

(8) The advisory committee may call to its assistance such person or persons as it may deem necessary to assist it, or to investigate matters relating to pension funds.

(9) The administrative work incidental to the performance of the functions of the advisory committee and its subcommittees shall be performed by officers or employees in the office of the registrar designated for that purpose by the registrar.

[section 3B added by section 2 of Act 54 of 1991]

Chapter II
Registration and incorporation

4. Registration of pension funds

(1) Every pension fund shall apply to the registrar for registration under this Act.

(2) An application under subsection (1) shall be accompanied by the particulars and the fee prescribed by regulation.

[subsection (2) amended by section 14 of Act 86 of 1984 and substituted by section 16(a) of Act 83 of 1992]

(3) The registrar shall, if the fund has complied with such requirements as he may have prescribed and he is satisfied that the registration of the fund is desirable in the public interest, register the fund provisionally and forward to the applicant a certificate of provisional registration.

[subsection (3) substituted by section 11(a) of Act 65 of 1968]

(4) If after considering any such application the registrar is satisfied that the fund complies with the conditions prescribed by regulation, he shall register such fund and send to the applicant a

certificate of registration as well as a copy of the rules of the fund bearing an endorsement of the date of registration.

[subsection (4) substituted by section 16(b) of Act 83 of 1992]

(5) If after considering any such application, the registrar is not satisfied as regards all the matters in respect of which he is in terms of sub-section (4) required to be satisfied, he shall in writing indicate to the applicant the requirements to be complied with in order that he may be so satisfied.

(6) Subject to the provisions of subsection (7) the provisional registration of a fund under subsection (3) shall be valid for a period of five years, but may in the discretion of the registrar and subject to such conditions and limitations as he may consider desirable, be renewed from time to time for periods not exceeding twelve months at a time and not exceeding five years in the aggregate.

[subsection (6) substituted by section 11(b) of Act 65 of 1968]

(7) Whenever a fund which is provisionally registered under this section has complied with all the requirements specified in sub-section (4), the registrar shall register the fund and transmit to it a certificate of registration as well as a copy of its rules with the date of registration duly endorsed thereon, and thereupon the fund shall cease to be provisionally registered.

(8) No fund shall be registered or provisionally registered under this Act except as provided in this section.

4A. Registration of pension funds to which State contributes financially

(1) Notwithstanding anything to the contrary contained in any law, the Minister may, after consultation with the Registrar of Pension Funds, by regulation provide for a management board for a pension fund to which the State contributes financially.

(2) If a management board has been established for a pension fund as is contemplated in subsection (1), such pension fund may, with the consent of the Minister, apply in terms of section 4 for registration.

(3) When an application has been made in terms of subsection (2), the provisions of this Act shall apply to the pension fund concerned, in so far as they can be applied, and as if the pension fund were a pension fund as defined in paragraph (b) of the definition of "pension fund organization" in section 1.

(4) The State President may by proclamation in the *Gazette* make such regulations as he may deem necessary or expedient to give effect to the provisions of subsections (1), (2) and (3), including regulations whereby—

(a) any provision of this Act or any other law is repealed or amended;

(b) the carrying on of the business of a pension fund referred to in subsection (1) is regulated from the date of the application for registration thereof until the date of registration.

[section 4A inserted by section 2 of Act 119 of 1991]

4B. Effect of registration of pension fund referred to in section 4A

(1) On the registration of a pension fund referred to in section 4A it shall become a juristic person.

(2) Subject to the provisions of subsections (3) and (4), the registration of a pension fund referred to in section 4A shall not affect the assets, rights, liabilities, obligations and membership of such pension fund.

(3) Regulations referred to in section 4A(4) may also provide for the termination of the membership of certain persons of a pension fund referred to in section 4A which has been registered and for their

membership of any other pension fund, and the passing of the obligations of the first-mentioned fund towards dependants and nominees of members thereof to the last-mentioned pension fund.

[section 4B inserted by section 2 of Act 119 of 1991]

4C. Transfer to pension fund referred to in section 4A of its assets held by another

(1) If any person holds any assets on behalf of a pension fund referred to in section 4A or has on behalf of any such pension fund invested any assets in any stock, debentures, securities or financial instruments, he shall, on production to him of the certificate of provisional registration or the certificate of registration in respect of such pension fund—

(a) transfer those assets into the name of such pension fund;

(b) take such steps as may be necessary to ensure that on such stock, debentures, securities or financial instruments issued in his name and in any relevant register such endorsements are made as may be necessary to show that the ownership in such stock, debentures, securities or financial instruments vests in such pension fund; and

(c) if requested thereto by such pension fund, transfer to such fund the stock, debentures, securities or financial instruments vested in it.

(2) No stamp duty, registration fee or costs shall be payable in respect of any transfer or endorsement referred to in subsection (1).

[section 4C inserted by section 2 of Act 119 of 1991]

5. Effect of registration of pension fund

(1) Upon the registration under this Act—

(a) of a fund which is a pension fund organization in terms of paragraph (a) of the definition of "pension fund organization" in sub-section (1) of section one, the fund shall, under the name by which is so registered, and in so far as its activities are concerned with any of the objects set out in that definition, become a body corporate capable of suing and being sued in its corporate name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules;

(b) of a fund which is a pension fund organization in terms of paragraph (b) of the said definition, all the assets, rights, liabilities and obligations pertaining to the business of the fund shall, notwithstanding anything 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 arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund;

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

(1bis) The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset or right which in terms of paragraph (c) of sub-section (1) vests in or devolves upon a registered fund shall, upon production to him by the fund of its certificate of registration or of provisional registration, as the case may be, and of the deed or other document aforesaid, without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his registers that are necessary by reason of such vesting or devolution.

[subsection (1)bis inserted by section 14 of Act 81 of 1957]

(2) All moneys and assets belonging to a pension fund shall be kept by that fund and every fund shall maintain such books of account and other records as may be necessary for the purpose of such fund: Provided that such money and assets may, subject to the conditions determined by the Minister by notice in the *Gazette*, also be kept in the name of the pension fund by one or more of the following institutions or persons, namely—

(a) a stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

(b) an insurer registered or provisionally registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943);

(c) a banking institution registered or provisionally registered under the Banks Act, 1965 (Act No. 23 of 1965);

(d) a nominee company; or

(e) a person approved by the registrar, or who is a member of a category of persons approved by the registrar.

[subsection (2) amended by section 9(a) of Act 64 of 1990]

(3) For the purposes of this section, a nominee company is a company which—

(a) has as its principal object to act as representative of any person;

(b) is precluded by its memorandum of association from incurring any liabilities other than those to persons on whose behalf it holds property;

(c) has entered into an irrevocable agreement with another person in terms of which such other person has undertaken to pay all expenses of and incidental to its formation, activities, management and liquidation; and

(d) has been approved by the registrar, subject to such conditions as he may impose, including any guarantee for the fulfillment of any obligation in respect of the holding of such property, the generality of the afore-going provisions not being restricted by the provisions of this paragraph.

[subsection (3) added by section 9(b) of Act 64 of 1990]

(4) Notwithstanding the provisions of subsection (2), the registrar may permit money and assets to be kept in the name of a nominee company on behalf of the pension fund.

[subsection (4) added by section 9(b) of Act 64 of 1990]

6. Allocation of assets and liabilities between pension fund organization and other associated business

(1) Within twelve months after the registration under this Act of a pension fund the business whereof is or has been carried on by any undertaking as part of or in conjunction with any other business in which that undertaking is or has been engaged, the person having control of the business of that undertaking shall submit to the registrar proposals as to the apportionment of the assets, rights, liabilities and obligations of that undertaking between the fund and such other business.

(2) If the proposals mentioned in sub-section (1) are not received within the period specified in that sub-section the registrar shall prepare proposals for the apportionment of the assets, rights, liabilities and obligations of that undertaking between the fund and such other business in such a manner as he may with due regard to all the circumstances consider equitable.

(3) The registrar may for the purpose of preparing any proposals under sub-section (2), require any person having control of the undertaking in question, to lodge with him, within such period as he may specify, any information relating to the business or any part of the business which is or has

been carried on by that undertaking, including the business of such pension fund, together with such reports by a valuator or (at the discretion of the registrar) by the auditor of that undertaking, as the registrar may direct.

(4) As soon as practicable after having received any proposals under sub-section (1) or after having prepared any proposals as provided in sub-section (2), the registrar shall transmit a copy thereof to the principal officer of the fund and publish at the expense of the fund in the *Gazette* and in at least one English and one Afrikaans newspaper circulating in the district in which the head office of the undertaking is situate, a notice—

(a) indicating that such apportionment is contemplated;

(b) stating the place or places where copies of the proposals in question will be available for inspection by interested persons for a period of thirty days from a date specified in the notice; and

(c) calling upon interested persons to submit to the registrar whatever representations they may deem necessary within the said period of thirty days.

(5) Upon the expiration of the period mentioned in paragraph (c) of sub-section (4), the registrar shall proceed to consider any written representations lodged with him in pursuance of the relevant notice and any oral representations which any person who lodged such written representations or the person having control of the business of the undertaking may desire to submit to him, and shall thereafter approve of the proposals in question as drafted or with such modifications as he may deem necessary.

(6) A decision made by the registrar under sub-section (5) shall be binding upon all persons affected thereby.

Chapter III
Manner of administration and powers of registered funds

7. Registered office

(1) Every registered fund shall have a registered office in the Republic.

[subsection (1) amended by section 30 of Act 104 of 1993]

(2) Process in any legal proceedings against any such fund may be served by leaving it at the registered office, and in the event of such registered office having ceased to exist, service upon the registrar shall be deemed to be service upon the fund.

7A. Board of fund

(1) Notwithstanding the rules of a fund, every fund shall have a board consisting of at least four board members, at least 50% of whom the members of the fund shall have the right to elect.

(2) Subject to subsection (1), the constitution of a board, the election procedure of the members mentioned in that subsection, the appointment and terms of office of the members, the procedures at meetings, the voting rights of members, the quorum for a meeting, the breaking of deadlocks and the powers of the board shall be set out in the rules of the fund: Provided that if a board consists of four members or less, all the members shall constitute a quorum at a meeting.

[section 7A inserted by section 2 of Act 22 of 1996]

7B. Exemptions

(1) The registrar may on the written application of a fund which shall include such information as the registrar may require—

(a) authorise a fund to have a board consisting of less than four board members if such number is impractical or unreasonably expensive: Provided that the members of the fund shall have the right to elect at least 50% of the board members;

(b) exempt a fund from the requirement that the members of the fund elect members of the board, if the fund—

(i) has been established for the benefit of employees of different employers which are not subsidiaries of a single holding company; or

(ii) is a retirement annuity fund as defined in the Income Tax Act, 1962 (Act No. 58 of 1962).

(2) The registrar may withdraw an exemption granted under subsection (1)(a) or (1)(b) if a fund no longer qualifies for such exemption.

[section 7B inserted by section 2 of Act 22 of 1996]

7C. Object of board

(1) The object of a board shall be to direct, control and oversee the operations of a fund in accordance with the applicable laws and the rules of the fund.

(2) In pursuing its object the board shall—

(a) take all reasonable steps to ensure that the interests of members in terms of the rules of the fund and the provisions of this Act are protected at all times, especially in the event of an amalgamation or transfer of any business contemplated in section 14, splitting of a fund, termination or reduction of contributions to a fund by an employer, increase of contributions of members and withdrawal of an employer who participates in a fund;

(b) act with due care, diligence and good faith;

(c) avoid conflicts of interest;

(d) act with impartiality in respect of all members and beneficiaries.

[section 7C inserted by section 2 of Act 22 of 1996]

7D. Duties of board

The duties of a board shall be to—

(a) ensure that proper registers, books and records of the operations of the fund are kept, inclusive of proper minutes of all resolutions passed by the board;

(b) ensure that proper control systems are employed by or on behalf of the board;

(c) ensure that adequate and appropriate information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund;

(d) take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with this Act;

(e) obtain expert advice on matters where board members may lack sufficient expertise;

(f) ensure that the rules and the operation and administration of the fund comply with this Act, the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), and all other applicable laws.

[section 7D inserted by section 2 of Act 22 of 1996]

7E. Application of certain sections

(1) Sections 7A, 7B, 7C and 7D shall apply to all funds registered on, or after, a date 12 months after the date of commencement of the Pension Funds Amendment Act, 1995.

(2) Any fund registered prior to a date 12 months after the date of commencement of the said Act, shall comply with sections 7A, 7B, 7C and 7D by 15 December 1998.

[section 7E inserted by section 2 of Act 22 of 1996]

8. Principal officer

(1) Every registered fund shall have a principal executive officer.

(2) The principal officer of a registered fund shall be an individual who is resident in the Republic, and if he is absent from the Republic or unable for any reason to discharge any duy imposed upon him by any provision of this Act, the fund shall, in the manner directed by its rules, appoint another person within thirty days to be its principal officer.

[subsection (2) amended by section 30 of Act 104 of 1993]

(3) Within thirty days of the registration of a fund under this Act, the board shall notify the registrar of the name of the principal officer of the fund.

[subsection (3) amended by section 6 of Act 22 of 1996]

(4) Whenever a registered fund has appointed a new principal officer, the board shall within thirty days as from such appointment give notice thereof in writing to the registrar.

[subsection (4) amended by section 6 of Act 22 of 1996]

9. Appointment of auditor

(1) Every registered fund shall in the manner prescribed by its rules appoint an auditor registered under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), who shall not be an officer of the fund, except where the accounts of such a fund in terms of the provisions of any law are to be audited by the Auditor-General.

[subsection (1) substituted by section 23 of Act 104 of 1993]

(2) Every registered fund shall within 30 days—

(a) from the date of registration appoint an auditor; and

(b) from the date of the appointment apply to the registrar for approval of such appointment.

[subsection (2) substituted by section 10 of Act 64 of 1990]

(3) The registrar may, without assigning any reason therefor, refuse to approve any appointment of an auditor or withdraw his prior approval and thereupon the auditor concerned shall vacate his office as auditor of the fund.

(4) When the registrar has refused to approve or has withdrawn his approval of the appointment of an auditor, the fund shall appoint some other person as auditor but again subject to the approval of the registrar.

(5) Where the auditor of a pension fund is a partnership, the appointment of such auditor shall not lapse by reason of a change in the composition of the partnership, as long as not less than half of the partners in the reconstituted partnership are persons who were partners as at the date when the appointment of the partnership was last approved by the registrar.

[section 9 substituted by section 12 of Act 65 of 1968]

9A. Appointment of valuator

(1) Every registered fund which in terms of section 16 is required to have its financial condition investigated and reported upon by a valuator, shall appoint a valuator.

(2) The provisions of section 9 (2), (3), (4) and (5) shall apply *mutatis mutandis* in connection with the appointment of a valuator of a registered fund.

[section 9A inserted by section 13 of Act 65 of 1968]

10. Business which may be carried on

No registered fund shall carry on any business other than the business of a pension fund: Provided that the registrar may approve of a fund carrying on such other business on such conditions and for such period as he may determine if the registrar is satisfied that this is necessary in order to safeguard an investment made by the fund.

11. Requirements for rules

The rules of a fund shall comply with the requirements prescribed by regulation.

[section 11 substituted by section 24 of Act 104 of 1993 and by section 17 of Act 83 of 1992]

12. Amendment of rules

(1) A registered fund may, in the manner directed by its rules, alter or rescind any rule or make any additional rule, but no such alteration, rescission or addition shall be valid—

(a) if it purports to effect any right of a creditor of the fund, other than as a member of shareholder thereof; or

(b) unless it has been approved by the registrar and registered as provided in sub-section (4).

(2) Within 60 days from the date of the passing of a resolution for the alteration or rescission of any rule or for the adoption of any additional rule, a copy of such resolution shall be transmitted by the principal officer to the registrar, together with the particulars prescribed by regulation.

[subsection (2) substituted by section 18(a) of Act 83 of 1992]

(3) If any such alteration, rescission or addition may affect the financial condition of the fund, the principal officer shall also transmit to the registrar a certificate by the valuator or, if no valuator has been employed, a statement by the fund, as to its financial soundness, having regard to the rates of contributions by employers and, if the fund is not in a sound financial condition, what arrangements will be made to bring the fund in a sound financial condition.

[subsection (3) substituted by section 18(b) of Act 83 of 1992]

(4) If the registrar finds that any such alteration, rescission or addition is not inconsistent with this Act, and is satisfied that it is financially sound, he shall register the alteration, rescission or addition and return a copy of the resolution to the principal officer with the date of registration endorsed thereon, and such alteration, rescission or addition, as the case may be, shall take effect as from the date determined by the fund concerned or, if no date has been so determined, as from the said date of registration.

(5) A registered fund may at any time consolidate its rules, and in such event the principal officer shall forward to the registrar a copy of such consolidated rules and if the registrar is satisfied that the consolidated rules are not substantially different from the existing rules of the fund, he shall register such consolidated rules and return a copy thereof to the principal officer with the date of registration endorsed thereon, and such consolidated rules shall thereupon take effect from the date of registration thereof.

13. Binding force of rules

Subject to the provisions of this Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming.

13A. Payment of contributions to pension funds

Notwithstanding any provision of the rules of a registered fund to the contrary, any contribution payable in respect of any member of the fund to the fund shall be paid directly to the fund by or on behalf of the member within a period of seven days after the expiration of the period in respect of which the contribution is being paid, and the board shall, not later than first business day following the day on which the fund received the contribution, deposit the contribution in the name of the fund with an institution registered under the Banks Act, 1965 (Act No. 23 of 1965), or the Building Societies Act, 1965 (Act No. 24 of 1965): Provided that in the case of a fund referred to in section 2(3)(a)(ii) the contributions may within the said period of seven days be paid by or on behalf of such member directly to the insurer administering the fund.

[section 13A inserted by section 15 of Act 86 of 1984 and amended by section 6 of Act 22 of 1996]

13B. Restrictions on administration of pension funds

(1) No person shall administer on behalf of a pension fund the investments of such a pension fund, or the disposition of benefits provided for in the rules of the fund, unless the registrar has in a particular case or in general granted approval thereto and the person complies with such conditions as the registrar may from time to time determine in the particular case or in general.

(2) Approval in terms of subsection (1) may be limited to the performance of specified functions.

(3) Application for approval in terms of subsection (1) shall be made in the manner and be accompanied by the fee prescribed by regulation.

(4) If the registrar deems it desirable in the public interest he may on such conditions, to such extent and in such manner as he may deem fit, exempt any person or category of persons from the provisions of this section, and may at any time revoke or amend any such exemption in a similar manner.

[section 13B inserted by section 20 of Act 83 of 1992]

14. Amalgamations and transfers

(1) No transaction involving the amalgamation of any business carried on by a registered fund with any business carried on by any other person (irrespective of whether that other person is or is not a registered fund), or the transfer of any business from a registered fund to any other person, or the transfer of any business from any other person to a registered fund shall be of any force or effect unless—

(a) the scheme for the proposed transaction, including a copy of every actuarial or other statement taken into account for the purposes of the scheme, has been submitted to the registrar;

(b) the registrar has been furnished with such additional particulars or such a special report by a valuator, as he may deem necessary for the purposes of this sub-section;

(c) the registrar is satisfied that the scheme referred to in paragraph (a) is reasonable and equitable and accords full recognition—

(i) to the rights and reasonable benefit expectations of the persons concerned in terms of the rules of a fund concerned; and

(ii) to any additional benefits the payment of which has become established practice,

and that the proposed transactions would not render any fund which is a party thereto and which will continue to exist if the proposed transaction 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 which is not in a sound financial condition, to attain such a condition within a period of time deemed by the registrar to be satisfactory;

[paragraph (c) substituted by section 3 of Act 54 of 1991 and by section 21 of Act 83 of 1992]

(d) the registrar has been furnished with such evidence as he may require that the provisions of the said scheme and the provisions, in so far as they are applicable, of the rules of every registered fund which is a party to the transaction, have been carried out or that adequate arrangements have been made to carry out such provisions at such times as may be required by the said scheme;

(e) the registrar has forwarded a certificate to the principal officer of every such fund to the effect that all the requirements of this sub-section have been satisfied.

(2) Whenever a scheme for any transaction referred to in sub-section (1) has come into force in accordance with the provisions of this section, the relevant assets and liabilities of the bodies so amalgamated shall respectively vest in and become binding upon the resultant body, or as the case may be, the relevant assets and liabilities of the body transferring its assets and liabilities or any portion thereof shall respectively vest in and become binding upon the body to which they are to be transferred.

(3) The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset which is transferred in accordance with the provisions of sub-section (2), shall, upon production to him by the person concerned of such deed or other document and of the certificate referred to in paragraph (e) of subsection (1), without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his registers that are necessary by reason of the amalgamation or transfer.

[subsection (3) substituted by section 15 of Act 81 of 1957]

(4) A transaction effected in terms of this section shall not deprive any creditor of a party thereto (other than in his capacity as a member or a shareholder of such party) of any right or remedy which he had immediately prior to that date against any party to the transaction or against any member or shareholder or officer of such party.

Chapter IV
Documents to be deposited with registrar

15. Accounts

(1) Subject to the provisions of subsection (4), every registered fund shall, within six months as from the expiration of every financial year, furnish to the registrar such statements in regard to its revenue, expenditure and financial position as may be prescribed by regulation, duly audited and reported on by the auditor of the fund.

[subsection (1) substituted by section 22(a) of Act 83 of 1992]

(2) Every registered fund shall, when furnishing to the registrar the documents referred to in sub-section (1), also furnish to the registrar—

(a) a copy of any special report by the auditor relating to any of the activities of the fund during the financial year to which such documents relate;

(b) a copy of any annual report that the fund may have issued to its members or shareholders in respect of the said financial year; and

(c) a copy of any other statement that the fund may have presented to its members or shareholders in respect of any of its activities during such financial year.

(3) If the registrar is of the opinion that any document furnished by a registered fund in terms of sub-section (1) does not correctly reflect the revenue and expenditure or the financial position (as the case may be) of the fund, he may reject the said document, and in that event—

(a) he shall notify the fund concerned of the reasons for such rejection; and

(b) the fund shall be deemed not to have furnished the said document to the registrar: Provided that in such event the registrar may apply the provisions of section thirty-three, even though the period concerned may have expired before application is made for extension.

(4) If a fund has been exempted as contemplated in section 2(3)(a), the registrar may authorize such fund to furnish to him, instead of the statements referred to in subsection (1), the information prescribed by regulation.

[subsection (4) added by section 22(b) of Act 83 of 1992]

16. Investigations by a valuator

(1) Save as provided in section 17, a registered fund shall, once at least in every three years, cause its financial condition to be investigated and reported upon by a valuator, and shall deposit a copy of such a report with the registrar, and shall send a copy of such report or a summary thereof, prepared by the valuator in a form prescribed by regulation and signed by him, to every employer participating in the fund.

[subsection (1) substituted by section 16(a) of Act 86 of 1984]

(2) Such investigation shall be made in respect of the position as at the expiration of a financial year, and such report shall be deposited with the registrar within twelve months from the close of that year.

(3) In the case of a fund which is registered on the date of commencement of section 16 of the Financial Institutions Amendment Act, 1984, and which, before that date, has caused its financial condition to be investigated in terms of subsection (1), the first investigation after the said date shall be made in respect of the position as at the expiration of the fifth financial year which is completed after the financial year-end in respect of which the previous investigation was made or as at the expiration of such earlier financial year as the fund may select.

[subsection (3) substituted by section 16(b) of Act 86 of 1984]

(3A) In the case of a fund which is registered on the date of commencement of section 16 of the Financial Institutions Amendment Act, 1984, but which has not, before that date, caused its financial position to be investigated in terms of subsection (1), the first investigation shall be made in respect of the position as at the expiration of the third financial year which is completed after that date or as at the expiration of the fifth financial year which is completed after the registration of the fund, whichever date is the earlier, or as at the expiration of such previous financial year as the fund may select.

[subsection (3A) inserted by section 16(c) of Act 86 of 1984]

(4) In the case of a fund other than a fund mentioned in sub-section (3) or (3A), the first investigation shall be made in respect of the position as at the expiration of the third financial year which is completed after the date of registration or as at the expiration of such previous financial year as the fund may select.

[subsection (4) substituted by section 16(d) of Act 86 of 1984]

(5) Notwithstanding anything contained in the preceding sub-sections, the registrar may, with the consent of the Minister, and after not less than one month's notice in writing to any registered fund, require that fund to cause such an investigation to be made in respect of the position as at the expiration of any financial year, if the registrar is of the opinion that an investigation would show that the fund is not in a sound financial condition: Provided that in the case of a fund which is carrying out the terms of a scheme approved by the registrar in terms of section eighteen, the registrar shall not act in accordance with the preceding provisions, unless he is of the opinion that an investigation would show that such scheme is unlikely to accomplish the objects of that section.

(6) If the rules of a fund provide that the benefits which may become payable to members are subject to the discretion of the management of the fund, the registrar shall, on the request of the fund and subject to the payment by the fund of such expenses as the registrar may incur in the matter, determine what amount or scale of benefits is to be taken into consideration for the purpose of the valuation, and such determination by the registrar shall be binding upon the fund.

(7) A report in terms of any of the preceding subsections shall include the particulars prescribed by regulation.

[subsection (7) amended by section 16(e) of Act 86 of 1984, substituted by section 9 of Act 50 of 1986 and by section 23 of Act 83 of 1992]

(8) Whenever a registered fund deposits with the registrar a copy of a report made by a valuator in terms of this section, it shall also deposit with the registrar a certificate by the board and by the principal officer that to the best of their knowledge and belief the information furnished to the valuator for purposes of the report was correct and complete in every material respect and, where applicable, that a copy of the report or a summary thereof referred to in subsection (1) was sent to every employer participating in the fund.

[subsection (8) substituted by section 16(f) of Act 86 of 1984 and amended by section 6 of Act 22 of 1996]

(9) The provisions of subsection (3) of section 15 in connection with a document relating to the financial position or the revenue or expenditure of a fund referred to therein, shall apply *mutatis mutandis* in respect of a copy of a report deposited with the registrar in terms of subsection (1) of this section and which in the opinion of the registrar does not correctly reflect its financial condition referred to in the said subsection (1).

[subsection (9) added by section 16(g) of Act 86 of 1984]

17. Modifications where investigations by a valuator are unnecessary

(1) If the registrar is satisfied that the financial methods adopted by a registered fund are such as to render periodical investigations by a valuator unnecessary, he shall, at the request of such fund, authorize the fund to prepare and furnish to the registrar a statement of its liabilities and assets in lieu of causing its financial condition to be investigated and reported upon by a valuator in terms of section sixteen.

(2) The provisions of sub-sections (2), (3), (4), (5) and (6) of section sixteen shall *mutatis mutandis* apply to every fund referred to in sub-section (1) of this section.

(3) Any statement prepared in terms of sub-section (1) shall include the following particulars, namely —

(a) the nature and amount of the liabilities and contingent liabilities of the fund;

(b) a full description of each asset held by the fund together with such particulars in respect of each such asset as would enable an independent person to estimate the value of such asset on a sale between a willing seller and a willing buyer: Provided that if a compliance with the requirements of this paragraph would result in unduly voluminous returns, the fund concerned may group various classes of assets together, or otherwise abridge the statement in such manner as the registrar may approve;

(c) the basis of valuation of each of the various kinds of assets adopted for purposes of the statement;

(d) the aggregate value placed on the assets for purposes of the statement; and

(e) particulars of any pledge, hypothecation or other encumbrance of the assets of the fund

(4) The said statement shall be accompanied by a report thereon by the auditor of the fund, and the said auditor shall in his report state—

(a) in what manner and to what extent he has satisfied himself as to the amount of the liabilities and contingent liabilities shown on the statement;

(b) in what manner and to what extent he has satisfied himself as to the existence of the assets shown on the statement;

(c) to what extent he has satisfied himself that the particulars of such assets which are shown on the statement are correct;

(d) whether or not in his opinion the basis of valuation of each of the various kinds of assets adopted by the fund is financially sound;

(e) whether or not, in his opinion, the fund is in a sound financial condition;

(f) if he is of the opinion that the fund is not in a sound financial condition—

(i) in what respects the condition of the fund is in his opinion unsound; and

(ii) the causes or probable causes of such unsoundness;

(g) such other particulars as he deems relevant to the purposes of this Act.

18. Fund not in a sound financial condition

(1) When any return under this Act indicates, in the opinion of the registrar, that a registered fund is not in a sound financial condition, the registrar shall, save as provided in section twenty-nine, direct the fund to submit a scheme setting out the arrangements which have been made or which it is intended to make to bring the fund into a financially sound condition within a reasonable period, and the fund shall deposit such scheme with the registrar within three months from the date of receipt of the said direction, together with a report thereon by a valuator or, in the case of a fund to which the provisions of section seventeen apply, by the auditor of the fund.

(1A) When any return under this Act indicates a deficiency in a registered fund, the fund shall, within three months from the date of such return, submit a scheme to the registrar setting out the arrangements which have been made or which it is intended to make to eliminate the deficiency, together with a report thereon by a valuator.

[subsection (1A) inserted by section 10(a) of Act 50 of 1986]

(2) If the registrar finds that a scheme submitted in terms of subsection (1) or (1A) is not inconsistent with the provisions of this Act and is satisfied that the arrangements set out therein should suffice to accomplish the objects of this section, he shall approve the scheme.

[subsection (2) substituted by section 10(b) of Act 50 of 1986]

(3) If the registrar is not satisfied regarding the matters referred to in subsection (2), he shall request the fund to make such amendments to the scheme, or to submit such new scheme, as will enable him to be so satisfied, and the fund shall comply with the request within a period prescribed by the registrar, not being less than 30 from the date of the request, and shall at the same time furnish to the registrar a report on such amendments or such new scheme by the valuator or auditor mentioned in subsections (1) and (1A), and the provisions of subsection (2) shall apply to any such amended scheme or new scheme which the fund may submit.

[subsection (3) substituted by section 10(c) of Act 50 of 1986]

(4) The fund shall carry out the terms of any scheme approved by the registrar under this section: Provided that—

(a) the registrar may, if he is satisfied that none of the objects of this section would be thereby prejudiced, permit the said fund to amend such scheme from time to time;

(b) if any return deposited with the registrar during the currency of such scheme in terms of this Act shows, in the opinion of the registrar, that the scheme is unlikely to accomplish the objects of this section, he may withdraw his approval of the scheme, and the fund concerned shall, within three months thereafter, prepare a further scheme, to which the provisions of this section shall apply; and

(c) if any such return shows, in the opinion of the registrar, that the financial condition of the fund is no longer unsound, he shall communicate with the principal officer of the fund to that effect and on receipt of such communication the obligations of the fund in respect of that scheme shall terminate immediately.

19. Investments

(1) *[subsection (1) substituted by section 7(a) of Act 91 of 1972 and by section 23(a) of Act 101 of 1976, amended by section 14(a) and (b) of Act 103 of 1979, by section 14 of Act No. 82 of 1982 and by section 17(a) and (b) of Act No. 86 of 1984, and deleted by section 8(a) of Act No. 53 of 1989]*

(1A) *[subsection (1A) inserted by section 11 of Act 94 of 1977 and deleted by section 14(c) of Act No. 103 of 1979]*

(2) *[subsection (2) substituted by section 5(b) of Act 51 of 1988 and deleted by section 8(a) of Act No. 53 of 1989]*

(3) *[subsection (3) deleted by section 8(a) of Act No. 53 of 1989]*

(4) No registered fund shall invest any of its assets in the business of an employer who participates in the scheme or arrangement whereby the fund has been established or in any subsidiary company (as defined in the Companies Act, 1973 (Act No. 61 of 1973) of such employer's business or lend any of its assets to such employer or subsidiary company: Provided that the Minister may exempt wholly or in part any fund established or conducted by a statutory body or a utility undertaking from this provision.

[subsection (4) amended by 14(d) of Act No. 103 of 1979]

(5) (a) A registered fund may, if its rules so permit, grant a loan to a member by way of investment of its funds to enable the member—

(i) to redeem a loan granted to the member by a person other than the fund, against security of immovable property which belongs to the member or his or her spouse and on which a dwelling has been or will be erected which is occupied or, as the case may be, will be occupied by the member or a dependant of the member;

(ii) to purchase a dwelling, or to purchase land and erect a dwelling on it, for occupation by the member or dependant of the member; or

(iii) to make additions or alterations to or to maintain or repair a dwelling which belongs to the member or his or her spouse and which is occupied or will be occupied by the member or a dependant of the member.

[subparagraph (iii) substituted by section 39(b) of Act No. 99 of 1980]

(b) A loan contemplated in paragraph (a) shall not be granted after the commencement of the Financial Institutions Amendment Act, 1986—

(i) unless secured by—

(aa) a first mortgage on the immovable property in respect of which it is granted; or

(bb) a pledge of the benefits to which the member is entitled in terms of the rules of the fund; or

(cc) both such mortgage and such pledge;

(ii) in respect of immovable property if the member concerned is liable to the fund in respect of a loan granted to him in respect of other immovable property;

(iii) at a lower rate of interest than that which may from time to time be prescribed by regulation;

(iv) unless the capital sum is redeemable over a period not exceeding 30 years in equal weekly or monthly instalments, which shall include the interest on the capital sum outstanding.

[paragraph (b) substituted by section 11(a) of Act 50 of 1986]

(c) A loan contemplated in paragraph (a) shall not exceed where it is secured in accordance with —

(i) paragraph (b)(i)(aa), 90 per cent of the market value of the hypothecated property concerned;

[subparagraph (i) amended by section 11(b) of Act 50 of 1986]

(ii) paragraph (b)(i)(bb), the amount of the benefit which the member would receive if he were to terminate his membership of the fund voluntarily or the market value of the immovable property concerned, whichever is the lesser amount; or

(iii) paragraph (b)(i)(cc), the amount equal to the aggregate of 90 percent of the market value of the hypothecated property concerned and the amount of the benefit which the member would receive if he were to terminate his membership of the fund voluntarily or the market value of the property, whichever is lesser amount.

[subparagraph (iii) amended by section 11(b) of Act 50 of 1986]

(cA) The percentages referred to in subparagraphs (i) and (iii) of paragraph (c), may be increased to 100 per cent, subject to the furnishing to the fund by the employer of the member of an irrevocable guarantee in respect of so much of the loan as may exceed 90 per cent.

[paragraph (cA) inserted by section 11(c) of Act 50 of 1986]

(d) For the purposes of this section 'immovable property' includes a surveyed site in respect of which a right of leasehold is registered in terms of section 6A of the Blacks (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945)

[paragraph (d) added by section 14(e) of Act No. 103 of 1979]

[subsection (5) substituted by section 23(b) of Act 101 of 1976, by section 11(a) of Act No. 80 of 1978 and by section 11(a) of Act 50 of 1986]

(5A) For the purposes of subsection (5) 'market value' means the price which would be obtained on a sale in the Republic between a willing seller and a willing purchaser (between whom there is no other direct or indirect connection), as estimated by a person appointed by the registered fund concerned for that purpose: Provided that where a transaction for the purchase of an immovable property (other than vacant land upon which a dwelling is in the course of erection or about to be erected) is pending and a purchase price has already been agreed upon, or where such an immovable property was acquired by purchase not more than six months before the date on which the estimate is made, the market value of the property shall not be fixed at an amount higher than the true purchase price of the property, as declared or to be declared by the parties concerned for transfer duty purposes, plus, in the last-mentioned case, one hundred rand.

[subsection (5A) inserted by section 23(c) of Act 101 of 1976]

(5B) Notwithstanding anything to the contrary contained in the rules of a registered fund, such a fund shall not, directly or indirectly, after the commencement of the Financial Institutions Amendment Act, 1986—

(a) grant a loan to a member or make any of its funds available, whether by way of an investment or otherwise, to be utilised in any manner by the fund or someone else for a loan to a member, other than a loan for a purpose mentioned in paragraph (a) of subsection (5) and which complies with the provisions of paragraphs (b) and (c) of that subsection; or

(b) grant a loan to, or invest in the shares of—

(i) a company controlled by an officer or a member of the fund or a director of a company which is an employer participating in the scheme or arrangement whereby the fund has been established; or

(ii) a subsidiary company or a controlled company (as defined in the Companies Act, 1973 (Act No. 61 of 1973)), of such a first-mentioned company.

[subsection (5B) inserted by section 23(c) of Act 101 of 1976 and substituted by section 11(d) of Act 50 of 1986]

(5C) A registered fund may, if its rules so permit, contribute to any other pension fund registered under this Act, or any fund of any kind whatsoever, which is conducted for the benefit of the employees of the said registered fund.

[subsection (5C) inserted by section 11(b) of Act 80 of 1978]

(6) (a) The registrar may, under exceptional circumstances, and on such conditions and for such periods as he may determine, temporarily exempt any fund from compliance with any provision of subsection (4), (5) or (5B)(a).

[paragraph (a) renumbered by section 1 of Act 80 of 1969, substituted by section 7(b) of Act 91 of 1972 and by section 14(f) of Act No. 103 of 1979, amended by section 17(c) of Act No. 86 of 1984, and substituted by section 8(b) of Act No. 53 of 1989]

(b) *[paragraph (b) added by section 1 of Act 80 of 1969, substituted by section 23(d) of Act 101 of 1976 and deleted by section 17(d) of Act No. 86 of 1984]*

(c) *[paragraph (c) added by section 7(c) of Act 91 of 1972 and deleted by section 11(a) of Act 64 of 1990]*

[subsection (6) substituted by section 9(b) of Act 58 of 1966]

(7) The Minister may in writing delegate to the registrar or any other officer in the public service any power conferred on the Minister by this section.

[subsection (7) added by section 9(c) of Act 58 of 1966, substituted by section 7(d) of Act 91 of 1972, deleted by section 17(e) of Act No. 86 of 1984 and added by section 11(b) of Act 64 of 1990]

(8) *[subsection (8) added by section 23(f) of Act 101 of 1976, substituted by section 17(f) of Act No. 86 of 1984 and deleted by section 8(c) of Act No. 53 of 1989]*

20. Requirements in regard to documents to be deposited with registrar

(1) A registered fund shall be deemed not to have complied with any provision of this Act, which imposes upon such fund the obligation to furnish to the registrar a document prepared by the fund, unless such document is signed by the principal officer and one other person authorized in accordance with the rules of the fund to sign documents.

(2) If any person (other than an auditor or a valuator) who is not a natural person, is required by any provision of this Act to sign any document which is to be furnished to the registrar, such document shall be signed on behalf of such person as follows, that is to say—

(a) if such person is a committee of individuals, by the person for the time being at the head of the committee and by one other member thereof;

(b) if such person is an association of persons, by the individual who is for the time being at the head of the board of directors or other committee controlling such association, and by one other member of such board or committee;

(c) in any other case, by individuals designated by the registrar, who exercise any control over the business of the said person.

(3) Any person who is required in terms of any provision of this Act to furnish to the registrar—

(a) any original document, shall also furnish such additional copies thereof, not exceeding three in number, as may be prescribed by regulation or as the registrar may require;

(b) a copy of any document, shall furnish one copy thereof certified as correct—

(i) in the case of a registered fund, by its principal officer; and

(ii) in any other case, by the person by whom such copy is required to be furnished,

together with so many additional copies, not exceeding three, as may be prescribed by regulation or as the registrar may require.

21. Registrar may require additional particulars in case of certain applications and returns

(1) If the registrar is of opinion that—

(a) any application for registration of a fund or of an alteration or rescission of rules or of an additional rule; or

(b) any return or scheme relating to the financial condition of a fund,

does not disclose sufficient information to enable him to make the necessary decision, the person concerned shall furnish such additional particulars as the registrar may deem necessary.

(2) If the registrar is of opinion that a certificate or special report by a valuator or by the auditor of a fund is necessary in regard to any matter set out in sub-section (1), the person concerned shall furnish such certificate or report as the registrar may require.

22. Inspection of documents

(1) Upon payment of the fees prescribed by regulation any person may inspect at the office of the registrar any document referred to in section thirty-five and make a copy thereof or take extracts therefrom, or obtain from the registrar a copy thereof or extract therefrom.

(2) The registrar may exempt any person from the obligation to pay fees under this section if he is satisfied that the inspection, copy or extract in question is desired for the purpose of furthering some public interest.

(3) The registrar shall without charge furnish any applicant therefor with particulars of the address of the registered office and the name of the principal officer of any registered fund.

23. Effect of registrar's certificate on documents

Every document which purports to have been certified by the registrar to be a document deposited at his office under the provisions of this Act, or to be a copy of such a document, shall *prima facie* be deemed to be such a document, or a copy thereof, and every such copy shall be admissible in evidence as if it were the original document.

Chapter V
Enquiries by registrar, applications to court, cancellation or suspension of registration and dissolution of funds

24. Enquiries

The registrar may address enquiries to any registered fund in relation to any matter connected with its business or transactions, and it shall be the duty of the fund to reply in writing thereto within a period of thirty days as from the date upon which the registrar addressed the enquiry to it or within such further period as the registrar may allow.

25. Powers of inspection

(1) In addition to the powers and duties conerred or imposed upon him by this Act the registrar shall have all the powers and duties conferred or imposed upon him by the Inspection of Financial Institutions Act 1962.

(2) Any reference in this Act to an inspection or investigation made under this section shall be construed as a reference to an inspection made under the Inspection of Financial Institutions Act, 1962.

[section 25 substituted by section 11(1) of Act 68 of 1962]

26. The court may alter the basis of management of a fund

(1) If in the opinion of the registrar a registered fund is not in a sound financial condition, and if such fund has failed to act in accordance with the provisions of section eighteen, or if such action is necessary as a result of an investigation under section twenty-five, the registrar may apply to the court for an order directing that the rules of the fund relating to the appointment, powers, remuneration (if any) and removal from office of the board, or relating to such other matter as the registrar may regard as appropriate, be altered in a manner to be specified by the registrar in such application.

[subsection (1) is amended by section 6 of Act 22 of 1996]

(2) The court shall consider the equitable interests of the members of the fund (or of the several classes of members if there is more than one such class) and of any other person who has rendered or who

intends to render financial assistance to the fund, and, subject to such considerations as aforesaid, shall make such order as it deems most advantageous to the members of the fund.

(3) Unless the court otherwise orders, the costs of the registrar in or in connection with an application in terms of this section shall be paid by the fund, and shall be a first charge upon the assets of such fund.

27. Cancellation or suspension of registration

(1) The registrar shall cancel the registration of a fund—

(a) on proof to his satisfaction that the fund has ceased to exist; or

(b) if the registrar and the fund are agreed that the fund was registered by mistake in circumstances not amounting to fraud:

Provided that in the circumstances stated in paragraph (b), the registrar may suspend the registration in lieu of cancelling it, if he is satisfied that by so doing the fund will be furnished with an opportunity of rectifying the said mistake in a manner consistent with the provisions of this Act, and if the fund does rectify such mistake to the satisfaction of the registrar, the latter shall thereupon reinstate the said registration, as from the date of suspension but if the mistake is not rectified within a period specified by the registrar he shall cancel the registration of the fund.

(2) The registrar may apply to the court for the cancellation or suspension of the registration of a fund if—

(a) the fund has wilfully and after notice from the registrar violated any provision of this Act; or

(b) the registrar is of opinion, as a result of an investigation under section twenty-five, that the registration should be cancelled or suspended.

(3) The court may cancel the registration of the fund or suspend such registration for such period as it think fit, and may attach to such cancellation or suspension such conditions as it thinks desirable, or may make any other order which in the circumstances it thinks desirable.

(4) Unless the court otherwise orders, the costs of the registrar in or in connection with the application shall be paid by the fund and shall be a first charge upon the assets of such fund.

28. Voluntary dissolution of fund

(1) Subject to the provisions of this section, a registered fund may be terminated or dissolved in such circumstances (if any) as may be specified for that purpose in its rules and in the manner provided by such rules, and the assets of the fund shall, subject to the said provisions, in that event be distributed in the manner provided by the said rules.

[subsection (1) substituted by section 25(a) of Act No. 83 of 1992]

(2) A liquidator shall be appointed in the manner directed by the rules, or, if the rules do not contain directions as to such appointment, by the board, but such appointment shall be subject to the approval of the registrar, and the period of liquidation shall be deemed to commence as from the date of such approval.

[subsection (2) amended by section 6 of Act No. 22 of 1996]

(3) During such liquidation the provisions of this Act shall continue to apply to such fund as if the liquidator were the board.

[subsection (3) amended by section 6 of Act No. 22 of 1996]

(4) (a) The liquidator shall as soon as may be deposit with the registrar the preliminary accounts prescribed by regulation, signed by him and certified by him as correct, showing the assets and liabilities of the fund at the commencement of the liquidation and the manner in which

it is proposed to realize the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members.

(b) In discharging the liabilities and contingent liabilities to or in respect of members referred to in paragraph (a) full recognition shall be accorded to—

(i) the rights and reasonable benefit expectations of the persons concerned;

(ii) additional benefits the payment of which by the fund has become an established practice.

[subsection (4) substituted by section 25(b) of Act No. 83 of 1992]

(5) The registrar may, in his discretion, direct the liquidator to furnish a report, drawn up by an independent valuator or other competent person nominated by the registrar, upon the preliminary account and preliminary balance sheet.

(6) The preliminary account, preliminary balance sheet and report (if any) referred to in sub-section (5) shall lie open at the office of the registrar, and at the registered office of such fund, and where the registered office of the fund is in any district other than the district wherein the office of the registrar is situate, at the office of the magistrate of the district in which the registered office of the fund is situate, for inspection by interested persons for a period of thirty days.

(7) The registrar shall, at the cost of such fund, cause to be published in the *Gazette* and in one English and one Afrikaans newspaper circulating in the district in which the registered office of such fund is situate, a notice stating the period during which and the places at which the preliminary account, preliminary balance sheet and report (if any) shall lie open for inspection as aforesaid, and such notice shall call upon all interested persons who have any objection to the said preliminary account, preliminary balance sheet and report (if any) to lodge their objections in writing with the registrar within a period stated in the notice, not being less than fourteen days as from the last day on which the aforesaid documents lie open for inspection.

(8) If no objections are lodged with the registrar in terms of sub-section (7), he shall direct the liquidator to complete the liquidation.

(9) If objections are lodged with the registrar in terms of subsection (7), the registrar may, after considering the said objections, direct the liquidator to amend the preliminary accounts or give such other directions relating to the liquidation as he thinks fit, provided such directions are not inconsistent with the rules of the fund or this section, and any such direction shall be binding upon the liquidator.

[subsection (9) substituted by section 25(c) of Act No. 83 of 1992]

(10) The liquidator shall, within fourteen days of the receipt by him of any direction of the registrar in terms of sub-section (9), post a copy thereof to every member, shareholder and creditor of the fund, and the liquidator or any person aggrieved by any such direction of the registrar may apply by motion to the court within twenty-eight days after such direction has been communicated to the liquidator, for an order to set aside the registrar's decision, and the court may confirm the said decision or make such order as it thinks fit.

(11) If the registrar is satisfied that his directions, in so far as they have not been varied or set aside by the court, have been given effect to, he shall direct the liquidator to complete the liquidation.

(12) The liquidator shall, within thirty days after the completion of the liquidation, lodge with the registrar a final account and a final balance sheet, signed and certified by him as correct showing the assets and liabilities of the fund at the commencement of the liquidation and the manner in which the assets have been realized and the liabilities (including any liabilities and contingent liabilities to or in respect of members) have been discharged.

(13) The provisions of the Companies Act, 1973 (Act No. 61 of 1973), shall apply *mutatis mutandis* to the dissolution of a fund in terms of this section, in so far as the said provisions relate to a voluntary

winding-up in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provisions of this Act.

[subsection (13) substituted by section 15 of Act No. 103 of 1979]

(14) All claims against the fund shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the court, and the liquidator may require any claim to be made on affidavit.

(15) If the registrar is satisfied that the said account and balance sheet are correct and that the liquidation has been completed, he shall cancel the registration of the fund and thereupon the fund shall be deemed to be dissolved.

29. Winding-up by the court

(1) If the registrar is of the opinion that a fund is in such an unsound financial condition that any s heme a contemplated by section eighteen would be ineffective, impracticable or unsatisfac ory, he may apply to the court for an order that the whole or any part of the business of the fund be wound up.

(2) Any creditor of a registered fund who is unable to obtain payment of his claim after recourse to the ordinary process of law may apply to the court for an order that the whole or any part of the business of the fund be wound up: Provided that a creditor shall not make application except by leave of the court, and the court hall not grant such leave unless the creditor has given security to an amount specified by the court for the payment of the costs of the application and of any opposition thereto, and has established *prima facie* the desirability of the order for which he wishes to apply.

(3) The court may make an order as prayed in terms of subsection (1) or sub-section (2), subject to the provisions contained in the following sub-sections.

(4) The provisions of the Companies Act, 1973 (Act No. 61 of 1973), shall apply *mutatis mutandis* to a winding-up under this section, in so far as the said provisions refer to a winding-up by the court in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provision of this Act or with any directions issued by the court under this section.

[subsection (4) substituted by section 16(a) of Act No. 103 of 1979]

(5) The court may direct that the aforementioned provisions of the Companies Act, 1973, may, for the purposes of the winding-up be suitably modified in any particular case if the court is satisfied that having regard to the circumstances of the fund concerned it would be impracticable or unnecessarily onerous to comply with the said provisions in every particular and that in spite of such modification the interests of the creditors of the fund will be sufficiently safeguarded.

[subsection (5) amended by section 16(b) of Act No. 103 of 1979]

(6) In the winding-up of the whole or any part of the business of a fund, the value of the interests of the members or of the various groups of members of the fund, and the value of any benefits due by the fund to persons other than members, shall be ascertained in such manner as the court may direct.

(6A) In giving any order or direction under this section the court shall have regard to any recommendation which may have been made by the fund's valuator, if any, and accord full recognition to the rights and reasonable benefit expectations of the persons concerned and to additional benefits the payment of which by the fund has become an established practice.

[subsection (6A) inserted by section 26 of Act No. 83 of 1992]

(7) Without prejudice to the powers of the Master who has jurisdiction in respect of any winding-up, the liquidator appointed n terms of sub-section (4) shall give the registrar such information as the latter may require from time to time and shall, whenever he intends to apply to the court for instructions, report accordingly to the registrar who shall be entitled to be heard personally or by

a representative at any such application, and may himself make an application to the court with reference to the winding-up.

(8) If, where the court has ordered that the whole business of the fund be wound up, the registrar is satisfied that the winding-up of such a fund has been completed, he shall cancel the registration of the fund and thereupon the fund shall be deemed to be dissolved.

30. Special provisions relating to liquidation of funds

(1) In applying the provisions of the Companies Act, 1973 (Act No. 61 of 1973), in terms of section twenty-eight or twenty-nine—

(a) the members of a fund shall be treated as deferred creditors, and their claims against the fund in their capacity as members shall not be settled until the debts of ordinary creditors have been pain;

(b) *[paragraph (b) deleted by section 25 of Act 104 of 1993]*

[subsection (1) amended by section 17 of Act No. 103 of 1979]

(2) If a fund has a share capital, the liability of a share-holder in the case of liquidation under the aforementioned sections shall either be limited to the amount (if any) unpaid or any share held by him, or shall be unlimited, according as is provided by the rules of the fund.

Chapter VA
Consideration and adjudication of complaints

[Chapter VA inserted by section 3 of Act No. 22 of 1996]

30A. Submission and consideration of complaints

(1) Notwithstanding the provisions of the rules of any fund, a complainant shall have the right to lodge a written complaint with a fund or an employer who participates in a fund.

(2) A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof.

(3) If the complainant is not satisfied with the reply contemplated in subsection (2), or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the Adjudicator.

[section 30A inserted by section 3 of Act No. 22 of 1996]

30B. Establishment of Office of Pension Funds Adjudicator

(1) There is hereby established an office which shall be known as the Office of the Pension Funds Adjudicator.

(2) The functions of the Office shall be performed by the Pension Funds Adjudicator.

[section 30B inserted by section 3 of Act No. 22 of 1996]

30C. Appointment of Adjudicator

(1) The Minister shall, after consultation with the Policy Board, appoint a person to the office of Adjudicator.

(2) No person shall be appointed as Adjudicator unless he or she is qualified to be admitted to practise as an advocate under the Admission of Advocates Act, 1964 (Act No. 67 of 1964), or as an attorney under the Attorneys Act, 1979 (Act No. 53 of 1979), and—

(a) for an uninterrupted period of at least 10 years practised as an advocate or an attorney; or

(b) for an uninterrupted period of at least 10 years was involved in the tuition of law and also practised as an advocate or attorney for such period as renders him or her suitable for appointment as Adjudicator; or

(c) possesses such other experience as renders him or her suitable for appointment as Adjudicator.

(3) The Adjudicator shall be appointed for a period of three years and may be reappointed on expiry of his or her term of office.

(4) The Adjudicator may at any time resign as Adjudicator by tendering his or her resignation in writing to the Minister: Provided that the resignation shall be addressed to the Minister at least three calender months prior to the date on which the Adjudicator wishes to vacate his or her office, unless the Minister allows a shorter period.

(5) The Minister may remove the Adjudicator from office on the grounds of misbehaviour, incapacity or incompetence, after consultation with the Policy Board.

[section 30C inserted by section 3 of Act No. 22 of 1996]

30D. Main object of Adjudicator

The main object of the Adjudicator shall be to dispose of complaints lodged in terms of section 30A(3) of this Act in a procedurally fair, economical and expeditious manner.

[section 30D inserted by section 3 of Act No. 22 of 1996]

30E. Disposal of complaints

(1) In order to achieve his or her main object, the Adjudicator—

(a) shall, subject to paragraph (b), investigate any complaint and may make the order which any court of law may make;

(b) may, if it is expedient and prior to investigating a complaint, require any complainant first to approach an organization established for the purpose of resolving disputes in the pension funds industry or part thereof, and approved by the registrar.

(2) Any complaint dealt with in terms of subsection (l)(b) shall be recorded by the Adjudicator and shall, for purposes of section 30H(3), be deemed to be a receipt of a complaint.

(3) If the complaint, dealt with in terms of subsection (l)(b), is not resolved, the complainant may again lodge the complaint with the Adjudicator, who shall deal with it in terms of subsection (l)(a).

[section 30E inserted by section 3 of Act No. 22 of 1996]

30F. Opportunity to comment

When the Adjudicator intends to conduct an investigation into a complaint he or she shall afford the fund or person against whom the allegations contained in the complaint are made, the opportunity to comment on the allegations.

[section 30F inserted by section 3 of Act No. 22 of 1996]

30G. Parties to complaint

The parties to a complaint shall be—

(a) the complainant;

(b) the fund or person against whom the complaint is directed;

(c) any person who has applied to the Adjudicator to be made a party and who has a sufficient interest in the matter to be made a party to the complaint;

(d) any other person whom the Adjudicator believes has a sufficient interest in the matter to be made a party to the complaint.

[section 30G inserted by section 3 of Act No. 22 of 1996]

30H. Jurisdiction and prescription

(1) The Adjudicator shall, subject to section 30I, investigate a complaint notwithstanding that the complaint relates to a matter which arose prior to the commencement of the Pension Funds Amendment Act, 1995.

(2) The Adjudicator shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in any civil court in respect of a matter which would constitute the subject matter of the investigation.

(3) Receipt of a complaint by the Adjudicator shall interrupt any running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), or the rules of the fund in question.

[section 30H inserted by section 3 of Act No. 22 of 1996]

30I. Time limit for lodging of complaints

(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.

(2) If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of three years shall commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.

(3) The Adjudicator may on good cause shown or of his or her own motion—

(a) either before or after expiry of any period prescribed by this Chapter, extend such period;

(b) condone non-compliance with any time limit prescribed by this Chapter.

[section 30I inserted by section 3 of Act No. 22 of 1996]

30J. Procedure for conducting investigation

(1) The Adjudicator may follow any procedure which he or she considers appropriate in conducting an investigation, including procedures in an inquisitorial manner.

(2) Notwithstanding section 22 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), the Adjudicator may obtain copies of any document or correspondence contained in the files of the registrar.

(3) Sections 1, 2, 3, 4 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), shall apply *mutatis mutandis* to the Adjudicator.

[section 30J inserted by section 3 of Act No. 22 of 1996]

30K. Legal representation

No party shall be entitled to legal representation at proceedings before the Adjudicator.

[section 30K inserted by section 3 of Act No. 22 of 1996]

30L. Record of proceedings

(1) The Adjudicator shall keep or cause to be kept, whether in writing or by mechanical or electronic means, a permanent record of the proceedings relating to the adjudication of a complaint and the evidence given.

(2) Any member of the public may obtain a readable copy of the record on payment of a fee determined by the Adjudicator.

(3) The registrar may, for purposes of the performance of his or her functions in terms of this or any other Act, rely on a copy of the record without the need of any further proof.

[section 30L inserted by section 3 of Act No. 22 of 1996]

30M. Statement by Adjudicator regarding determination

After the Adjudicator has completed an investigation, he or she shall send a statement containing his or her determination and the reasons therefor, signed by him or her, to all parties concerned as well as to the clerk or registrar of the court which would have had jurisdiction had the matter been heard by a court.

[section 30M inserted by section 3 of Act No. 22 of 1996]

30N. Interest on amount awarded

Where a determination consists of an obligation to pay an amount of money, the debt shall bear interest as from the date and at the rate determined by the Adjudicator.

[section 30N inserted by section 3 of Act No. 22 of 1996]

30O. Enforceability of determination

(1) Any determination of the Adjudicator shall be deemed to be a civil judgment of any court of law had the matter in question been heard by such court, and shall be so noted by the clerk or the registrar of the court, as the case may be.

(2) A writ or warrant of execution may be issued by the clerk or the registrar of the court in question and executed by the sheriff of such court after expiration of a period of six weeks after the date of the determination, on condition that no application contemplated in section 30P has been lodged.

[section 30O inserted by section 3 of Act No. 22 of 1996]

30P. Access to court

(1) Any party who feels aggrieved by a determination of the Adjudicator may, within six weeks after the date of the determination, apply to the division of the Supreme Court which has jurisdiction, for relief, and shall at the same time give written notice of his or her intention so to apply to the other parties to the complaint.

(2) The division of the Supreme Court contemplated in subsection (1) shall have the power to consider the merits of the complaint in question, to take evidence and to make any order it deems fit.

[section 30P inserted by section 3 of Act No. 22 of 1996]

30Q. Powers of Adjudicator

The Adjudicator may with the concurrence of the Financial Service Board—

(a) hire, purchase or otherwise acquire such movable property as may be necessary for the performance of his or her functions and may let, sell or otherwise dispose of property so purchased or acquired;

(b) in order to perform his or her functions, enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services;

(c) insure his or her Office against any loss, damage, risk or liability which it may suffer or incur;

(d) employ persons to assist in the performance of his or her functions;

(e) obtain such professional advice in the performance of his or her functions as may be reasonably required;

(f) subject to such conditions as he or she may determine, delegate any of his or her functions, except the functions contemplated in section 30E, to an employee of his or her Office;

(g) in general do anything which is necessary or expedient for the achievement of his or her objects and the performance of his or her functions.

[section 30Q inserted by section 3 of Act No. 22 of 1996]

30R. Funds of Adjudicator

(1) The funds of the Adjudicator shall consist of—

(a) funds provided by the Financial Services Board on the grounds of a budget submitted to and approved of by the Financial Services Board;

(b) money accruing to the Adjudicator from any other source.

(2) The Adjudicator shall utilise the funds for the defrayal of expenses incurred in connection with the performance of his or her functions under this Act.

(3) The Adjudicator shall deposit all the money received by him or her in an account which he or she shall open with a banking institution registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

(4) The Adjudicator may invest money deposited in terms of subsection (3) which is not required for immediate use.

(5) Any money standing to the credit of the Adjudicator in the account referred to in subsection (3) at the close of the financial year as well as money which has been invested in terms of subsection (4), shall be carried forward to the next financial year.

(6) The financial year of the Adjudicator shall end on 31 March in each year.

[section 30R inserted by section 3 of Act No. 22 of 1996]

30S. Remuneration and terms and conditions of employment of Adjudicator and employees

(1) The remuneration and other terms and conditions of employment of—

(a) the Adjudicator shall be determined by the Financial Services Board;

(b) any employee of the Adjudicator shall be determined by the Adjudicator with the concurrence of the Financial Services Board.

(2) Any remuneration of the Adjudicator and his or her employees shall be paid out of the funds of the Adjudicator.

[section 30S inserted by section 3 of Act No. 22 of 1996]

30T. Accountability

(1) The Adjudicator or one of his or her employees designated by him or her, shall be charged with the accountability in respect of all moneys received and payments made by the Adjudicator.

(2) The accounting officer contemplated in subsection (1) shall—

(a) keep full and correct record of all money received or expended by, and of all assets, liabilities and financial transactions of, the Adjudicator; and

(b) as soon as is practicable, but not later than three months, after the end of each financial year, prepare annual financial statements reflecting, with suitable particulars, money received and expenses incurred by the Adjudicator during, and his or her assets and liabilities at the end of, the financial year in question.

(3) The records and financial statements referred to in subsection (2) shall be audited by the Auditor-General.

[section 30T inserted by section 3 of Act No. 22 of 1996]

30U. Report of Adjudicator

The Adjudicator shall each year within six months after the end of his or her financial year, submit a report to the Minister on his or her affairs and functions during the financial year in question, including the audited financial statements.

[section 30U inserted by section 3 of Act No. 22 of 1996]

30V. Offences and penalties

An person who—

(a) insults the Adjudicator;

(b) anticipates a determination of the Adjudicator in any manner calculated to influence the determination;

(c) wilfully interrupts any proceedings conducted by the Adjudicator or misbehaves himself or herself in any manner in the place where the proceedings are being held;

(d) in connection with a complaint does anything which, if done before a court of law, would have constituted contempt of court,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

[section 30V inserted by section 3 of Act No. 22 of 1996]

30W. Limitation of liability

The Adjudicator, or any of his or her employees, shall not be liable in respect of anything done or omitted to be done in good faith in the exercise of a power or the performance of a duty conferred or imposed by or under this Act.

[section 30W inserted by section 3 of Act No. 22 of 1996]

30X. Liquidation

(1) The Office of the Adjudicator shall not be placed in liquidation except by Act of Parliament.

(2) In the event of the liquidation of the Office, the surplus assets of the Office (if any) shall accrue to the State.

[section 30X inserted by section 3 of Act No. 22 of 1996]

Chapter VI
General and miscellaneous

31. Carrying on business of unregistered pension fund organization and use of designation "pension fund"

(1) No person shall—

(a) Carry on the business of a pension fund which is in existence at the commencement of this Act, for a period of more than six months after such commencement unless application has been duly mad under section four for the registration of that fund; or

(b) carry on the business of a pension fund established after such commencement, unless that fund has been duly registered under section four; or

(c) carry on the business of a pension fund for a period of more than twelve months after the date on which the person who applied for registration of the fund is advised by the registrar that the application for registration has been refused; or

(d) after the expiration of a period of twelve months from the commencement of this Act, apply to his business a name which includes the words "pension fund" or any other name which is calculated to indicate that he carries on the business of a pension fund, unless such business is registered as a pension fund under this Act, except with the consent of the registrar.

[subsection (1) renumbered by section 14 of Act 80 of 1959]

(2) If at the commencement of this Act any person applied to his business any such name as is referred to in paragraph (d) of sub-section (1) and he, after the commencement of this sub-section, changes such name and produces any deed or document bearing such name and registered in any deeds registry, to the officer in charge of that registry, and satisfies the said officer that such name was changed by virtue of the provisions of the said paragraph (d), the said officer shall, without any charge, substitute the new name for the previous name on such deed or document and in all the relevant registers in the said registry.

[subsection (2) added by section 14 of Act 80 of 1959]

32. Registrar may require unregistered funds to furnish information

(1) The registrar may by notice in writing require any person whom he has reason to suspect is carrying on the business of a pension fund which is not registered under this Act, to transmit to him, within a period stated in such notice, a copy of the rules, if any, under which such person is operating, together with a copy of the last annual accounts recorded by such person, and such further information as the registrar may require.

(2) If such person fails to comply with the requirements of the registrar to his satisfaction, the registrar may, with the consent of the Minister, investigate the affairs or any part of the affairs of the said person, or appoint an inspector to hold such an investigation and to report the result of his investigation to the registrar, and the provisions of section twenty-five shall *mutatis mutandis* apply to every such investigation, and the registrar shall be entitled to recover from the person concerned

all expenses necessarily incurred in connection with the investigation, unless such investigation shows that such person is not carrying on the business of a pension fund.

[subsection (2) amended by section 11(2) of Act 68 of 1962]

(3) If it appears from enquiries made by the registrar in terms of sub-section (1) or of any investigation made in terms of sub-section (2), that the person concerned is carrying on the business of a pension fund, the registrar shall register the fund provisionally whereafter the provisions of this Act shall apply to the said fund.

32A. Certain practices or methods of conducting business prohibited

(1) With the consent of the Minister the registrar may by notice in the *Gazette* declare a specific practice or method of conducting business to be an irregular or undesirable practice or an undesirable method of conducting business for any specified category of pension fund or for all pension funds: Provided that the Minister shall not consent to such declaration unless the registrar has given at least 30 days notice in the *Gazette* of his intention to make such declaration and has invited in the notice all interested persons to make written representations to him regarding the intended declaration, within 21 days of such notice.

(2) Any pension fund in question shall not, after the expiry of 21 days from the date of the said notice in the *Gazette*, employ any practice or method of conducting business which by virtue of such notice has been declared to be irregular or undesirable.

(3) The registrar may in writing direct any fund which, before or after the date of such notice, employed any practice or method of conducting business which by virtue of the said notice is irregular or undesirable, to rectify as required by the registrar, anything specified by the registrar which in the opinion of the registrar was caused by or arose out of such employment.

(4) Any pension fund which has been so directed to rectify anything, shall do so within 60 days after being so directed or within such longer period as the registrar may approve.

[section 32A inserted by section 12 of Act No. 50 of 1986]

33. Registrar may extend certain periods

(1) When any person is obliged in terms of any provision of this Act to perform any act within a specified period, the registrar may, at the request of such person, in any particular case extend that period from time to time.

(2) The registrar may in special circumstances extend any such specified period after it has expired.

34. Annual report by registrar

The registrar shall annually submit to the Minister a report on his activities under the Act.

[section 34 substituted by section 26 of Act No. 104 of 1993]

35. Right to obtain copies of or to inspect certain documents

(1) Every registered fund shall deliver to any member on demand by such member, and on payment of such sum as may be determined by the rules of the fund, a copy of any of the following documents, that is to say—

(a) the rules of the fund;

(b) the last revenue account and the last balance sheet prepared in terms of sub-section (1) of section fifteen.

(2) Any member shall be entitled to inspect without charge at the registered office of a registered fund, a copy of any of the following documents and make extracts therefrom, that is to say—

(a) the documents referred to in sub-section (1);

(b) the last report (if any) by a valuator prepared in terms of section sixteen;

(c) the last statement (if any) and report thereon prepared in terms of section seventeen;

(d) any scheme which is being carried out by the fund in accordance with the provisions of section eighteen.

36. Regulations

(1) The Minister may make regulations, not inconsistent with provisions of this Act—

(a) in regard to all matters which by this Act are required or permitted to be prescribed by regulation;

(b) prescribing the form of any document referred to in this Act for which provision is not otherwise made in this Act, or prescribing alterations or additions to any such form;

(bA) prescribing matters in addition to those contemplated in any other provision of this Act in respect of which fees shall be payable, the fee payable in respect of each such matter, and, in relation to such fees as well as fees payable under any such other provision of this Act, the persons by whom the fees shall be payable, the manner of payment thereof and, where it is deemed necessary, the payment of interest in respect of overdue fees;

[paragraph (bA) inserted by section 18 of Act No. 86 of 1984 and substituted by section 2(a) of Act No. 7 of 1993]

(bB) limiting the amount which and the extent to which a fund may invest in particular assets or in particular kinds or categories of assets, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies;

[paragraph (bB) inserted by section 9 of Act No. 53 of 1989]

(bC) authorizing the registrar to grant unconditional or conditional exemption, whether unlimited or limited in duration, from provisions of the regulations contemplated in paragraph (bB);

[paragraph (bC) inserted by section 9 of Act No. 53 of 1989]

(c) generally, as to all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

[subsection (1) renumbered by section 27 of Act No. 83 of 1992]

(2) Different regulations may in terms of subsection (1) be made in respect of different funds.

[subsection (2) added by section 27 of Act No. 83 of 1992]

(3) Fees which are in terms of or by virtue of a provision of this Act payable, and interest so payable in respect of overdue fees, shall be a debt due to the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), and may be recovered by the registrar by action in any competent court.

[subsection (3) added by section 2(b) of Act No. 7 of 1993]

[section 36 amended by section 18(1) of Act No. 103 of 1979]

37. Penalties

(1) Any person who—

(a) contravenes or fails to comply with the provisions of section 9, 9A, 13A, 13B or 35; or

[paragraph (a) substituted by section 14 of Act 65 of 1968, by section 19(a) of Act 86 of 1984 and by section 28(a) of Act 83 of 1992]

(b) fails to make a return or transmit or deposit a scheme, report, account, statement or other document when required to do so in terms of this Act; or

(c) contravenes the provisions of section nineteen or any condition on which he has been exempted from those provisions; or

(d) fails or refuses to furnish information, or produce documents or accounts, or render other assistance to the registrar when called upon to do so in terms of this Act; or

(e) after the expiration of a period of six months from the commencement of this Act, induces or attempts to induce any person to become a member of, or to contribute to a fund not registered under this Act; or

(f) contravenes or fails to comply with the provisions of section 10, 31, or 32A(2) or (4), shall be guilty of an offence, and liable on conviction—

(i) in the case of an offence referred to in paragraph (a) to a fine not exceeding R2 000;

(ii) in the case of an offence referred to in paragraph (b) or (c) to a fine not exceeding R500;

(iii) in the case of an offence referred to in paragraph (d) or (e) to a fine not exceeding R1 000; and

(iv) in the case of an offence referred to in paragraph (f) to a fine not exceeding R1 000, or, if the offender is an individual, to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.

[paragraph (f) amended by section 19(b) of Act 86 of 1984, by section 13 of Act 50 of 1986 and by section 28(b) of Act 83 of 1992]

(2) Without derogation from the provisions of sub-section (1), a person who has failed to make a return or to transmit or deposit a scheme, report, account, statement or other document within the time prescribed in the appropriate provision of the Act, may thereafter furnish such return, or transmit or deposit such scheme, report, account, statement or other document subject to the payment of a penalty prescribed by regulation.

(3) Any penalty prescribed under sub-section (2) may vary according to the period which has elapsed since the last day on which the return, scheme, report, account, statement or other document in question was required to be made, transmitted or deposited.

(4) For the purpose of sub-section (2) the decision of the registrar as to the time within which a return, scheme, report, account, statement or other document referred to in that subsection was required to be furnished, transmitted or deposited, shall be final.

(5) Any penalty payable under subsection (2) shall be a debt due to the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), and may be recovered by the registrar by action in any competent court.

[subsection (5) substituted by section 3 of Act 7 of 1993]

37A. Pension benefits not reducible, transferable or executable

(1) Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act No. 58 of 1962), and the Maintenance Act, 1963 (Act No. 23 of 1963), no benefit provided for in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in determination of a judgment debtor's financial position in terms of section 65 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold or spend payment thereof: Provided that the fund may pay any such benefit or any benefit in pursuance of such contributions, or part thereof, to any one or more of the dependants of the member or beneficiary or to a guardian or trustee of the benefit of such dependant or dependants during such period as it may determine.

[subsection (1) amended by section 40 of Act No. 99 of 1980]

(2) (a) lf in terms of the rules of a fund the residue of a full benefit, after deduction of any debt due by the person entitled to the benefit, represents the benefit due to that person, such reduction shall for the purposes of subsection (1) be construed as a reduction of the benefit.

(b) The set-off of any debt against a benefit shall for the purposes of subsection (1) be construed as a reduction of the benefit.

(3) The provisions of subsection (1) shall not apply with reference to anything done towards reducing or obtaining settlement of a debt—

(a) which, in the case of a fund to which the Financial Institutions Amendment Act, 1976 (Act No. 101 of 1976), applies, arose before the commencement of that Act;

(b) which, in the case of a fund to which the Financial Institutions Amendment Act, 1976, does not apply, arose before the commencement of the Financial Institutions Amendment Act, 1977;

[paragraph (b) amended by section 27(a) of Act No. 104 of 1993]

(c) which a fund may reduce or settle under section 37D, to the extent to which a fund may reduce or settle such debt; or

[paragraph (c) amended by section 27(b) of Act No. 104 of 1993]

(d) which is owed to a fund by a member in respect of arrear contributions, but excluding amounts which are in arrear due to the failure of the employer concerned to pay the member's contributions to the fund after deduction thereof from the member's remuneration.

[paragraph (d) added by section 27(b) of Act No. 104 of 1993 and substituted by section 4 of Act No. 22 of 1996]

[section 37A inserted by section 24 of Act No. 101 of 1976 and substituted by section 12 of Act No. 94 of 197]

37B. Disposition of pension benefits upon insolvency

If the estate of any person entitled to a benefit payable in terms of the rules of a registered fund (including any annuity purchased by the said fund from an insurer for that person) is sequestrated or surrendered, such benefit or any part thereof which became payable after the commencement of the Financial Institutions Amendment Act, 1976 (Act No. 101 of 1976), shall, subject to the provisions of section 19(5)

(b)(i) and subject to the provisions of sections 37A(3) and 37D, not be deemed to form part of the assets in the insolvent estate of that person and may not in any way be attached or appropriated by the trustee in his insolvent estate or by his creditors, notwithstanding anything to the contrary in any law relating to insolvency.

[section 37B inserted by section 24 of Act No. 101 of 1976, and substituted by section 13 of Act No. 94 of 1977 and by section 12 of Act No. 80 of 1978]

37C. Disposition of pension benefits upon death of member

(1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of sections 37A(3), and 37D, not from part of the assets in the estate of such a member, but shall be dealt with in the following manner:

(a) If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the board, to one of such dependants or in proportions to some of or all such dependants.

[paragraph (a) substituted by section 5(a) of Act No. 22 of 1996]

(b) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependant of the member, to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the benefit shall be paid to such nominee: Provided that where the aggregate amount of the debts in the estate of the member exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts as such aggregate of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the member in writing to the fund shall be paid to the nominee.

[paragraph (b) substituted by section 21 of Act No. 54 of 1989]

(bA) If a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the board may deem equitable: Provided that this paragraph shall only apply to the designation of a nominee made on or after 30 June 1989: Provided further that, in respect of a designation made on or after the said date, this paragraph shall not prohibit a fund from paying the benefit, either to a dependant or nominee contemplated in this paragraph or, if there is more than one such dependant or nominee, in proportions to any or all of those dependants and nominees.

[paragraph (bA) inserted by section 6(a) of Act 51 of 1988 and substituted by section 21 of Act No. 54 of 1989, and by section 5(b) of Act No. 22 of 1996]

(c) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court in terms of section 9 of the Estates Act, 1965 (Act No. 66 of 1965), into the Guardian's Fund.

[paragraph (c) substituted by section 21 of Act No. 54 of 1989]

[subsection (1), previously paragraphs (a), (b) and (c), renumbered by section 6(b) of Act 51 of 1988 and amended by section 28 of Act 104 of 1993]

(2) For the purpose of this section, a payment by a registered fund to a trustee contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988), for the benefit of a dependant or nominee contemplated in this section shall be deemed to be a payment to such dependant or nominee.

[subsection (2) added by section 6(b) of Act 51 of 1988 and substituted by section 29 of Act 83 of 1992]

(3) An benefit dealt with in terms of this section, payable to a minor dependant or minor nominee, may be paid in more than one payment in such amounts as the board may from time to time consider appropriate and in the best interests of such dependant or nominee: Provided that interest at a reasonable rate, having regard to the investment return earned by the fund, shall be added to the outstanding balance at such times as the board may determine: Provided further that any balance owing to such a dependant or nominee at the date on which he or she attains majority or dies, whichever occurs first, shall be paid in full.

[subsection (3) added by section 5(c) of Act 22 of 1996]

(4) (a) Any benefit dealt with in terms of this section, payable to a major dependant or major nominee, may be paid in more than one payment if the dependant or nominee has consented thereto in writing: Provided that—

(i) the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a written agreement; and

(ii) the agreement may be cancelled by either party on written notice not exceeding 90 days.

(b) If the agreement contemplated in paragraph (a) is cancelled the balance of the benefit shall be paid to the dependant or nominee in full.

[subsection (4) added by section 5(c) of Act 22 of 1996]

[section 37C inserted by section 24 of (Act No. 101 of 1976), substituted by section 13 of Act No. 80 of 1978 and by section 41 of Act No. 99 of 1980]

37D. Fund may make certain deductions from pension benefits

A registered fund may—

(a) Deduct any amount due to the fund in respect of—

(i) a loan granted to a member in terms of section 19(5)(a); or

(ii) any amount for which the fund is liable under a guarantee furnished in respect of a loan by some other person to a member for any purpose referred to in section 19(5)(a),

from the benefit to which the member or a beneficiary is entitled in terms of the rules of the fund, to an amount not exceeding the amount which in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act;

(b) deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of—

(i) (aa) a loan granted by the employer to the member of any purpose referred to in section section 19(5)(a); or

(bb) any amount for which the employer is liable under a guarantee furnished in respect of a loan by some other person to the member for any purpose referred to in section 19(5)(a),

to an amount not exceeding the amount which in terms of the Income Tax Act, 1962, may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule of that Act; or

(ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which —

(aa) the member has in writing admitted liability to the employer; or

(bb) judgment has been obtained against the member in any court, including a magistrate's court,

from any benefit payable in respect of the member or beneficiary in terms of the rules of the fund, and pay such amount to the employer concerned;

(c) deduct any amount which the fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of—

(i) such member's or beneficiary's subscription to a medical scheme, registered otherwise than provisionally in terms of the Medical Schemes Act, 1967 (Act No. 72 of 1967);

(ii) any insurance premium payable by such member or beneficiary to an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943);

(iii) any purpose approved by the registrar, on the conditions determined by him, upon a request in writing from the fund,

from the benefit to which the member or beneficiary is entitled in terms of the rules of the fund, and pay such amount, if due, to such medical scheme, insurer or person concerned, as the case may be.

[paragraph (c) substituted by section 14 of Act No. 80 of 1978]

[section 37D inserted by section 14 of Act No. 94 of 1977]

38. Exemption from Act No. 57 of 1988

The Trust Property Control Act, 1988 (Act No. 57 of 1988), shall not apply to a fund registered under this Act.

[section 38 substituted by section 29 of Act 104 of 1993]

39. Amendment of Act 27 of 1943

Section one of the Insurance Act, 1943 (Act No. 27 of 1943), is hereby amended by the substitution for paragraphs (f) and (f)*bis* of the proviso to the definition of "insurance business" of the following paragraph:

"(f) the activities of a pension fund as defined in the Pension Funds Act, 1956;".

40. Act in certain respects, and certain rules, binding on State

From the date of the registration of a pension fund referred to in section 4A the provisions of this Act, excluding the provisions of section 37, in so far as they relate to such pension fund, and the rules of such pension fund, shall be binding on the State.

[section 40 substituted by section 3 of Act 119 of 1991]

41. Short title and date of commencement

This Act shall be called the Pension Funds Act, 1956, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.