

These Revised Rules are effective from  
01 March 2022

**MOMENTUM PENSION PRESERVATION FUND  
REVISED RULES**

**RULES OF THE MOMENTUM PENSION PRESERVATION FUND****AMENDED BY THE FOLLOWING:**

- \*1 Amendment registered by the Registrar on 22.01.2018 with effect from 01.03.2017  
(Rules 6.8, 9.1.1, 9.1.3, 9.1.4 and 9.2.1; introduction to Rule 9.5)**
- \*2 Amendment registered by the Registrar on 28.02.2018 with effect from 01.11.2017  
(Definitions of APPROVED PENSION FUND and APPROVED PROVIDENT FUND; Rule 3.1.4.2; renumber Rule 4.4.4 to 4.4.3)**
- \*3 Amendment registered by the Registrar on 22.02.2019 with effect from 01.01.2019  
(Definition of ACT; insert definition of AUTHORITY; delete definition of REGISTRAR; substitute reference to REGISTRAR with AUTHORITY; definition of TRANSFER AMOUNT; delete definition of TRUSTEE CHOICE PORTFOLIO; Rules 2.2, 3.1, 4.2, 7.4.2, 9.1.1, 9.1.2, 9.3.4, 9.4.6, 9.7.3 and 9.7.7)**
- \*4 Amendment registered by the Registrar on 17.05.2019 with effect from 01.03.2019  
(Rules 2.1, 5.1.4.2, 5.1.4.6, 5.2.1, 5.2.3.7, 5.3.3.8 and 7.3)**
- \*5 Amendment registered by the Registrar on 22.04.2020 with effect from 01.03.2020  
(Definitions of ADMINISTRATOR and WITHDRAWAL NOTIFICATION; Rules 5.3.2, 5.3.3.1 to 5.3.3.7, 6.6.1 and 7.3.7)**
- \*6 Amendment registered by the Authority on 08.01.2021 with effect from 01.03.2021  
(Fourth paragraph of the PREAMBLE; insert definition of APPROVED FUND; delete definitions of APPROVED PENSION PRESERVATION FUND and APPROVED PROVIDENT PRESERVATION FUND; insert definition of APPROVED PRESERVATION FUND; definitions of FUND BENEFIT, FUND MEMBER POLICY and INTEREST; insert definition of POLICY BENEFIT; definition of UNCLAIMED BENEFITS FUND; Rules 2.1.2, 2.1.4, 3.1.2.1, 3.1.3.2, 4.1, 4.2, 4.4, 4.4.1, 4.4.3, 4.5, 5.1.2, 5.1.3, 5.1.4.1, 5.1.4.2, 5.1.4.3, 5.1.4.4, 5.1.4.5.2, 5.1.4.6, 5.1.5, 5.2.1.2, 5.2.2, 5.2.3.1, 5.2.3.2.2, 5.2.3.2.3, 5.2.3.4, 5.2.3.5, 5.2.3.6.2, 5.2.3.7, 5.3.2, 5.3.3.1, 5.3.3.3, 5.3.3.4 to 5.3.3.8, 7.2, 7.3.2, 7.3.4, 7.5.1, 7.5.2, 8.1 and 8.2.3.1)**
- \*7 Amendment registered by the Authority on 13.04.2022 with effect from 01.03.2022  
(Definitions of DISINVESTMENT PROCESS, NON-VESTED BENEFIT and VESTED BENEFIT; Rules 2.1.3, 5.1.4, 5.1.5, 5.2.1.3, 5.2.3.2, 5.3.3.4, 5.3.3.5, 6.6.2.1, 7.3.3 and 8.2.3.2)**

## RULES OF THE MOMENTUM PENSION PRESERVATION FUND

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**PREAMBLE**

The Momentum Pension Preservation Fund started on 01 May 2005.

The FUND is an independent legal entity with legal personality existing separately from its MEMBERS. It can sue and be sued in its own name and has rights and obligations.

The FUND is an underwritten fund, complying with the conditions set out in Regulation 1 under the ACT.

\*6 The sponsor and underwriter of the FUND is Momentum Metropolitan Life Limited.

The purpose of the FUND is to provide benefits for its MEMBERS upon their retirement or withdrawal or, when they die, for their BENEFICIARIES.

The RULES have been revised with effect from 1 March 2015 and these RULES replace the previous RULES from 1 March 2015.

The registered address of the FUND is Momentum, 268 West Avenue, Centurion, 0157.

## 1. DEFINITIONS

In these RULES, unless inconsistent with the context,

- (a) all words and expressions signifying the singular include the plural and vice versa;
- (b) words and expressions implying one gender include the other genders;
- (c) words and expressions defined in the ACT will have the meanings given to them in the ACT, unless specified otherwise;
- (d) any reference to a month means a calendar month, which runs from the first day until the last day of each of the 12 periods into which the year is divided, unless it is stated otherwise, and
- (e) the following words and expressions will mean:

\*3 **ACT** means the Pension Funds Act and the Regulations issued under this Act.

\*5 **ADMINISTRATOR** means Momentum Metropolitan Life Limited, who acts as the administering insurer for purpose of Regulation 1.

\*6 **APPROVED FUND** means an APPROVED PENSION FUND, APPROVED PROVIDENT FUND or APPROVED PRESERVATION FUND.

\*2 **APPROVED PENSION FUND** means a pension fund that has been registered in terms of the ACT or established under any other law in South Africa and approved by the COMMISSIONER.

\*6 **APPROVED PENSION PRESERVATION FUND** Deleted.

\*6 **APPROVED PRESERVATION FUND** means a pension preservation fund or a provident preservation fund that has been registered in terms of the ACT and approved by the COMMISSIONER.

\*2 **APPROVED PROVIDENT FUND** means a provident fund that has been registered in terms of the ACT or established under any other law in South Africa and approved by the COMMISSIONER.

\*6 **APPROVED PROVIDENT PRESERVATION FUND** Deleted.

**APPROVED RETIREMENT ANNUITY FUND** means a retirement annuity fund that has been registered in terms of the ACT and approved as such by the COMMISSIONER.

**\*3 AUTHORITY** means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act.

**BANK VERIFICATION** means the verification of the bank account details of the MEMBER or BENEFICIARY, as the case may be, by the specific bank.

**BENEFICIARY** means a dependant of a MEMBER as defined in the ACT, or the MEMBER'S a nominee, who is or may become entitled to a benefit from the FUND.

**COMMISSIONER** means the Commissioner for the South African Revenue Service.

**DAY** means any day other than a Saturday, Sunday or public holiday as published in the Government Gazette. When days are calculated, the first day must be excluded and the last day must be included, unless the last day falls on a Saturday, Sunday or public holiday. In that case, the last day will be the next following day that is not a Saturday, Sunday or public holiday.

**\*7 DISINVESTMENT PROCESS** means the process that starts with the notification to the INSURER to terminate the FUND MEMBER POLICY, or the relevant part of the FUND POLICY, as the case may be, and ends with the INSURER paying the benefit under the FUND MEMBER POLICY or the FUND POLICY, as the case may be, into the INSURER'S bank account: Provided that in the case of a death benefit, the MEMBER'S POLICY BENEFIT will upon termination of the FUND MEMBER POLICY, or the relevant part of the FUND POLICY, as the case may be, be invested in an investment portfolio selected by the TRUSTEES until the TRUSTEES' decision on the distribution of the MEMBER'S FUND BENEFIT has been finalised.

**DIVORCE ORDER** means a decree granted under section 7(8)(a) of the Divorce Act or in terms of any order made by a court in respect of the division of assets of a marriage under Islamic law pursuant to its dissolution.

**FUND** means the Momentum Pension Preservation Fund.

**\*6 FUND BENEFIT** means the benefit payable in respect of a MEMBER, which comprises his POLICY BENEFIT less the deductions referred to in Rule 4.4, plus INTEREST.

**\*6 FUND MEMBER POLICY** means a policy of insurance defined in Regulation 3.1 of the Regulations under the Long-term Insurance Act, purchased by the FUND and administered by the INSURER, to fund the FUND'S liability to provide the benefits referred to in the RULES in respect of a specific MEMBER.



**FUND POLICY** means a policy of insurance defined in the Long-term Insurance Act, purchased by the FUND and administered by the INSURER, to fund the FUND'S liability to provide the benefits referred to in the RULES in respect of the MEMBERS concerned.

**INSURER** means an insurer registered under the Long-term Insurance Act.

\*6 **INTEREST** means the interest earned on the MEMBER'S POLICY BENEFIT for the time that it was invested in the INSURER'S bank account up to the date of payment of the benefit.

**MEMBER** means any person who has been accepted in the FUND in terms of these RULES and whose membership of the FUND has not ended under these RULES.

\*7 **NON-VESTED BENEFIT** means that portion of a MEMBER'S FUND BENEFIT remaining after the deduction of his VESTED BENEFIT.

\*6 **POLICY BENEFIT** means the benefit payable in respect of a MEMBER as set out in Rule 4.1.

\*3 **REGISTRAR** Deleted.

**RETIREMENT DATE** means the date after the MEMBER has requested retirement from the FUND, when all the requirements necessary to give effect to the instruction has been provided to the INSURER, provided that the MEMBER is eligible to retire on that date in terms of the Income Tax Act.

**RULES** means these rules and any amendments to them.

\*3 **TRANSFER AMOUNT** means any amount transferred to the FUND as set out in Rule 7.3.

**TRUSTEE** means a person appointed under Rule 9.1 and includes independent and alternate trustees.

\*3 **TRUSTEE CHOICE PORTFOLIO** Deleted.

\*6 **UNCLAIMED BENEFITS FUND** means an APPROVED PRESERVATION FUND set up to deal with unclaimed benefits, as selected by the TRUSTEES.

\*7 **VESTED BENEFIT** means that portion of a MEMBER'S FUND BENEFIT comprising of:  
(a) any vested benefit transferred from an APPROVED FUND;

- (b) plus the growth on (a);
- (c) less the proportionate deductions under section 37D of the ACT.

\*5

**WITHDRAWAL NOTIFICATION** means the notification received by the FUND relating to a MEMBER'S exit from the FUND, which,

- (a) if a retirement benefit as set out in Rule 5.1 is payable, means the receipt of a retirement form properly signed by the MEMBER in the format as determined by the TRUSTEES;
- (b) if a withdrawal benefit as set out in Rule 5.2 is payable, means the receipt of a withdrawal form properly signed by the MEMBER in the format as determined by the TRUSTEES,

together with the information required by the COMMISSIONER and all the information required by the FUND, included but not limited to the information required to request BANK VERIFICATION, or

- (c) if a death benefit as set out in Rule 5.3 is payable, means notification of the MEMBER'S death.

## 2. MEMBERSHIP

### \*4 2.1 Who may become a MEMBER

The following persons may become MEMBERS:

2.1.1 a member of an APPROVED PENSION FUND or an APPROVED PROVIDENT FUND whose membership of that fund has ended because of –

2.1.1.1 his resignation, retrenchment or dismissal from employment;

2.1.1.2 the winding up of that fund, or

2.1.1.3 a transfer of business from one employer to another in terms of section 197 of the Labour Relations Act,

as set out in paragraph (a)(i) of the definition of pension preservation fund in section 1 of the Income Tax Act;

\*6 2.1.2 a member of an APPROVED PRESERVATION FUND if –

2.1.2.1 that fund was wound up, or

2.1.2.2 the MEMBER chose to have any lump sum benefit as set out in paragraph 2(1)(b)(ii) of the Second Schedule to the Income Tax Act transferred to the FUND,

as set out in paragraph (a)(ii) of the definition of pension preservation fund in section 1 of the Income Tax Act;

\*7 2.1.3 a member of an APPROVED FUND who has elected to transfer his retirement benefit from that fund to the FUND as set out in paragraph (a)(v) of the definition of pension preservation fund in section 1(1) of the Income Tax Act;

\*6 2.1.4 a person who has elected to transfer an amount awarded to him in terms of a DIVORCE ORDER from an APPROVED FUND to the FUND, for his benefit;

2.1.5 a member of the Government Employees Pension Fund who has elected to transfer his withdrawal benefit from that fund to the FUND, and

2.1.6 a person who has elected to transfer an amount awarded to him in terms of a DIVORCE ORDER, from the Government Employees Pension Fund to the FUND, for his benefit.

## **2.2 When membership will start**

\*3

A MEMBER'S membership will start from the date on which all the requirements pertaining to his membership are met and the INSURER has accepted his membership application.

## **2.3 When membership will end**

A MEMBER'S membership of the FUND will end as soon as –

2.3.1 he has received all the benefits owed to him in terms of these RULES when he –

2.3.1.1 withdraws his total FUND BENEFIT from the FUND;

2.3.1.2 retires from the FUND, or

2.3.1.3 dies;

2.3.2 his FUND BENEFIT has been appropriated as referred to in Rule 4.5;

2.3.3 his FUND BENEFIT has been transferred to another fund and he is no longer entitled to any benefits in the FUND, or

2.3.4 the FUND has been terminated.

### 3. INVESTMENT OPTIONS

\*3

#### 3.1 Investment choice

3.1.1 A MEMBER can choose to invest his TRANSFER AMOUNT in one or more of the investment portfolios approved by the TRUSTEES, in which case Rule 3.1.2 will apply, or to invest his TRANSFER AMOUNT in one or more other types of investments, in which case Rule 3.1.3 will apply.

3.1.2 If a MEMBER chooses to invest his TRANSFER AMOUNT in one or more of the investment portfolios approved by the TRUSTEES, the following will apply:

\*6

3.1.2.1 The TRUSTEES will be entitled to withdraw an investment portfolio from the approved list at any time, in which case the MEMBER'S POLICY BENEFIT will be invested as provided for under Rule 3.1.1 or in another type of investment under Rule 3.1.3;

3.1.2.2 The TRUSTEES will be entitled, but not obliged, to require that the MEMBER be assisted by an accredited financial adviser;

3.1.2.3 The MEMBER must give the TRUSTEES and the FUND the undertakings and indemnities as they may ask for from time to time, and

3.1.2.4 The investments will be subject to legislation and any limitation or conditions that the TRUSTEES may impose from time to time.

3.1.3 If a MEMBER chooses to invest his TRANSFER AMOUNT in one or more other types of investments, the following will apply in addition to the provisions listed under Rules 3.1.2.3 and 3.1.2.4:

3.1.3.1 The TRUSTEES have to approve both the type of investment and the investment provider proposed by the MEMBER;

\*6

- 3.1.3.2 The TRUSTEES will be entitled to terminate this investment at any time, in which case the MEMBER'S POLICY BENEFIT will be invested as provided for under Rule 3.1.1 or in another type of investment under Rule 3.1.3, and
- 3.1.3.3 The MEMBER must be assisted by an accredited financial adviser.
- 3.1.4 The risk and responsibility regarding the choice of investments will at all times remain that of the MEMBER. Neither the FUND nor the TRUSTEES will in any way be liable for losses or damages suffered by a MEMBER or any other person in respect of any investment choice made by a MEMBER or any discretion exercised or not exercised by the TRUSTEES under Rule 3.

### **3.2 Selecting a FUND POLICY**

The TRUSTEES will select a FUND POLICY to apply to all MEMBERS who did not select their own FUND MEMBER POLICIES.

### **3.3 Selecting a FUND MEMBER POLICY**

- 3.3.1 Every year, the TRUSTEES will approve all new FUND MEMBER POLICIES and review the range of FUND MEMBER POLICIES that are available to MEMBERS for selection, to make sure that these policies are suitable for the MEMBERS.
- 3.3.2 A MEMBER will select a FUND MEMBER POLICY. Neither the FUND nor the TRUSTEES will give any advice to the MEMBER on this selection.

**\*6 4. THE MEMBER'S POLICY BENEFIT**

- \*6** 4.1 A MEMBER'S POLICY BENEFIT will be equal to the FUND'S corresponding claim from time to time as policyholder against the INSURER for the benefits provided or to be provided by the INSURER under the specific FUND MEMBER POLICY, or the FUND POLICY, as the case may be, less the deductions referred to in Rule 4.4, in line with the terms of the policy, the underlying actuarial basis of the policy and the prescriptions of the Long-term Insurance Act and the regulations issued under that Act, hereinafter referred to as the POLICY PRESCRIPTIONS.
- \*3 \*6** 4.2 Where the FUND MEMBER POLICY or the MEMBER'S benefit under the FUND POLICY reached the end of its contract term, the value of the FUND MEMBER POLICY or the value under the FUND POLICY relating to the MEMBER will be invested in the investment portfolio selected by the TRUSTEES for that purpose (in this Rule referred to as the DEFERRED MATURITY INVESTMENT PORTFOLIO) for that MEMBER, unless the MEMBER chooses an alternative investment portfolio, if his FUND MEMBER POLICY or the FUND POLICY so allows.
- 4.3 Any change in the benefits provided or to be provided under the FUND POLICY on account of a causal event, as determined in line with the POLICY PRESCRIPTIONS, has the result that the FUND'S liability relating to the MEMBER changes accordingly. The FUND will let the MEMBER or his BENEFICIARY know of a change regarding causal events.
- \*6** 4.4 The following will be debited against the specific FUND MEMBER POLICY or the FUND POLICY, as the case may be:
- 4.4.1 the MEMBER'S share of the expenses, fees and costs relating to the FUND referred to in Rule 10.8, as set out in the specific FUND MEMBER POLICY, or the FUND POLICY, as the case may be;
- 4.4.2 the costs incurred in tracing and verifying a MEMBER'S details or establishing the financial dependency of a MEMBER'S BENEFICIARY, and
- \*2 \*6** 4.4.3 any amount assigned from a MEMBER'S benefit or pension interest to his non-member spouse in terms of a DIVORCE ORDER as set out in section 37D(1)(d) of the ACT and/or any amount payable in terms of a maintenance order, together with tax thereon, if legislation allows for it.

The FUND'S responsibility to make the deduction will be limited to the MEMBER'S POLICY BENEFIT as at the date of the maintenance or DIVORCE ORDER, less the tax payable by the MEMBER, if applicable. The amount deducted will be invested in the INSURER'S bank account until the date it is paid.

- \*6 4.5 If a MEMBER'S POLICY BENEFIT is lower than the minimum amount determined by the TRUSTEES from time to time, the FUND may appropriate that POLICY BENEFIT to cover the deductions referred to in Rule 4.4 in respect of that MEMBER, whereupon the MEMBER'S membership of the FUND will come to an end.



## 5. THE MEMBER'S BENEFITS

### 5.1 Retirement

#### 5.1.1 Normal retirement

A MEMBER who retires on his RETIREMENT DATE will become entitled to his FUND BENEFIT.

#### \*6 5.1.2 Early retirement due to ill-health

A MEMBER who becomes permanently incapable of carrying on his occupation due to sickness, accident, injury or incapacity through infirmity of body or mind may, by providing the TRUSTEES with acceptable medical evidence, retire from the FUND before his RETIREMENT DATE. He will then become entitled to his FUND BENEFIT.

#### \*6 5.1.3 Disinvestment of retirement benefit

The FUND will start with the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT as soon as possible after receiving the WITHDRAWAL NOTIFICATION.

#### \*7 5.1.4 Payment of retirement benefit

5.1.4.1 The FUND will only pay the FUND BENEFIT once the BANK VERIFICATION has been completed and the FUND has received all the documents and other information relating to the MEMBER that are required to make payment.

5.1.4.2 After being given access to retirement benefits counselling as envisaged in the ACT, a MEMBER –

5.1.4.2.1 may take his full VESTED BENEFIT as a lump sum;

5.1.4.2.2 may take up to one-third of his NON-VESTED BENEFIT as a lump sum, and

5.1.4.2.3 must use the balance of the FUND BENEFIT, subject to the *de minimis* amount prescribed in the Income Tax Act, to purchase an annuity (including

a living annuity), a combination of annuities or a combination of types of annuities in the MEMBER'S name from one or more INSURERS, chosen from the range of annuities selected by the TRUSTEES or alternative annuities chosen by the MEMBER.

- 5.1.4.3 An annuity referred to in Rules 5.1.4.2.3 must be compulsory, non-commutable, payable for and based on the lifetime of the MEMBER or the value of retirement interest, if applicable, and may not be transferred, assigned, reduced, hypothecated or attached by creditors as contemplated by the provisions of sections 37A and 37B of the ACT.
- 5.1.4.4 If a MEMBER chooses to purchase more than one annuity, the amount to purchase each annuity may not be less than the de minimis amount prescribed in the Income Tax Act.
- 5.1.4.5 The MEMBER must inform the FUND of his choice on this matter in writing at the time of his WITHDRAWAL NOTIFICATION.
- 5.1.4.6 As soon as the INSURER has received the cash consideration for the purchase of the annuity referred to in Rule 5.1.4.2.3 and has received the relevant information to make payment possible, and the FUND has paid the balance of the MEMBER'S FUND BENEFIT to the MEMBER, that MEMBER'S membership of the FUND will end. The FUND will then have no further responsibility relating to the MEMBER and neither the MEMBER nor his BENEFICIARIES will be able to make any further claim against the FUND. The INSURER from whom the MEMBER bought the annuity will be solely liable and responsible for the payment of the annuity.
- 5.1.4.7 The FUND will apply for a tax directive as soon as possible after the later of the finalisation of the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT and receipt of instructions with regards to how much of the benefit should be paid as a lump sum.

- 5.1.4.8 When the FUND receives the tax directive, it will –
- 5.1.4.8.1 deduct the tax from the retirement benefit and pay it to the COMMISSIONER as soon as possible, and
  - 5.1.4.8.2 pay the remaining FUND BENEFIT as soon as possible after receipt of the tax directive, subject to Rule 5.1.4.1.
- 5.1.4.9 Where the COMMISSIONER asks that the MEMBER contact the COMMISSIONER'S office, the FUND will pass that message on to the MEMBER and any further action on the payment of the benefit will be postponed until the MEMBER has resolved this issue with the COMMISSIONER. If the MEMBER does not manage to resolve his tax issues with the COMMISSIONER within 6 months from the date on which the FUND received the tax directive, the FUND will reinstate his POLICY BENEFIT. His benefit will be invested in the investment portfolio selected by the TRUSTEES for this purpose, unless the MEMBER requests otherwise. The FUND will start with the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT within 7 DAYS of receiving confirmation that the MEMBER'S tax affairs have been resolved and the provisions of Rules 5.1.4.7 and 5.1.4.8 will apply.

\*6 \*7

### **5.1.5 Transfer of ownership of FUND MEMBER POLICY**

The FUND may transfer ownership of the FUND MEMBER POLICY to the MEMBER if the MEMBER requested it. The FUND will first buy the annuity as referred to in Rule 5.1.4.2.3 and deduct the required tax on the lump sum benefit from the value of the FUND MEMBER POLICY, whereafter it will transfer ownership of the FUND MEMBER POLICY to the MEMBER.

## **5.2 Withdrawal**

\*4

### **5.2.1 Withdrawal benefit**

- 5.2.1.1 Subject to Rule 5.2.1.3, a MEMBER may, before he reaches his RETIREMENT DATE, make one withdrawal from his FUND

BENEFIT. This one withdrawal applies separately to each TRANSFER AMOUNT and may be equal to the whole of the MEMBER'S FUND BENEFIT or only a part thereof.

\*6 5.2.1.2 A MEMBER who emigrated from South Africa or ceased to be a South African tax resident for at least three consecutive years as contemplated in paragraph (c)(ii)(aa)(b) of the definition of "pension preservation fund" in section 1(1) of the Income Tax Act, may elect to have his FUND BENEFIT, or the balance thereof if he has already made a pre-retirement withdrawal under Rule 5.2.1.1, paid to him before he reaches his RETIREMENT DATE.

\*7 5.2.1.3 The provisions of Rule 5.2.1.1 will not apply to a MEMBER who transferred his retirement benefit from an APPROVED PENSION FUND, APPROVED PROVIDENT FUND or APPROVED PRESERVATION FUND as referred to in Rule 7.3.3.

\*6 **5.2.2 Disinvestment of withdrawal benefit**

The FUND will start with the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT as soon as possible after receiving the WITHDRAWAL NOTIFICATION.

**5.2.3 Payment of withdrawal benefit**

\*6 5.2.3.1 The FUND will only pay the FUND BENEFIT once the BANK VERIFICATION has been completed and the FUND has received all the documents and other information relating to the MEMBER that are required to make payment.

\*7 5.2.3.2 Withdrawal benefits will be paid as a lump sum. Subject to the requirements of the COMMISSIONER and the Income Tax Act, a MEMBER who withdraws has the following choices:

5.2.3.2.1 take his whole withdrawal benefit as a lump sum;

5.2.3.2.2 transfer his whole withdrawal benefit to an APPROVED FUND or an APPROVED RETIREMENT ANNUITY FUND, or

5.2.3.2.3 take a portion of his withdrawal benefit as a lump sum and transfer the balance to an APPROVED FUND or an APPROVED RETIREMENT ANNUITY FUND.

5.2.3.3 In order to determine the accrual date for purposes of the Income Tax Act, the following dates will be considered to be the date on which the MEMBER made an election to have the benefit paid to him:

5.2.3.3.1 where the MEMBER makes an election before his actual withdrawal date, and the FUND receives the WITHDRAWAL NOTIFICATION before the actual withdrawal date, the date of the MEMBER'S actual withdrawal;

5.2.3.3.2 where the MEMBER makes an election after his actual withdrawal date, irrespective of when the FUND receives the WITHDRAWAL NOTIFICATION, the date on which the MEMBER signed the election, and

5.2.3.3.3 where the FUND receives a withdrawal form without confirmation of the MEMBER having made an election, and the FUND only receives such confirmation in a subsequent tax year, the date that the FUND receives the confirmation of the MEMBER'S election to have the benefit paid to him.

\*6 5.2.3.4 Once the FUND has paid a FUND BENEFIT or transferred it to another fund, the FUND will have no further liability in respect of the MEMBER. Where the withdrawal benefit has been transferred to another fund, it will be the sole responsibility of that fund to pay the benefit.

\*6 5.2.3.5 The FUND will apply for a tax directive as soon as possible after the later of finalisation of the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT and receipt of instructions with regards to how much of the benefit

should be paid as a lump sum.

5.2.3.6 When the FUND receives the tax directive, it will –

5.2.3.6.1 deduct the tax from the withdrawal benefit and pay it to the COMMISSIONER as soon as possible, and

\*6 5.2.3.6.2 pay the remaining FUND BENEFIT as soon as possible after receipt of the tax directive, subject to Rule 5.2.3.1.

\*4 \*6 5.2.3.7 Where the COMMISSIONER asks that the MEMBER contact the COMMISSIONER'S office, the FUND will pass that message on to the MEMBER and any further action on the payment of the benefit will be postponed until the MEMBER has resolved this issue with the COMMISSIONER. If the MEMBER does not manage to resolve his tax issues with the COMMISSIONER within 6 months from the date on which the FUND received the tax directive, the FUND will reinstate his POLICY BENEFIT. His benefit will be invested in the investment portfolio selected by the TRUSTEES for this purpose, unless the MEMBER requests otherwise. The FUND will start with the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT within 7 DAYS of receiving confirmation that the MEMBER'S tax affairs have been resolved and the provisions of Rules 5.2.3.5 and 5.2.3.6 will apply.

#### **5.2.4 Cession of FUND MEMBER POLICY**

Instead of paying a withdrawal benefit to the MEMBER, the FUND may cede the FUND MEMBER POLICY to him, after complying with the legislative requirements for such cession.

### **5.3 Death**

#### **5.3.1 Death benefit**

If a MEMBER dies, the FUND will pay his FUND BENEFIT.

**\*5 \*6 5.3.2 Disinvestment of death benefit**

The FUND will start with the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT as soon as possible after receiving the WITHDRAWAL NOTIFICATION.

**\*5 5.3.3 Payment of death benefit**

**\*6 5.3.3.1** The TRUSTEES must decide on the distribution of the MEMBER'S FUND BENEFIT, following the provisions of section 37C of the ACT.

5.3.3.2 A BENEFICIARY becomes entitled to a MEMBER'S death benefit on the date of the finalisation of the TRUSTEES' resolution on how the death benefit must be distributed.

**\*6 5.3.3.3** The FUND will pay the FUND BENEFIT once the FUND has received all the documents and other information that are required to make payment and after the BANK VERIFICATION has been completed.

**\*6 \*7 5.3.3.4** The FUND will pay the FUND BENEFIT as a lump sum. If any of the BENEFICIARIES want the FUND BENEFIT or a part thereof to be used to purchase an annuity in the BENEFICIARY'S name from one or more INSURERS, they must let the FUND know in writing within one calendar month from the date of the TRUSTEES' final resolution on the distribution of the FUND BENEFIT.

**\*6 \*7 5.3.3.5** As soon as the BENEFICIARY has purchased an annuity, the FUND will have no further responsibility relating to that BENEFICIARY. The INSURER from whom the BENEFICIARY purchased the annuity will be solely responsible for the payment of the annuity.

**\*6 5.3.3.6** The FUND will apply for a tax directive as soon as possible after the requirements as set out in Rules 5.3.3.3 and 5.3.3.4 have been met.

- \*6
- 5.3.3.7 When the FUND receives the tax directive, it will –
- 5.3.3.7.1 deduct the tax from the FUND BENEFIT and pay it to the COMMISSIONER as soon as possible, and
- 5.3.3.7.2 pay the FUND BENEFIT as soon as possible after receipt of the tax directive, subject to Rule 5.3.3.4.
- \*4 \*6
- 5.3.3.8 Where the tax directive asks that the taxpayer contact the COMMISSIONER'S office, the FUND will pass that message on to the MEMBER'S BENEFICIARIES and/or the executor of the MEMBER'S estate and any further action on the payment of the benefit will be postponed until the BENEFICIARIES or the executor have sorted this out with the COMMISSIONER. If the MEMBER'S tax issues have not been resolved within 6 months from the date on which the FUND received the tax directive, the FUND will reinstate the MEMBER'S POLICY BENEFIT. His benefit will be invested in the investment portfolio selected by the TRUSTEES for this purpose. The FUND will start with the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT within 7 DAYS of receiving confirmation that the MEMBER'S tax affairs have been resolved and the provisions of Rules 5.3.3.6 and 5.3.3.7 will apply.



## **6. GENERAL PROVISIONS REGARDING BENEFITS**

### **6.1 The duty of the person who claims**

Any person entitled to a benefit from the FUND must supply the FUND with –

6.1.1 acceptable proof of his age and identity, if the FUND asks for it, and

6.1.2 such other information as the FUND may reasonably request,  
before the FUND will pay the benefit.

### **6.2 Benefits cannot be transferred**

A MEMBER or his BENEFICIARY cannot hand over, encumber, pledge, cede or alienate a benefit under the FUND, except as permitted by the ACT.

### **6.3 Benefits cannot be reduced**

The prohibitions about the reduction of a benefit as set out in section 37A of the ACT apply to a benefit and a right to a benefit in terms of these RULES.

### **6.4 Deduction from benefit**

The FUND may make any deduction from a benefit that is permitted by the ACT.

### **6.5 How and where the FUND will pay a benefit**

6.5.1 The ADMINISTRATOR will pay a benefit to the MEMBER or BENEFICIARY entitled to it by way of electronic funds transfer (EFT) into the bank account of the MEMBER or BENEFICIARY as specified by the MEMBER or the BENEFICIARY, as the case may be. Where a MEMBER or BENEFICIARY provides sufficient proof that he is not able to open a bank account, the ADMINISTRATOR will pay the benefit to the third party nominated by the MEMBER or BENEFICIARY to receive such payment on his behalf. Such payment shall be regarded as payment to the MEMBER or BENEFICIARY concerned.

6.5.2 This account must be held with a bank registered in the Republic of South Africa in terms of the Banks Act.

6.5.3 The FUND may make payment in another manner and on such terms as it may determine.

6.5.4 Once the FUND has paid the benefit as set out above, the FUND will have no further responsibility relating to that MEMBER or BENEFICIARY.

## **6.6 Payment of benefit other than death benefit where the MEMBER dies**

Where a MEMBER who became entitled to –

- \*5
- 6.6.1 a withdrawal benefit under Rule 6.2 dies before the benefit has been paid to him, the benefit will be paid into his estate, or where he does not have an estate, into the UNCLAIMED BENEFITS FUND or the Guardian's Fund. Rule 5.3.2 and Rules 5.3.3.4 and 5.3.3.7 will apply, or
- 6.6.2 a retirement benefit under Rule 5.1 dies before the benefit has been paid, this benefit will be dealt with in the following manner:
- \*7
- 6.6.2.1 If the MEMBER died before he has elected in writing to purchase an annuity, the FUND will pay the entire benefit into his estate as a death lump sum benefit and the provisions of Rule 6.6.1 will apply.
- 6.6.2.2 If the MEMBER died after he has elected in writing to purchase a living annuity from an INSURER in his name, but before the living annuity has been purchased or the lump sum has been paid,
- 6.6.2.2.1 and the MEMBER specified a specific amount or percentage to be paid as a lump sum, the FUND will pay that amount or percentage into his estate as a lump sum and the provisions of Rule 6.6.1 will apply;
- 6.6.2.2.2 the FUND will purchase a living annuity with the remaining benefit from an INSURER as specified by the TRUSTEES, and
- 6.6.2.2.3 the beneficiary of this living annuity will be the beneficiary as nominated by the MEMBER to receive his death benefit under the living annuity.

- 6.6.2.3 If the MEMBER died after he has elected in writing to purchase a living annuity from an INSURER in his name, after the lump sum has been paid but before the living annuity has been purchased,
- 6.6.2.3.1 the FUND will purchase a living annuity with the remaining benefit from an INSURER as specified by the TRUSTEES, and
  - 6.6.2.3.2 the beneficiary of this living annuity will be the beneficiary as nominated by the MEMBER to receive his death benefit under the living annuity.
- 6.6.2.4 If the MEMBER died after he has elected in writing to purchase a living annuity from an INSURER in his name, after the living annuity has been purchased but before the lump sum has been paid,
- 6.6.2.4.1 and the MEMBER specified a specific amount or percentage to be paid as a lump sum, the FUND will pay that amount or percentage into his estate as a lump sum and the provisions of Rule 6.6.1 will apply, and
  - 6.6.2.4.2 the FUND will pay the remaining benefit into the living annuity that has been purchased.
- 6.6.2.5 If the MEMBER died after he has elected in writing to purchase an annuity other than a living annuity from an INSURER in his name, but before that annuity has been purchased or the lump sum has been paid,
- 6.6.2.5.1 and the MEMBER specified a specific amount or percentage to be paid as a lump sum, the FUND will pay that amount or percentage into his estate as a lump sum and the provisions of Rule 6.6.1 will apply;
  - 6.6.2.5.2 the FUND will purchase a living annuity with the remaining benefit from an INSURER as specified by the TRUSTEES, and
  - 6.6.2.5.3 the beneficiary of this living annuity will be the

beneficiary as nominated by the MEMBER to receive his death benefit under the annuity as referred to in Rule 6.6.2.5 above.

6.6.2.6 If the MEMBER died after he has elected in writing to purchase an annuity other than a living annuity from an INSURER in his name, after the lump sum has been paid but before the annuity has been purchased,

6.6.2.6.1 the FUND will purchase a living annuity with the remaining benefit from an INSURER as specified by the TRUSTEES, and

6.6.2.6.2 the beneficiary of this living annuity will be the beneficiary as nominated by the MEMBER to receive his death benefit under the living annuity.

6.6.2.7 If the MEMBER died after he has elected in writing to purchase an annuity other than a living annuity from an INSURER in his name, after the annuity has been purchased but before the lump sum has been paid, the FUND will pay the entire benefit into his estate as a death lump sum benefit and the provisions of Rule 6.6.1 will apply.

## **6.7 Payment of benefit to third party for the benefit of the MEMBER or BENEFICIARY**

6.7.1 If the TRUSTEES have good reason to believe that a MEMBER or BENEFICIARY entitled to benefits in terms of the RULES is –

6.7.1.1 not responsible for his actions or incapable of managing his own affairs due to disease, psychiatric disorder or defect;.

6.7.1.2 addicted to the any drugs or intoxicating liquors or otherwise of intemperate habits;

6.7.1.3 a prodigal, or

6.7.1.4 failing or has failed on account of imprisonment, desertion or any other cause to support persons dependent upon him for maintenance,

they may direct that the benefits payable to that MEMBER or BENEFICIARY be paid in whole or in part to a guardian, curator or trustee or to a beneficiary fund as defined in the ACT for the benefit of the MEMBER or BENEFICIARY.

6.7.2 The TRUSTEES will give notice of their intention to act under Rule 6.7.1 to the MEMBER, BENEFICIARY or their representative and give them an opportunity to present relevant factors to convince them to the contrary within a specified period.

## **6.8 Unclaimed benefits**

\*1

The TRUSTEES may at any time decide to transfer any unclaimed benefit as defined in the ACT to the UNCLAIMED BENEFITS FUND or any other fund established by law or in terms of the ACT to receive unclaimed benefits. Once the FUND has transferred an unclaimed benefit to another fund, it will be the sole responsibility of that fund to pay the benefit and the FUND will have no further liability towards the MEMBER or his BENEFICIARIES in respect of that benefit.

## **7. TRANSFERS TO OR FROM THE FUND**

### **7.1 The TRUSTEES can allow transfers**

The TRUSTEES can allow a MEMBER to transfer to or from the FUND, in line with section 14 of the ACT.

\*6

### **7.2 Transfers from the FUND**

- 7.2.1 On the request of a MEMBER and subject to legislative requirements and the conditions laid down by the TRUSTEES, the MEMBER can transfer his benefit or a portion thereof from the FUND to an APPROVED FUND or an APPROVED RETIREMENT ANNUITY FUND.
- 7.2.2 The FUND will start with the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT as soon as possible after receiving the AUTHORITY'S confirmation of approval of the transfer referred to in Rule 7.2.1 in terms of section 14 of the ACT, or, where such approval is not required, on receipt of the signed documents from the transferee fund.
- 7.2.3 The FUND will then apply for a tax directive as soon as possible after the finalisation of the DISINVESTMENT PROCESS relating to the MEMBER'S POLICY BENEFIT and pay a transfer value for the MEMBER to the receiving fund as soon as possible after receipt of the tax directive.
- 7.2.4 Once a MEMBER'S benefit has been transferred, the FUND will have no further responsibility relating to the MEMBER. This responsibility will then lie with the fund to which the MEMBER'S POLICY BENEFIT has been transferred.
- 7.2.5 A non-member spouse as defined in the ACT who is entitled to a portion of a MEMBER'S pension interest in terms of a DIVORCE ORDER that has to be deducted from the MEMBER'S POLICY BENEFIT, can choose to have that portion of the MEMBER'S POLICY BENEFIT transferred for his benefit to another APPROVED FUND or an APPROVED RETIREMENT ANNUITY FUND. The non-member spouse must inform the FUND of his choice in writing. The FUND will then transfer that portion of the MEMBER'S POLICY BENEFIT to the fund chosen by the

non-member spouse, in line with legislative requirements.

**\*4 7.3 Transfers to the FUND**

7.3.1 A person referred to in Rule 2.1.1 will have the option to transfer his benefit under an APPROVED PENSION FUND or an APPROVED PROVIDENT FUND to the FUND.

**\*6** 7.3.2 A person referred to in Rule 2.1.2 may elect to transfer his benefit under the other APPROVED PRESERVATION FUND to the FUND, only if the full benefit to which the MEMBER is entitled in terms of the rules of that fund is transferred to the FUND.

**\*7** 7.3.3 A person referred to in Rule 2.1.3 may elect to transfer his retirement benefit under an APPROVED PENSION FUND, APPROVED PROVIDENT FUND, or APPROVED PRESERVATION FUND, to the FUND, subject to the provisions imposed by the COMMISSIONER.

**\*6** 7.3.4 A person referred to in Rule 2.1.4 may elect to transfer the amount awarded to him in terms of a DIVORCE ORDER from an APPROVED PENSION FUND, APPROVED PROVIDENT FUND or APPROVED PRESERVATION FUND of which his former spouse is or was previously a member, to the FUND, for his benefit.

7.3.5 A person referred to in Rule 2.1.5 may elect to transfer his benefit under the Government Employees Pension Fund to the FUND.

7.3.6 A person referred to in Rule 2.1.6 may elect to transfer the amount awarded to him in terms of a DIVORCE ORDER from the Government Employees Pension Fund of which his former spouse is or was previously a member, to the FUND, for his benefit.

**\*5** 7.3.7 The fund of which a person was a member before his transfer must pay a TRANSFER AMOUNT for the MEMBER in line with section 14 of the ACT to the FUND. The only amounts that may be taken off this TRANSFER AMOUNT or his benefit after it has been transferred are withdrawals and deductions allowed for in the Income Tax Act.

## **7.4 Investment of TRANSFER AMOUNT**

7.4.1 The FUND must invest the TRANSFER AMOUNT, plus, subject to Rule 7.5, the INTEREST earned while it was invested in the INSURER'S bank account, less any expenses relating to the transfer, to the MEMBER FUND POLICY concerned.

\*3

7.4.2 Where the FUND has received the TRANSFER AMOUNT and the data required to invest the TRANSFER AMOUNT (in this Rule 7 referred to as the "MEMBER DATA"), but not a correct and valid written instruction as to how the TRANSFER AMOUNT should be invested, the FUND will invest the TRANSFER AMOUNT within 7 DAYS after it receives the last of the TRANSFER AMOUNT and the MEMBER DATA in the investment portfolio selected by the TRUSTEES for that purpose.

7.4.3 Where the FUND has received the TRANSFER AMOUNT and the MEMBER DATA and a correct and valid written instruction as to the manner in which the TRANSFER AMOUNT has to be invested, the FUND will invest the TRANSFER AMOUNT in the specific FUND MEMBER POLICY or the FUND POLICY, as the case may be, within 7 DAYS after it receives the last of the correct and valid investment instruction, the TRANSFER AMOUNT and the MEMBER DATA, in line with Rule 3.

\*6

## **7.5 INTEREST payable on the TRANSFER AMOUNT**

7.5.1 Where the FUND invests the TRANSFER AMOUNT within the 7 DAY period set out in Rule 7.4, the FUND will keep the INTEREST earned in the INSURER'S bank account between the date of the FUND receiving the TRANSFER AMOUNT and the date of the FUND investing it, in the INSURER'S bank account. This INTEREST will be used for expenses not debited against the MEMBER'S POLICY BENEFIT.

7.5.2 Where the FUND invests the TRANSFER AMOUNT after the 7 DAY period set out in Rule 7.4, the FUND will credit the INTEREST in the INSURER'S bank account between the end of the 7 DAY period set out in Rule 7.4 and the date of the FUND investing it to the MEMBER'S POLICY BENEFIT.



## **7.6 Transfer of a MEMBER to and from a fund in an SADC country**

- 7.6.1 Where a MEMBER transfers his benefit or a portion thereof from the FUND to a fund in one of the Southern African Development Community (SADC) countries, the FUND will pay a transfer value for the MEMBER to the receiving fund in the SADC country.
- 7.6.2 Where a MEMBER transfers his benefit or a portion thereof from a fund in one of the SADC countries to the FUND, the fund in the SADC country of which he was a member before his transfer must pay a TRANSFER AMOUNT for the MEMBER to the FUND.
- 7.6.3 The following countries are members of the SADC: Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.

## **8. TERMINATION AND AMALGAMATION**

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### **8.1 Amalgamation of the FUND with another APPROVED PRESERVATION FUND**

- 8.1.1 If the TRUSTEES decide that the FUND must be amalgamated with another APPROVED PRESERVATION FUND, they must ensure that the assets and liabilities or part of the assets and liabilities of the FUND are transferred to that APPROVED PRESERVATION FUND under section 14 of the ACT. If all the assets and liabilities have been transferred to the other APPROVED PROVIDENT FUND, the TRUSTEES must apply to the AUTHORITY for the cancellation of the registration of the FUND as required under the ACT.
- 8.1.2 The FUND will start with the DISINVESTMENT PROCESS relating to the MEMBERS' POLICY BENEFITS as soon as possible after receiving the AUTHORITY'S confirmation of approval of the transfer to another APPROVED PRESERVATION FUND in terms of section 14 of the ACT.
- 8.1.3 If required, the FUND will then apply for tax directives as soon as possible after the finalisation of the DISINVESTMENT PROCESS relating to the MEMBERS' POLICY BENEFITS and pay the transfer values for the MEMBERS to the receiving fund as soon as possible after receipt of the tax directives.
- 8.1.4 Once all the assets and liabilities have been transferred to the other APPROVED PRESERVATION FUND, the FUND will have no further responsibility relating to the MEMBERS. This responsibility will then lie with the fund to which the MEMBERS' POLICY BENEFITS have been transferred. The TRUSTEES must then apply to the AUTHORITY for the cancellation of the registration of the FUND as required under the ACT.

### **8.2 Termination of the FUND**

If the TRUSTEES decide that the FUND must be terminated, they must notify the ADMINISTRATOR of the termination in writing at least 6 months before the intended date of the termination. In this case, the following will apply:

- \*3 8.2.1 The TRUSTEES will appoint a liquidator to liquidate the FUND and apply to the AUTHORITY for approval of this appointment. Once the AUTHORITY has confirmed the liquidator's appointment, the liquidator will liquidate the FUND in line with the provisions of the ACT.
- 8.2.2 The liquidator must use the assets of the FUND, after payment of all the liquidation expenses, to provide benefits for all MEMBERS on an equitable basis recommended by the FUND'S Actuary. All MEMBERS whose membership of the FUND have terminated in the immediately preceding 12 months, shall for purposes of this section be deemed to be MEMBERS on the date of termination of the FUND: Provided that the liquidator will take benefits already paid to or in respect of these MEMBERS before the division of the remaining assets into account in the calculation of the amount payable to or in respect of these MEMBERS.
- 8.2.3 Where the liquidator is able to trace the MEMBER or his BENEFICIARY, as the case may be, the liquidator will deal as follows with the amount available for the MEMBER or his BENEFICIARY:
- \*6 8.2.3.1 Transfer the amount to an APPROVED PENSION FUND, APPROVED PROVIDENT FUND, APPROVED PRESERVATION FUND or APPROVED RETIREMENT ANNUITY FUND;
- \*7 8.2.3.2 transfer the amount to an INSURER to buy an annuity for the MEMBER or his BENEFICIARY, as the case may be, where the MEMBER or BENEFICIARY is entitled to an annuity, or
- 8.2.3.3 pay the amount as a lump sum benefit where permitted if the MEMBER or his BENEFICIARY so requests.
- 8.2.4 Where the liquidator is not able to trace the MEMBER or his BENEFICIARY, as the case may be, or if he is satisfied that the benefits will remain unclaimed, the amount payable will be paid to the UNCLAIMED BENEFITS FUND.
- \*3 8.2.5 After the FUND has made all the payments due, the FUND will have no further liability to any person. The FUND must then apply to the AUTHORITY for the cancellation of the registration of the FUND as required under the ACT.

## 9. MANAGEMENT OF THE FUND

### 9.1 Appointment of TRUSTEES

- \*1 \*3 9.1.1 The sponsor of the FUND will appoint 6 TRUSTEES to manage the FUND.
- \*3 9.1.2 At least 3 TRUSTEES must be independent. This means that these TRUSTEES must meet the requirements set by the AUTHORITY.
- \*1 9.1.3 The sponsor will also appoint alternates for the TRUSTEES in the same manner as set out in Rule 9.1.1. The sponsor does not have to appoint an equal number of TRUSTEES and alternates. Any alternate can act during the absence of any other TRUSTEE.
- \*1 \*3 9.1.4 The sponsor will fill any TRUSTEE vacancy within the period prescribed by the AUTHORITY. A temporary vacancy will not invalidate the decisions taken by the TRUSTEES during that period.

### 9.2 Term of office

- \*1 9.2.1 The term of office of a TRUSTEE will start immediately after the date on which he was appointed. It will end 3 years after the TRUSTEES' date of appointment or such lesser period as agreed with the TRUSTEE.
- 9.2.2 A TRUSTEE may be re-appointed.

### 9.3 Election of chairperson

- 9.3.1 The TRUSTEES must elect a chairperson from their own ranks.
- 9.3.2 The term of office of the chairperson will start immediately after the date on which he was elected. It will end 3 years after the date on which the TRUSTEE was elected as the chairperson, provided that he is still a TRUSTEE.
- 9.3.3 A chairperson may be re-elected.
- \*3 9.3.4 If the chairperson is absent from any meeting, the attending TRUSTEES must elect a chairperson from their ranks for that meeting, provided that in the case of a sub-committee or committee meeting, the chairperson must be an independent TRUSTEE.

- 9.3.5 If the chairperson is unable to fulfil his duties as chairperson for longer than a month, the TRUSTEES must elect a chairperson in his place from their own ranks for that period.

#### **9.4 When a TRUSTEE'S office will come to an end**

A TRUSTEE'S office will come to an end when –

- 9.4.1 his term of office expires as set out in Rule 9.2.1;
- 9.4.2 he resigns by giving at least 30 days' prior written notice to the FUND;
- 9.4.3 he dies;
- 9.4.4 he is absent from 3 consecutive TRUSTEE meetings without the prior approval of the other TRUSTEES;
- 9.4.5 the majority of TRUSTEES vote for his removal;
- \*3 9.4.6 as an independent TRUSTEE he no longer meets the requirements set by the AUTHORITY;
- 9.4.7 following a peer performance review, it is found that he does not meet the standard of competency determined by the TRUSTEES;
- \*3 9.4.8 he fails to attain and retain the levels of skills and training as required by the AUTHORITY, or
- 9.4.9 he breaches any of the provisions of the Code of Conduct adopted by the TRUSTEES.

#### **9.5 Eligibility for election as TRUSTEE**

- \*1 The sponsor may not appoint a person who falls in any of the following categories as a TRUSTEE. If a TRUSTEE at any time falls into any of these categories, he will immediately be removed from his position as TRUSTEE:

- 9.5.1 a minor;
- 9.5.2 an unrehabilitated insolvent;
- 9.5.3 a person who is found guilty of a criminal offence of which dishonesty is an element;

- 9.5.4 a person who has been removed from an office of trust because of misconduct;
- 9.5.5 a person who is disqualified from being a director in terms of an order under the Companies Act, and
- 9.5.6 a person who is declared unfit to manage his own affairs by a capable Court.

## **9.6 Powers and duties of TRUSTEES**

The TRUSTEES have the duties set out in the ACT and elsewhere in these Rules. They also have the following powers and duties:

- 9.6.1 They may enter into contracts in the name of and on behalf of the FUND. This includes contracts with an INSURER to insure any benefits provided for in these Rules and investment contracts in terms of which all the assets of the FUND will be invested in the name of the FUND.
- 9.6.2 They may institute, conduct, defend or dispose of any legal proceedings by or against the FUND.
- 9.6.3 They may write off any amount which is or may be due to the FUND and which, in their opinion, is not recoverable or unprofitable to recover.
- 9.6.4 They may appoint committees and sub-committees and delegate any of their powers to these committees and sub-committees or any other person or entity, subject to the terms and conditions determined by them. They will determine the composition, scope of responsibility, functions, frequency of meetings and all other matters relating to these committees and sub-committees and will record it in the charter for that committee or sub-committee. They may amend these charters and may withdraw the delegation at any time. The minutes of the meetings of the committees and sub-committee will be submitted to the TRUSTEES at their first following meeting for noting. They will keep a register of all the functions delegated to the ADMINISTRATOR. They will ratify any decisions or actions taken by a delegate other than the committees, subcommittees or ADMINISTRATOR.

- 9.6.5 They must authorise such persons as they may approve from time to time, and upon such terms and conditions as they may approve, to sign any contract or other document binding the FUND or any document authorising the performance of any act on behalf of the FUND. Documents that must be submitted to the regulators must be signed in the manner prescribed by them.
- 9.6.6 They must declare any personal interest in any matter under discussion.
- 9.6.7 They can do everything that is required or will contribute towards achieving the objectives of the FUND.

### **9.7 Meetings, notice, quorum, minutes and voting**

- 9.7.1 The TRUSTEES must meet at least twice in every 12 months to conduct the business of the FUND.
- 9.7.2 The FUND must give the TRUSTEES written notice of a meeting at least 15 days before the date of the meeting, unless otherwise agreed.
- 9.7.3 A quorum will be formed by 4 TRUSTEES, of which 2 must be independent TRUSTEES.
- 9.7.4 The TRUSTEES will make sure that there are proper minutes for all meetings of the TRUSTEES and committees.
- 9.7.5 Each TRUSTEE will have one vote. An alternate TRUSTEE will have one vote for the time that he acts during the absence of a TRUSTEE. All decisions of the TRUSTEES will be made by majority decision and, if the votes are equal, the chairperson will have a casting vote in addition to his vote as TRUSTEE.
- 9.7.6 A resolution in writing signed by a majority of the TRUSTEES, for which purpose an alternate may sign in the absence of the TRUSTEE for whom he is an alternate, shall be as valid as if it had been passed at a meeting of the TRUSTEES duly called and constituted, provided that, in the case of urgency, it is not required that such resolution be signed by a TRUSTEE not present in the Republic of South Africa at the time the resolution is to be passed.

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- \*3 9.7.7 A decision agreed to by the majority of trustees via e-mail will have the same force and effect as a resolution passed at a meeting of the TRUSTEES. The date of the resolution will be the date on which the last of the number of TRUSTEES required to reach a majority, agrees to the decision. The decision must be tabled at the next meeting of the TRUSTEES for noting.

## **9.8 Insurance policies to be taken out by the TRUSTEES**

- \*3 9.8.1 The TRUSTEES must take out a fidelity guarantee insurance policy to indemnify the FUND against losses owing to the dishonesty or fraud of any of its officials (including the TRUSTEES) or such other indemnification as the AUTHORITY may allow.
- 9.8.2 The TRUSTEES must take out a professional indemnity insurance policy to insure the FUND and its officials against losses owing to the negligence, errors or omissions of any of its officials.



## **10. ADMINISTRATION OF THE FUND**

### **10.1 Appointment of ADMINISTRATOR**

10.1.1 The FUND must appoint the ADMINISTRATOR to administer the FUND.

10.1.2 The FUND and the ADMINISTRATOR must enter into an administration agreement as required by the ACT. This agreement must set out the powers and duties of the ADMINISTRATOR and the fees that the FUND must pay to the ADMINISTRATOR.

### **10.2 Appointment of Principal Officer and deputy Principal Officer**

\*3 10.2.1 The TRUSTEES must appoint a Principal Officer as required by the ACT and apply to the AUTHORITY for approval of this appointment.

\*3 10.2.2 Once the AUTHORITY has confirmed the Principal Officer's appointment, the Principal Officer will represent the FUND in all respects as far as its dealings with the AUTHORITY are concerned.

10.2.3 The TRUSTEES may terminate the service of the Principal Officer and make another appointment in his place at any time, following the same procedure as set out in Rule 10.2.1.

10.2.4 The Principal Officer may resign by giving written notice to the TRUSTEES.

\*3 10.2.5 The TRUSTEES may appoint a deputy Principal Officer as contemplated in the ACT and will advise the AUTHORITY of such appointment. The provisions of Rules 10.2.3 and 10.2.4 will apply to the deputy Principal Officer.

10.2.6 The Principal Officer may delegate any of his duties to the deputy Principal Officer in writing. Such delegation may be changed or withdrawn at any time.

\*3 10.2.7 If the Principal Officer is absent from the Republic of South Africa or is otherwise unable to perform his duties, the deputy Principal Officer will act as Principal Officer in his stead until the TRUSTEES appoint another person as Principal Officer. The TRUSTEES will appoint a new Principal Officer within the period prescribed by the AUTHORITY and notify the

AUTHORITY accordingly.

### **10.3 Appointment of Auditor, annual audit and FUND'S financial year**

- \*3 10.3.1 The TRUSTEES must appoint an Auditor as required by the ACT and apply to the AUTHORITY for approval of this appointment.
- \*3 10.3.2 Once the AUTHORITY has confirmed the Auditor's appointment, the Auditor will be responsible for auditing the FUND'S books and accounts at least once a year.
- \*3 10.3.3 Within 6 months after the end of the FUND'S financial year, or such other period as required by the AUTHORITY, the TRUSTEES will submit the FUND'S financial statements for that financial year to the AUTHORITY as required in the ACT.
- 10.3.4 The FUND'S financial year starts on 1 July and ends on 30 June of the following year.

### **10.4 Appointment of Actuary**

- \*3 10.4.1 The TRUSTEES must appoint an Actuary as required by the ACT and apply to the AUTHORITY for approval of this appointment.
- \*3 10.4.2 Once the AUTHORITY has confirmed the Actuary's appointment, the Actuary will be responsible for investigating and reporting on the FUND'S financial condition as required in the ACT.

### **10.5 Amendment of RULES**

- 10.5.1 The TRUSTEES may amend, add to, revise or delete provisions from the RULES, provided that where this in any way affects the liability of the INSURER, the TRUSTEES must first get the INSURER'S prior written consent.
- \*3 10.5.2 The FUND must submit any amendment to the AUTHORITY for registration within the period prescribed in the ACT. After confirmation of registration by the AUTHORITY, the amendment must be submitted to the COMMISSIONER for tax approval.

## **10.6 Communicating with the FUND**

All communications in connection with these RULES and the administration of the FUND must be in writing, addressed to the person and sent to the facsimile number or e-mail address as specified by the FUND, or, where voice-recorded transactions are permitted, by voice, subject to such terms and conditions determined by the FUND.

## **10.7 Providing information to the FUND**

The MEMBER must provide the FUND with the information that the TRUSTEES may reasonably require for the purposes of the FUND. This includes the information required by the COMMISSIONER.

## **10.8 Expenses, fees and costs relating to the FUND**

Unless it is specified otherwise, the ADMINISTRATOR will be responsible for the payment of the following fees, expenses and remuneration in connection with its management and administration and the investment of its moneys thereof:

10.8.1 FUND Expenses: this includes the costs relating to the valuation and audit of the FUND, the remuneration of the independent TRUSTEES, the Principal Officer and the Deputy Principal Officer, the costs of the fidelity guarantee insurance policy and the professional indemnity insurance policy referred to in Rule 9.8, levies and fees payable to any institution under any relevant legislation and such other expenses as may be determined by the TRUSTEES.

10.8.2 Consulting Fees: this includes the commission or advisory fee payable to a financial adviser.

10.8.3 Asset Management Fees: these are the fees charged by any individual or portfolio management company appointed to manage all or a portion of the assets of the FUND.

10.8.4 Administration Fees: this includes the costs of administering the FUND, the costs relating to the management of the assets of the FUND, levies and fees payable to any institution under any relevant legislation and such other costs as may be determined by the TRUSTEES from time to time.

## 11. GENERAL MEETING OF MEMBERS

- 11.1 The TRUSTEES may at any time or shall if requested to do so by not less than 10% of the MEMBERS, convene a general meeting of the MEMBERS ((in this Rule 11 referred to as a "GENERAL MEETING").
- 11.2 The TRUSTEES will send a written notice to each MEMBER, at his address as shown in the records of the FUND, not less than 21 days before the meeting, specifying the time, place and the agenda for the GENERAL MEETING. If the TRUSTEES accidentally does not send a notice to a MEMBER, or a MEMBER does not receive the notice, it does not mean that the GENERAL MEETING is not a valid meeting.
- 11.3 The TRUSTEES must nominate a person to be the chairperson of a GENERAL MEETING, failing which the MEMBERS present at that GENERAL MEETING, can elect a chairperson from their ranks.
- 11.4 A MEMBER may by notice in writing delivered to the FUND not later than 48 hours before the GENERAL MEETING appoint one proxy to attend, speak and vote on his behalf at the GENERAL MEETING. A proxy need not be a MEMBER and may act as proxy for more than one MEMBER.
- 11.5 Three persons who are MEMBERS, present in person or represented by a proxy, will form a quorum at a GENERAL MEETING.
- 11.6 Voting on any resolution proposed at a GENERAL MEETING will in be by a show of hands. However, if any MEMBER or proxy present at the meeting calls for a poll, a poll shall be held forthwith and the result of that poll will be the final decision of the meeting.
- 11.7 A person who is a MEMBER, whether present or represented by proxy at a GENERAL MEETING, will be entitled to cast one vote on any resolution.
- 11.8 A declaration in writing, signed by the chairperson as to the passing of any resolution at a GENERAL MEETING, will be conclusive evidence of the passing of that resolution.

## **12. GENERAL**

### **12.1 Binding force of RULES**

These RULES are binding on the FUND, the MEMBERS, the TRUSTEES, the ADMINISTRATOR, any individual appointed to manage the affairs of the FUND and on any person who claims under these RULES or whose claim is derived from a person so claiming.

### **12.2 Records**

The FUND will keep a complete record of all the necessary particulars of MEMBERS and of all persons entitled to benefits under the FUND and of all other matters essential to the operation of the FUND.

### **12.3 Copies of documents**

A MEMBER can request a copy of these RULES and a copy of the latest financial statements of the FUND. This will be provided to the MEMBER in electronic format.

### **12.4 Disputes**

12.4.1 If there is a dispute which relates to the administration of the FUND, the investment of the FUND'S assets or the interpretation or application of these RULES, any party to the dispute will have the right to register a written complaint, as defined in the ACT, with the FUND. This person is referred to as a Complainant.

12.4.2 The FUND will properly consider and reply to the complaint in writing within 30 DAYS after it received the complaint. If the Complainant is not satisfied with the reply or if the FUND does not reply within the 30 DAYS, the Complainant can register a complaint with the Pension Funds Adjudicator, subject to the procedures and conditions set out in the ACT.

12.4.3 If the Complainant chooses not to register a complaint with the Pension Funds Adjudicator, and the complaint cannot be resolved, the following will apply:

12.4.3.1 The parties can agree in writing to refer the matter to arbitration under the Arbitration Act. In this case, the decision of the arbitrator will be final and binding upon the parties, or

12.4.3.2 any of the parties can institute legal proceedings.