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STATE PRESIDENT'S OFFICE

No. 10. 5 January 1994

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 197 of 1993: Closed Pension Fund Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 10. 5 Januarie 1994

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 197 van 1993: Wet op die Geslote Pensioenfonds, 1993.

ACT

To provide for the termination of the pension scheme established by the Members of Parliament and Political Office-bearers Pension Scheme Act, 1984; and the establishment of a Closed Pension Fund; and to provide for matters connected therewith.

*(English text signed by the State President.)
(Assented to 22 December 1993.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
 - (i) “board” means the Board of Trustees mentioned in section 4; (ix) 5
 - (ii) “Constitution” means the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983); (iii)
 - (iii) “dependant”, in relation to a member of the fund, means any person who in terms of the pension provision which applied in respect of such member immediately prior to the commencement of this Act would have been a dependant of that member had that pension provision applied in respect of the member at the time of that member’s death; (i) 10
 - (iv) “fund” means the fund established by section 2; (ii)
 - (v) “Minister” means the Minister of Finance; (iv)
 - (vi) “pensionable service” means pensionable service as defined in the Pension Act; (vi) 15
 - (vii) “Pension Act” means the Members of Parliament and Political Office-bearers Pension Scheme Act, 1984 (Act No. 112 of 1984); (viii)
 - (viii) “pension provision” means—
 - (a) section 15 or 15A of the previous Constitution, read with section 101(2) of the Constitution, or section 13 of the Constitution; 20
 - (b) the relevant provision of—
 - (i) the Proclamation relating to the Pension Scheme for Members of the President’s Council, 1980 (Proclamation No. 63 of 1981);
 - (ii) the Members of the Coloured Persons Representative Council Pensions Act, 1974 (Act No. 79 of 1974); 25
 - (iii) the Members of the South African Indian Council Pensions Act, 1974 (Act No. 86 of 1974);
 - (c) the relevant provision of—
 - (i) the Provincial Council Service Pensions Ordinance, 1973 (Ordinance No. 19 of 1973), of the Cape of Good Hope; 30
 - (ii) the Provincial Council Service Pensions Ordinance, 1973 (Ordinance No. 11 of 1973), of the Orange Free State;
 - (iii) the Provincial Council Service Pensions Ordinance, 1973 (Ordinance No. 21 of 1973), of Natal; 35
 - (iv) the Provincial Council and Executive Committee Members’ Pensions Ordinance, 1973 (Ordinance No. 20 of 1973), of the Transvaal; and
 - (d) the Pension Act; (v)
 - (ix) “Pension Scheme” means the Members of Parliament and Political Office-bearers Pension Scheme established by section 2 of the Pension Act; (vii) 40
 - (x) “previous Constitution” means the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961); (xi)
 - (xi) “rules” means the rules referred to in section 10. (x) 45

WET

Om voorsiening te maak vir die beëindiging van die pensioenskema ingestel deur die Wet op die Pensioenskema vir Parlementslede en Politieke Ampsbekleërs, 1984; en die instelling van 'n Geslote Pensioenfonds; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 22 Desember 1993.)*

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - 5 (i) “afhanklike”, met betrekking tot ’n lid van die fonds, enigiemand wat ingevolge die pensioenbepaling wat onmiddellik voor die inwerking-treding van hierdie Wet ten opsigte van so ’n lid van toepassing was ’n afhanklike van daardie lid sou gewees het indien daardie pensioenbepaling ten opsigte van daardie lid ten tyde van daardie lid se dood van toepassing was; (iii)
 - 10 (ii) “fonds” die fonds by artikel 2 ingestel; (iv)
 - (iii) “Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1983 (Wet No. 110 van 1983); (ii)
 - (iv) “Minister” die Minister van Finansies; (v)
 - 15 (v) “pensioenbepaling”—
 - (a) artikel 15 of 15A van die vorige Grondwet, saamgelees met artikel 101(2) van die Grondwet, of artikel 13 van die Grondwet;
 - (b) die betrokke bepaling van—
 - 20 (i) die Proklamasie betreffende die Pensioenskema vir Lede van die Presidentsraad, 1980 (Proklamasie No. 63 van 1981);
 - (ii) die Wet op Pensioene vir Lede van die Verteenwoordigende Kleurlingraad, 1974 (Wet No. 79 van 1974);
 - (iii) die Wet op Pensioene vir Lede van die Suid-Afrikaanse Indiërraad, 1974 (Wet No. 86 van 1974);
 - 25 (c) die betrokke bepaling van—
 - (i) die Ordonnansie op Pensioene vir Provinsiale Raadsdiens, 1973 (Ordonnansie No. 19 van 1973), van die Kaap die Goeie Hoop;
 - (ii) die Ordonnansie op Pensioene vir Provinsiale Raadsdiens, 1973 (Ordonnansie No. 11 van 1973), van die Oranje-Vrystaat;
 - (iii) die Ordonnansie op Pensioene vir Provinsiale Raadsdiens, 1973 (Ordonnansie No. 21 van 1973), van Natal;
 - (iv) die Ordonnansie op Pensioene vir Lede van die Provinsiale Raad en die Uitvoerende Komitee, 1973 (Ordonnansie No. 20 van 1973), van Transvaal; en
 - (d) die Pensioenwet; (viii)
 - (vi) “pensioengewende diens” pensioengewende diens soos omskryf in die Pensioenwet; (vi)
 - 40 (vii) “Pensioenskema” die Pensioenskema vir Parlementslede en Politieke Ampsbekleërs ingestel by artikel 2 van die Pensioenwet; (ix)
 - (viii) “Pensioenwet” die Wet op die Pensioenskema vir Parlementslede en Politieke Ampsbekleërs, 1984 (Wet No. 112 van 1984); (vii)
 - (ix) “raad” die Raad van Trustees in artikel 4 vermeld; (i)
 - 45 (x) “reglement” die reglement in artikel 10 vermeld; (xi)
 - (xi) “vorige Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1961 (Wet No. 32 van 1961). (x)

Establishment of fund

2. (1) There is hereby established a fund to be called the Closed Pension Fund.
(2) The fund shall be a juristic person.

Membership of fund

3. (1) Every person who receives a pension in terms of a pension provision or who on the termination of membership of the Pension Scheme or on the vacation of the office mentioned in section 13 of the Constitution or on the death of such person becomes entitled to the payment of a pension, shall be a member of the fund. 5

(2) Any person who is a member of the fund in terms of subsection (1) shall with effect from 1 February 1994 cease to be a member of the Pension Scheme. 10

Management of affairs of fund

4. (1) The affairs of the fund shall, subject to the provisions of subsection (3), be managed by a Board of Trustees.

(2) The members of the board shall be elected by the members of the fund from their own number. 15

(3) The Minister shall appoint a committee in order to perform in respect of the fund the functions of the board until the first meeting of the board.

Pensions payable from fund to persons already in receipt of pension

5. (1) Every person who on 31 January 1994 receives a pension in terms of a pension provision shall with effect from 1 February 1994 receive a pension from the fund, calculated in accordance with that provision. 20

(2) The pension paid in terms of a pension provision to a person mentioned in subsection (1) shall be discontinued with effect from 1 February 1994.

Pensions payable out of fund to member of Pension Scheme and occupier of office 25

6. To a person who on 31 January 1994 is a member of the Pension Scheme, or who is the occupier of the office referred to in section 13 of the Constitution, there shall be paid out of the fund—

- (a) in the case of a person who is such a member and has at least five years' pensionable service to his credit, with effect from the date following the first general election under the Constitution of the Republic of South Africa, 1993, a pension calculated in accordance with section 8 of the Pension Act and, if applicable to him, section 9 of the Pension Act; 30
- (b) in the case of the person who is the occupier of that office, with effect from the date following the day upon which that person vacates that office a pension calculated in accordance with subsection (1)(a) of the said section 13. 35

Gratuities payable out of fund to members of Pension Scheme

7. To any person who is a member of the Pension Scheme there shall, notwithstanding the duration of such person's pensionable service, be paid out of the fund a gratuity calculated in accordance with section 11 of the Pension Act with reference to such person's pensionable service as at 31 January 1994. 40

Pensions and benefits payable to widows or widowers and other dependants of deceased members

8. On the death of a member of the fund there shall be paid to the widow or widower or other dependants of that member the same pension or other benefit as would have been payable to the widow, widower or dependants of such a member in terms of the pension provision which immediately prior to the commencement of this Act applied in respect of that member. 45

Instelling van fonds

2. (1) Daar word hierby 'n fonds met die naam die Geslote Pensioenfonds ingestel.

(2) Die fonds is 'n regspersoon.

5 Lidmaatskap van fonds

3. (1) Elke persoon wat 'n pensioen ingevolge 'n pensioenbepaling ontvang of wat by beëindiging van lidmaatskap van die Pensioenskema of by ontruiming van die amp in artikel 13 van die Grondwet vermeld of by die afsterwe van so 'n persoon op die betaling van 'n pensioen geregtig word, is 'n lid van die fonds.

10 (2) Iemand wat ingevolge subartikel (1) 'n lid van die fonds is, hou met ingang van 1 Februarie 1994 op om lid van die Pensioenskema te wees.

Behartiging van sake van fonds

4. (1) Die sake van die fonds word behoudens die bepalings van subartikel (3) deur 'n Raad van Trustees behartig.

15 (2) Die lede van die raad word deur die lede van die fonds uit hul eie geledere gekies.

(3) Die Minister moet 'n komitee aanstel ten einde ten opsigte van die fonds die werksaamhede van die raad tot die eerste vergadering van die raad te verrig.

Pensioene betaalbaar uit fonds aan persone reeds in ontvangs van pensioen

20 5. (1) Elke persoon wat op 31 Januarie 1994 'n pensioen ingevolge 'n pensioenbepaling ontvang, ontvang met ingang van 1 Februarie 1994 'n pensioen uit die fonds bereken ooreenkomstig daardie bepaling.

(2) Die pensioen wat ingevolge 'n pensioenbepaling aan iemand vermeld in subartikel (1) betaal word, word met ingang van 1 Februarie 1994 gestaak.

25 Pensioene betaalbaar uit fonds aan lid van Pensioenskema en bekleër van amp

6. Aan iemand wat op 31 Januarie 1994 'n lid van die Pensioenskema is, of wat die bekleër van die amp vermeld in artikel 13 van die Grondwet is, word uit die fonds betaal—

30 (a) in die geval van iemand wat so 'n lid is en minstens vyf jaar pensioengewende diens het, met ingang van die datum wat volg op die eerste algemene verkiesing kragtens die Grondwet van die Republiek van Suid-Afrika, 1993, 'n pensioen bereken ooreenkomstig artikel 8 van die Pensioenwet en, indien op hom van toepassing, artikel 9 van die Pensioenwet;

35 (b) in die geval van die persoon wat die bekleër van daardie amp is, met ingang van die dag wat volg op die dag waarop daardie persoon daardie amp ontruim, 'n pensioen bereken ooreenkomstig subartikel (1)(a) van gemelde artikel 13.

Gratifikasies betaalbaar uit fonds aan lede van Pensioenskema

40 7. Aan iemand wat 'n lid van die Pensioenskema is, word ongeag die duur van daardie persoon se pensioengewende diens, 'n gratifikasie, bereken ooreenkomstig artikel 11 van die Pensioenwet, met verwysing na daardie persoon se pensioengewende diens soos op 31 Januarie 1994, uit die fonds betaal.

45 Pensioene en voordele betaalbaar aan weduwees of wewenaars en ander afhanklikes van afgestorwe lede

8. By die afsterwe van 'n lid van die fonds word aan die weduwee of wewenaar of ander afhanklikes van daardie lid dieselfde pensioen of ander voordeel betaal as wat aan die weduwee, wewenaar of afhanklikes van so 'n lid betaalbaar sou gewees het ingevolge die pensioenbepaling wat onmiddellik voor die inwerkingtreding van hierdie Wet ten opsigte van daardie lid van toepassing was.

Payment of certain moneys to fund

9. (1) (a) Money required for meeting the fund's obligation with regard to the payment of any pension, gratuity or benefit in terms of this Act shall be paid over to the fund either from the State Revenue Fund as provided in subsection (2) or in the form of public stock issued in terms of section 19 of the Exchequer Act, 1975 (Act No. 66 of 1975). 5

(b) Money which is to be paid over from the State Revenue Fund in terms of paragraph (a), shall be deemed to have been appropriated by Parliament for the purpose mentioned in that paragraph.

(2) Money referred to in subsection (1) shall be paid over as follows: 10

(a) In respect of the fund's immediate obligations relating to the payment of pensions, gratuities and benefits in terms of sections 5(1), 6, 7 and 8, an amount of R440 million in the form of public stock before or on 1 February 1994;

(b) in respect of the remaining obligations of the fund as at 31 January 1994, in regular instalments over a period not exceeding nine years from 31 January 1994. 15

(3) The obligations referred to in subsection (2)(b) shall be as established by actuaries nominated by the Transitional Executive Council, and specified in a report of such actuaries approved by that Council. 20

(4) No amounts other than those referred to in subsection (2) shall form a charge against the State Revenue Fund in respect of the fund.

(5) All obligations of the State relating to the payment of pensions, gratuities and benefits in terms of any pension provision are hereby transferred to the fund.

Rules

10. (1) The board or, until the first meeting of the board, the committee referred to in section 4(3), may, subject to the approval of the Minister, make rules not inconsistent with any provision of this Act and, which are necessary for the proper management of the affairs of the fund, including rules relating to the investment of money of the fund not required for immediate use. 30

(2) After the final amount referred to in section 9(2)(b) has been paid over, the board may make such rules without reference to the Minister.

Application of certain provisions of Act 24 of 1956

11. The provisions of sections 37A, 37B and 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956), shall apply *mutatis mutandis* in respect of any pension which is or will become payable in terms of this Act. 35

Audit

12. The financial statements of the fund shall be audited annually by an auditor registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), as a public accountant and auditor and who is engaged in public practice as such, and audited copies of such statements shall within six months of the end of the financial year be submitted to the Minister and the Auditor-General. 40

No pension, gratuity or benefit payable in terms of pension provision

13. To any person who receives or has received any pension, gratuity or benefit in terms of section 5(1), 6, 7 or 8, no pension, gratuity or benefit shall be payable in terms of any pension provision. 45

Short title

14. This Act shall be called the Closed Pension Fund Act, 1993.

Oorbetaling van sekere bedrae aan fonds

9. (1) (a) Geld wat nodig is vir die nakoming van die fonds se verpligting met betrekking tot die betaling van enige pensioen, gratifikasie of voordeel ingevolge hierdie Wet, word aan die fonds oorbetaal óf uit die Staatsinkomstefonds soos in subartikel (2) bepaal óf in die vorm van openbare effekte uitgereik kragtens artikel 19 van die Skatkiswet, 1975 (Wet No. 66 van 1975).

(b) Geld wat ingevolge paragraaf (a) uit die Staatsinkomstefonds oorbetaal moet word, word geag deur die Parlement vir die doel in daardie paragraaf vermeld, bewillig te wees.

10 (2) Geld in subartikel (1) vermeld, word soos volg oorbetaal:

(a) Ten opsigte van die fonds se onmiddellike verpligtinge betreffende die betaling van pensioene, gratifikasies en voordele ingevolge artikels 5(1), 6, 7 en 8, 'n bedrag van R440 miljoen in die vorm van openbare effekte voor of op 1 Februarie 1994;

15 (b) ten opsigte van die oorblywende verpligtings van die fonds soos op 31 Januarie 1994, in gereelde paalemente oor 'n tydperk van hoogstens nege jaar vanaf 31 Januarie 1994.

(3) Die verpligtinge in subartikel (2)(b) vermeld, moet wees soos vasgestel deur aktuarisse genomineer deur die Uitvoerende Oorgangsraad, en bepaal in 'n verslag van daardie aktuarisse wat deur daardie Raad goedgekeur is.

20 (4) Geen ander bedrae as dié in subartikel (2) vermeld, maak 'n las uit teen die Staatsinkomstefonds ten opsigte van die fonds nie.

(5) Alle verpligtinge van die Staat betreffende die betaling van pensioene, gratifikasies en voordele ingevolge enige pensioenbepaling word hierby op die 25 fonds oorgedra.

Reglement

10. (1) Die raad of, tot die eerste vergadering van die raad, die komitee in artikel 4(3) vermeld, kan onderworpe aan die goedkeuring van die Minister reëls maak wat nie strydig met enige bepaling van hierdie Wet is nie en wat nodig is vir die behoorlike behartiging van die sake van die fonds, met inbegrip van reëls betreffende die belegging van geld van die fonds wat nie vir onmiddellike aanwending nodig is nie.

(2) Nadat die finale bedrag in artikel 9(2)(b) vermeld, oorbetaal is, kan die raad sodanige reëls sonder verwysing na die Minister maak.

35 Toepassing van sekere bepalings van Wet 24 van 1956

11. Die bepalings van artikels 37A, 37B en 37C van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), is *mutatis mutandis* van toepassing ten opsigte van enige pensioen wat ingevolge hierdie Wet betaalbaar is of betaalbaar gaan word.

40 Oudit

12. Die finansiële state van die fonds word jaarliks deur 'n ouditeur wat ingevolge artikel 15 van die Wet op Openbare Rekenmeesters en Ouditeurs, 1991 (Wet No. 80 van 1991), as 'n openbare rekenmeester en ouditeur geregistreer is en wat as sodanig openbare praktyk beoefen, geouditeer, en geouditeerde afskrifte van genoemde state moet binne ses maande na die einde van die betrokke boekjaar aan die Minister en die Ouditeur-generaal voorgelê word.

Geen pensioen, gratifikasie of voordeel is ingevolge pensioenbepaling betaalbaar nie

13. Aan iemand wat 'n pensioen, gratifikasie of voordeel ingevolge artikel 5(1), 6, 7 of 8 ontvang het of ontvang, is geen pensioen, gratifikasie of voordeel ingevolge 'n pensioenbepaling betaalbaar nie.

Kort titel

14. Hierdie Wet heet die Wet op die Geslote Pensioenfonds, 1993.

