



HARMONISATION OF PENSIONS REGULATORY REQUIREMENTS

DATE: APRIL 2018

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PENSIONS REGULATORY REQUIREMENTS 2017

PREAMBLE

The purpose of this Guideline is to provide for the supervision and protection of interests of pension fund members and beneficiaries and to safeguard the stability of the pension industry and financial system as a whole; to provide for the registration, regulation, supervision and dissolution of pension funds, and for incidental matters in line with internationally accepted standards set out by the International Organisation of Pension Supervisors (IOPS).

PART I – PRELIMINARY

1. Short title and commencement

This Regulatory Framework may be cited as the Pensions Regulatory Framework of 2017, and shall operate as the CISNA model regulatory framework for Pension regulation amongst SADC Member states.

2. Interpretation

In these Regulatory Framework, unless the context otherwise requires -

“actuary” means a person having an actuarial qualification and member of a relevant professional body or institute recognised as such by the Regulatory authority;

“actuarial report” means a report prepared by the actuary in respect of a fund pursuant to clause 24.1 of this Regulatory Framework;

“administrator” means a legal entity authorised by the Regulatory authority in terms of clause 0;

“annuity” means a specified income payable at stated intervals for a fixed or a contingent period, often for the recipient’s life, against payment of a stipulated premium paid either in prior instalment payments or in a single payment;

“asset manager” means a legal entity under the agreement with another person, which applies the assets of the other person by way of investment, whether in its own name or of the other person; but does not include a custodian or a trustee;

“auditor” means a person registered as an accountant and auditor in terms of the relevant laws and who is a member of a recognised professional institute of chartered accountants;;

“authorisation” includes licensing, registration and approval and “authorised” shall be construed accordingly;

“authorised person” means an authorised person authorised by the regulatory authority;

“bank” means an institution that holds a license issued under any banking law or relevant financial institutions law;

“beneficiary” means any person who is entitled to receive a benefit from a pension scheme as provided for in the rules of the scheme or as may be specified in the relevant law;

“beneficiary fund” means a fund that accepts and administers lump sum death benefits on behalf of minor dependants of deceased pension scheme members;

“CISNA” means the Plenary of the Committee of Insurance

“curator” means a person who is appointed by the Regulatory authority to take care of the assets of a pension scheme whose licence has been suspended, terminated, or otherwise revoked and includes a conservator, receiver or such other relevant title;

“custodian” means a bank or any other entity authorised by the Regulatory authority to provide custodial services;

“defined benefit scheme” means a pension scheme in which the rules of the scheme predetermine or specify the benefits to be paid to the members other than a defined contribution scheme;

“defined contribution scheme” means a scheme where a member’s benefit is determined by reference to total contributions paid into the pension scheme by or in respect of that member as increased or decreased dependent on investment returns;

“employer” means a person, including the Government of a Member state and a state-owned company that has entered into an employment contract, with a member of a relevant scheme;

“financially sound” means a pension scheme that has assets that exceed or are equal to its liabilities;

“financial year” means a 12-month period determined by the scheme as reflected in the rules of the scheme;

“fund” means the assets of a pension scheme;

“independent trustee” means a trustee that is not directly or indirectly associated with the employer, sponsor or the members of a pension scheme;

“non-occupational pension scheme” means a pension scheme in which a person applies to join in his or her individual capacity and is not dependent on an employer-employee relationship, and includes a retirement annuity fund, a preservation fund and a beneficiary fund;

“pension scheme intermediary” means a person licensed in terms of clause 0;

“authorised person” means any person licensed by the Regulatory authority;

“liquidator” means a person appointed for purposes of dissolution of a pension scheme under these Regulatory Framework with such necessary and legally accepted modifications as the Regulatory authority may direct;

“member” means a natural person who has acquired membership of a pension scheme in terms of the rules of the pension scheme;

“Minister” means the Minister of a member state responsible for pension laws in that member state;

“occupational pension scheme” means a pension scheme which a person joins as a result of an employee-employer relationship;

“pension scheme” or “scheme” means a pension scheme authorised in terms of clause 10 and set up to conduct pension scheme business;

“pension scheme business” means the business of undertaking liability in return for contributions from members and/or sponsoring employers to provide annuities or lump-sum payments and other related benefits, on the members’ attainment of retirement age or some other contingency;

“person” means a natural or legal person and includes an individual, a company, the government or a government agency and any other body recognized as a separate legal entity;

“preservation fund” means a scheme established for purpose of preservation of pension benefits;

“provident scheme” means any scheme that pays out all benefits in the form of a lump sum;

“principal officer” means a representative of the scheme, appointed in terms of clause 0 of this Regulatory Framework;

“Regulatory authority” means the Regulatory Authority of a member state responsible for pensions regulation;

“retirement annuity fund” means a pension fund set up for individual natural persons;

“sponsor” means any person that applies to set up a non-occupational pension scheme or an umbrella pension scheme;

“sponsoring employer” means an employer who contributes towards an occupational pension scheme for a member;

“stakeholder” means –

- (a) a member and any beneficiary of the scheme;
- (b) an employer; and
- (c) a former member who has a legitimate interest in the scheme;

“ultimate controller” means any person notwithstanding that the person exercises any influence on an authorised person, either directly or indirectly through a third party, and includes any person in accordance with whose direction and instructions the directors of the authorised person are accustomed to act and whose opinions are influential in the authorised person’s decision making process; and

“umbrella pension scheme” means a multi-employer pension scheme in which –

- (a) more than one employer participates;
- (b) the assets and liabilities in respect of the members employed by each participating employer are accounted for separately from those in respect of members employed by other participating employers; and
- (c) the financial position is determined separately in respect of the members employed by each participating employer.

3. Application of the Regulatory Framework

3.1 This Regulatory Framework shall apply to all pension schemes of CISNA member states.

3.2 Where a pension scheme is subject to the provisions of any other law in the member state, the provisions of that other law which would otherwise apply to such pension scheme, shall not apply wherever those provisions would be

inconsistent with the domestic pensions legislation to the extent of that inconsistency.

PART II – THE REGULATORY AUTHORITY

4. Administration of the Regulatory Framework

The Regulatory authority shall be responsible for compliance with this Regulatory Framework, and for that purpose-

- 4.1 shall ensure effective supervision, regulation, control and protection of pension scheme business; and
- 4.2 may appoint technically qualified personnel to ensure compliance with this Regulatory Framework.

5. Objects, functions and powers of the Regulatory authority

5.1 The Regulatory authority shall, in administering this Regulatory Framework –

- 5.1.1 have regard to the following Regulatory objectives –
 - (a) maintaining a fair, safe, stable and efficient pension industry for the benefit and protection of members and beneficiaries;
 - (b) promoting confidence, competition and sound business cooperation in the pension industry in the member state;
 - (c) ensuring fair treatment of members and beneficiaries;
 - (d) ensuring that the activities of a pension scheme are not used in furtherance of, or for a purpose connected with, a financial crime; and
 - (e) ensuring the sustainable growth of the pension industry in a member state;
- 5.1.2 discharge its functions in a manner which it considers most appropriate for the purpose of meeting the Regulatory objectives set out in paragraph 5.1.1, taking into account –
 - (a) the need to balance the Regulatory objectives;
 - (b) the need to establish and maintain the good repute of a member state as a sound financial centre and of enhancing its competitive position;
 - (c) the duties and responsibilities of those who operate and administer pensions schemes;
 - (d) the need to use resources committed to supervision in an efficient and economic manner;
 - (e) the benefit of promoting public understanding of the pension industry; and
 - (f) the best economic interests of a member state; and
- 5.1.3 have such powers as are necessary in the attainment of its objects and discharge of its functions in terms of this Regulatory Framework, and shall, in particular, have the power to -

- (a) request any information, record or document in relation to any pension scheme;
- (b) carry out, at any time, on-site inspections on the business premises of a pension scheme and audit its books or records;
- (c) order that an investigation should be conducted into any pension scheme;
- (d) appoint a curator in relation to the whole or part of a pension scheme whose authorisation has been suspended, terminated or otherwise revoked;
- (e) apply to court for the freezing of assets of any person connected with an offence under this Guideline or regulations made under it;
- (f) give any directive or take any action necessary to achieve the objects of this Regulatory Framework;
- (g) prescribe minimum investment requirements;
- (h) prescribe limitations on geographic location in which pension scheme monies may be invested; and
- (i) where applicable impose levies or other charges on pension schemes and authorised persons authorised by the regulatory authority.

5.2 To maintain adherence to internationally accepted standards for pension supervision and the general development of the pension industry in a member state, the Regulatory authority shall-

5.2.1 develop relations and co-operate with foreign pension supervisors, regional and international associations of pension supervisors and other regional and international associations or bodies relevant to the functions of the regulatory authority; and

5.2.2 advise on regulation and policies on matters related to the sound development and growth of the pension industry, including making recommendations on amendments or revisions of these Regulatory Framework, regulations or any other law related to pension schemes.

6. Annual report by the Regulatory authority

The Regulatory authority shall, within six (6) months after the end of each year ending on 31st December, furnish to CISNA a report on the enforcement of the Regulatory Framework during that year, together with an overview of the pension industry in a member state.

PART III – AUTHORISATION OF PENSION SCHEMES

7. Categories and business of pension schemes

7.1 Pension schemes in a member state may be categorized into the following-

7.1.1 Occupational pension schemes;

7.1.2 Non-occupational pensions schemes; and

7.1.3 Umbrella pension schemes.

7.2 A pension scheme is prohibited from conducting any business other than pension scheme business, unless the Regulatory authority has approved the conducting of such other business.

8. Pension scheme to be authorised

- 8.1 No person shall conduct pension scheme business in a member state unless that person is authorised as a pension scheme as contemplated under this Regulatory Framework.
- 8.2 No person shall -
- 8.2.1 without the approval of the Regulatory authority, apply to his business or undertaking a name which includes the words “Pension scheme”, “Provident scheme” “Preservation fund”, “Beneficiary fund”, “Retirement annuity fund”, “Umbrella scheme” or any permutation thereof that is or is likely to lead to persons to believe that he carries on pension scheme business;
 - 8.2.2 perform any act which indicates that he carries on or is authorised to carry on pension scheme business, unless the Regulatory authority has authorised such business or undertaking as a pension scheme in accordance with this Regulatory Framework;
 - 8.2.3 collect or repatriate, or facilitate the collection or repatriation of, contributions to an unauthorised person.
- 8.3 Subject to the transitional requirements under Part XVI, any person who contravenes clauses 8.1 or 8.2 shall be liable to a prescribed administrative penalty or fine.

9. Application for authorisation of a pension scheme

- 9.1 A person who intends to operate a pension scheme in a member state shall make an application for authorisation to the Regulatory authority in the form and manner as prescribed by the Regulatory authority.
- 9.2 Every application made as contemplated under clause 9.1 shall be accompanied by-
- 9.2.1 the names, addresses, and particulars of-
 - (a) the persons constituting the governing body of the proposed pension scheme;
 - (b) the sponsoring employer, if applicable;
 - 9.2.2 an indication of:
 - (a) the category of pension scheme for which it has applied;
 - (b) whether the pension scheme is a provident scheme or not;
 - (c) in the case of a non-occupational pension scheme, whether the scheme is a retirement annuity fund, preservation fund or beneficiary fund;
 - 9.2.3 a copy of the rules of the proposed scheme;
 - 9.2.4 a certificate by an actuary as to the soundness of such rules from a financial point of view;
 - 9.2.5 the applicable fee as prescribed by the Regulatory authority;
 - 9.2.6 in the case of a scheme in existence at the commencement of this Regulatory Framework -

- (a) the documents governing the formation of the scheme, including the constitution of the scheme, trust deed, charter, or articles of incorporation, as the case may be;
 - (b) the relevant financial statements of the scheme for the last two financial years immediately preceding the year on which the application is made; and
 - (c) a statement showing in detail the latest actuarial valuation report;
- 9.2.7 such other information or document as may be specified or requested by the Regulatory authority.

10. Authorisation of a pension scheme

- 10.1 Where an application is made in terms of clause 9, the Regulatory authority shall authorise the applicant if it is satisfied that the following authorisation criteria is met-
- 10.1.1 the rules of the scheme are consistent with this Regulatory Framework;
 - 10.1.2 the scheme has a sound financial position;
 - 10.1.3 the scheme shall be managed by a board of trustees that meets the fit and proper criteria as prescribed by the Regulatory authority;
 - 10.1.4 the authorisation of the scheme shall not be contrary to public interest; and
 - 10.1.5 the application complies with other conditions as prescribed by the Regulatory authority.
- 10.2 If the Regulatory authority is satisfied that the applicant meets the criteria for authorisation in terms of clause 10.1, Regulatory authority may, subject to such conditions as it may determine, authorise the applicant for the category of pension scheme for which it has applied.
- 10.3 Where the Regulatory authority decides to authorise the applicant as a pension scheme in terms of clause 10.2, the Regulatory authority shall-
- 10.3.1 notify the applicant, in writing, of its decision to approve the application; and
 - 10.3.2 issue a certificate of authorisation of the pension scheme to the applicant,
- within ninety (90) days of the receipt of a complete application.
- 10.4 The Regulatory authority may decline an application for authorisation of a pension scheme, if it appears to the Regulatory authority that the applicant does not meet the requirements and the criteria prescribed by the Regulatory authority.
- 10.5 Where an application has been declined in terms of clause 10.4 -
- 10.5.1 the Regulatory authority shall, in writing,
 - (a) inform the applicant of the decision to decline the application; and
 - (b) indicate the reasons for the decision,

within ninety (90) days of the receipt of a complete application; and
10.5.2 the applicant may resubmit an application for authorisation in terms of clause 9 after having addressed the concerns raised in clause 10.5.1 (b) above.

11. Effect of authorisation of pension scheme

- 11.1 Any pension scheme authorised in accordance with these Regulatory Framework, shall -
- 11.1.1 become a body corporate, governed by a board of trustees, capable of suing and being sued in its own name, of owning or holding property, and of doing or performing all such acts as may be necessary or incidental to the exercise of its powers or the performance of its functions in terms of its rules; and
- 11.1.2 assume liability for and guarantee the benefits offered to its members in terms of the rules.
- 11.2 Notwithstanding anything to the contrary in any written law, memorandum or articles of incorporation, constitution or rules of any person having control of the business of a pension scheme, all the assets, rights, liabilities and obligations pertaining to the business of a pension scheme shall be deemed to be assets, rights, liabilities and obligations of the pension scheme to the exclusion of any other person.
- 11.3 No person shall have a claim on the assets or rights, or be responsible for any liabilities or obligations of the scheme under clause 11.2 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 pension scheme.
- 11.4 The assets, rights, liabilities and obligations of a scheme, including any assets held by any person in trust for the pension scheme, existing immediately before its authorisation, shall vest in and devolve upon the pension scheme without any formal transfer or cession.
- 11.5 A pension scheme shall be exempt from the payment of transfer duty, stamp duty, registration fees or charges related to the vesting or devolution as per clause 11.4.
- 11.6 Process in any legal proceedings against any registered pension scheme may be served by leaving it at the pension scheme's main registered office, and in the event of such place having ceased to exist, service upon the Regulatory authority shall be deemed to be service upon the pension scheme.

PART IV – RULES OF PENSION SCHEME AND PENSION SCHEME

CONTRACT

12. Matters to be included in rules of a pension scheme

The rules of a pension scheme shall be written in an official language of the member state and shall, subject to regulations, state -

- 12.1 the name of the pension scheme and the physical address of its registered office;
- 12.2 the category, type and object of the pension scheme;
- 12.3 the requirements for admission to membership and the circumstances under which membership is to cease;
- 12.4 the conditions under which any member or other person may become entitled to any benefit and the nature and extent of any such benefit;
- 12.5 the appointment, removal from office, powers and remuneration, if any, of officers of the pension scheme;
- 12.6 the powers of investment of schemes;
- 12.7 the manner in which any actuarial surplus will be distributed to stakeholders;
- 12.8 the manner in which any actuarial deficit will be financed;
- 12.9 the manner in which benefits are calculated;
- 12.10 the manner in which contracts and other documents binding the pension scheme shall be executed;
- 12.11 the manner of altering and rescinding any rules, and of making additional rules;
- 12.12 the appointment of the auditor of the scheme and the duration of such appointment;
- 12.13 the manner in which any disputes between the pension scheme and its members or any person whose claim is derived from a member shall be settled;
- 12.14 the custody of any title deeds, securities, and other documents belonging to or held by the scheme;
- 12.15 the manner in which and the circumstances under which the pension scheme shall be wound up; and
- 12.16 such other requirements as may be prescribed by the Regulatory authority.

13. Amendment of rules

- 13.1 A pension scheme may, in the manner prescribed by its rules, pass a resolution to amend or replace any rule or make additional rules, but no such amendment, replacement, or addition shall be valid-
 - 13.1.1 if it purports to affect any right of a creditor of the pension scheme, other than as a member or beneficiary thereof; and
 - 13.1.2 unless it has been approved by the Regulatory authority.
- 13.2 The board of trustees shall, within one month of the passing of the resolution approving an amendment or replacement of the rules, submit such number of copies of the amendment or replacement rules to the Regulatory authority, together with such documentation or information as may be prescribed by the Regulatory authority.
- 13.3 The Regulatory authority shall approve an amendment or replacement of the rules if it is satisfied that the amendment or replacement-

- 13.3.1 is approved by at least a two-thirds majority vote of the members of the scheme;
 - 13.3.2 is consistent with this Regulatory Framework or any other law administered by the Regulatory authority;
 - 13.3.3 will not render the pension scheme unable to maintain a sound financial position;
 - 13.3.4 does not adversely affect the ability of the board of trustees to manage the pension scheme with integrity, prudence and professional skill;
 - 13.3.5 is not contrary to public interest; or
 - 13.3.6 will not adversely affect any creditor of the pension scheme.
- 13.4 The Regulatory authority may refuse to approve the amendment or replacement if it has the effect of-
- 13.4.1 reducing any benefit that has accrued to a member or beneficiary in respect of his or her membership prior to the amendment or replacement; or
 - 13.4.2 unreasonably prejudicing any beneficiary or group of beneficiaries.
- 13.5 Notwithstanding the provisions of this clause, the Regulatory authority may at any time direct that the rules be amended to comply with the provisions of this Regulatory Framework or any regulations made pursuant to this Regulatory Framework.
- 13.6 The Regulatory authority may at any time, require a scheme to consolidate its rules and amendments or replacements into a set of revised rules.

14. Binding effect of rules of pension scheme

The rules of a pension scheme and any amendment thereof shall be binding and legally enforceable on -

- 14.1 the pension scheme concerned and any of its authorised persons;
- 14.2 the pension scheme's members and beneficiaries;
- 14.3 the employers, where the employer is a party; and
- 14.4 any person who claims any benefit under the rules or whose claim is derived from a person so claiming.

15. Pension scheme contract

- 15.1 A non-occupational pension scheme is required to provide every member of the scheme with a contract as evidence of membership that clearly sets out the obligations of the scheme to the member.
- 15.2 The Regulatory authority may issue regulations specifying the contents of the non-occupational pension scheme contract.

PART V – GOVERNANCE OF PENSION SCHEME

16. Board of trustees of a pension scheme

- 16.1 Every pension scheme shall have a board of trustees, which shall be its governing body.
- 16.2 A person appointed or elected as a member of the board of trustees shall meet the fit and proper criteria prescribed by the Regulatory authority.
- 16.3 The board of trustees of a pension scheme shall comprise of an odd number of at least five members, and not more than eleven members, except where the Regulatory authority has, on application, permitted a number more than the aforesaid.
- 16.4 Where the pension scheme is-
 - 16.4.1 an occupational pension scheme, the sponsoring employer(s) have the right to appoint trustees, provided that the employer appointed trustees shall be less in number than the member elected trustees;
 - 16.4.2 a non-occupational pension scheme, the pension scheme must have at least one independent trustee, and the sponsor of the pension scheme has the right to appoint trustees, provided that the sponsor appointed trustees shall be less in number than the member elected trustees;
 - 16.4.3 an umbrella pension scheme, the pension scheme must have at least one independent trustee, and the sponsor of the pension scheme and the sponsoring employer(s) have the right to appoint trustees, provided that the total of the sponsor appointed trustees and sponsoring employer(s) appointed trustees shall be less in number than the member elected trustees.

17. Functions of board of trustees

- 17.1 The function of a board of trustees shall be to manage a pension scheme in the best interest of its members, and in terms of any applicable laws, regulations and the rules.
- 17.2 A board of trustees shall, in pursuing its functions-
 - 17.2.1 adopt a code of conduct which shall provide for the following conditions and such other conditions as may be prescribed by the Regulatory authority-
 - (a) a duty to act with due care, diligence and good faith;
 - (b) a duty to manage conflict of interest and to act with impartiality in respect of all members and beneficiaries; and
 - (c) a duty to obtain independent and objective expert advice on matters where board members lack sufficient expertise;
 - 17.2.2 develop, adopt and implement an investment policy, communication policy and a risk management policy that complies with such regulations or standards as may be prescribed by the Regulatory authority; and
 - 17.2.3 assess its performance at least once a year, using criteria consistent with that prescribed by the Regulatory authority.

18. Duties of board of trustees

- 18.1 The board of trustees shall appoint and manage authorised persons who will perform the functions required by a pension scheme, including-
- 18.1.1 an administrator who shall-
 - (a) maintain the membership records of a pension scheme;
 - (b) manage collection of contributions and payment of benefits on behalf of a pension scheme; and
 - (c) generally, assist in the administration of a pension scheme;
 - 18.1.2 one or more asset managers who are competent to implement the investment policy;
 - 18.1.3 a custodian who shall hold the assets of a pension scheme;
 - 18.1.4 one or more insurers, where the pension scheme provides any benefits that require insurance, if applicable;
 - 18.1.5 an auditor;
 - 18.1.6 an actuary; and
 - 18.1.7 any other person that the board deems necessary.
- 18.2 The board of a pension scheme shall ensure that the assets of the scheme are at all times held by a custodian.
- 18.3 Notwithstanding clause 18.1.6, the Regulatory authority may, on application, exempt a defined contribution pension scheme from appointing an actuary on such conditions as it may consider appropriate.
- 18.4 The Regulatory authority may vary any conditions fixed in terms of clause 18.2, or cancel any exemption granted in terms of that clause.
- 18.5 The appointments under clause 18.1 shall be subject to the following conditions -
- 18.5.1 the authorised person is authorised to perform the relevant service;
 - 18.5.2 the board has taken reasonable steps to assure itself that the authorised person has adequate systems and controls to perform the functions that have been delegated to them;
 - 18.5.3 the board has a contract with the authorised person which meets the requirements that may be prescribed by the Regulatory authority;
 - 18.5.4 the board monitors the performance of the authorised person in terms of benchmarks described in the contract; and
 - 18.5.5 the board reviews the appointment of the authorised person at least once every three years.
- 18.6 The board shall-
- 18.6.1 ensure that proper registers and records of the operations of the pension scheme are kept, including proper minutes of all resolutions passed by the board;
 - 18.6.2 take all reasonable steps to ensure that contributions are paid on time to the pension scheme;

- 18.6.3 ensure that adequate and appropriate information is communicated to stakeholders informing them of their rights, benefits and duties in terms of the rules, together with such matters as may be prescribed by the Regulatory authority;
- 18.6.4 ensure that the rules, the operation and administration of the pension scheme complies with the laws administered by the Regulatory authority; and
- 18.6.5 ensure that the pension scheme is protected against errors or dishonesty of the principal officer, the board, or any other official of the scheme, either by way of guarantee by the employer or by way of insurance of such amounts as the board, acting on the expert advice and after taking account of the risks to which the scheme is exposed to, considers adequate.

19. Duties of authorised persons

- 19.1 A authorised person appointed in terms of clause 18.1 shall -
 - 19.1.1 act solely in the interest of pension scheme members and their beneficiaries;
 - 19.1.2 carry out its duties prudently; and
 - 19.1.3 avoid conflicts of interest and act impartially.
- 19.2 A authorised person shall report to the Regulatory authority any activity of a pension scheme that it is aware of or is suspicious of, within fourteen (14) days of being aware of, or being suspicious, that the activity is not compliant with the provisions of the law administered by the regulatory authority or any other law.

20. Principal office

- 20.1 A pension scheme shall have a principal office in a Member state, the location of which shall be subject to the approval of the Regulatory authority.
- 20.2 The board of a pension scheme shall request the Regulatory authority for approval prior to changing the address of the principal office of the scheme.

21. Principal Officer

- 21.1 A pension scheme shall, with prior approval of the Regulatory authority, appoint a principal officer in terms of its rules, and such person shall be appointed if he or she -
 - 21.1.1 is resident in a Member state; and
 - 21.1.2 satisfies the fit and proper requirements for appointment of a principal officer as may be prescribed by the Regulatory authority.
- 21.2 A pension scheme may, with the approval of the Regulatory authority appoint an acting principal officer, in the absence of the substantive principal officer, or where the principal officer is unable to perform his or her duties. .

- 21.3 Where anything is required to be done by or in terms of the law applicable to a pension scheme, it shall be the duty of a principal officer to ensure that whatever is required is in fact done.
- 21.4 A principal officer shall report to the Regulatory authority within five (5) working days of being aware of any activity of a pension scheme –
- 21.4.1 that does not comply with the provisions of the law administered by the regulatory authority or any other relevant law ; or
- 21.4.2 that may prejudice the interests of the members.
- 21.5 Where a pension scheme fails to appoint a principal officer, the Regulatory authority shall be entitled to institute any action including penal actions against the pension scheme or its board of trustees for such failure.
- 21.6 Where a pension scheme employs a principal officer without having obtained the approval of the Regulatory authority, the Regulatory authority shall be entitled to impose appropriate penal measures against such pension scheme and or its board of trustees.

22. Resignation or termination of appointment of Principal Officer or Authorised person

- 22.1 Any principal officer or authorised person who resigns from his or her position with a pension scheme or whose appointment has been terminated by a pension scheme shall, within fourteen (14) days of the resignation or termination, inform the Regulatory authority of the resignation or termination in writing, and of any matter relating to the affairs of the scheme of which the principal officer or authorised person became aware of in the performance of that person's duties, and which may jeopardise the scheme's ability to comply with its obligations. .
- 22.2 A pension scheme shall be obliged to inform the Regulatory authority in writing of the resignation or termination of the appointment of the principal officer or authorised person and the reasons for the termination within fourteen (14) days of the termination.
- 22.3 Any information submitted by the principal officer or authorised person in terms of clause 22.1 shall not be used by the Regulatory authority in any subsequent criminal proceedings against the principal officer or authorised person.
- 22.4 A person who contravenes this clause shall be liable to an administrative fine.

PART VI – FINANCIAL REQUIREMENTS

23. Accounts

- 23.1 A pension scheme shall maintain such books of accounts and other records as may be necessary for the purpose of the pension scheme.
- 23.2 A pension scheme shall, within four (4) months after the end of its financial year, submit to the Regulatory authority audited accounts and such other statements and reports in the prescribed format.

- 23.3 If the Regulatory authority is not satisfied with any audited accounts, statements or reports submitted in terms of clause 23.2, the Regulatory authority may direct the pension scheme to re-submit the required information or provide further information.
- 23.4 A pension scheme shall comply with any direction made under clause 23.3 within the period stipulated by the Regulatory authority.
- 23.5 The provisions of clause 22 apply to the auditor of a pension scheme, in so far as they can be applied with the necessary changes.

24. Investigations by Actuary

- 24.1 Subject to clause 18.2, a pension scheme shall cause its financial condition to be investigated by and reported upon by an actuary at such time and in such a manner as may be determined by the Regulatory authority.
- 24.2 An actuarial report made in terms of clause 24.1 shall be submitted to the Regulatory authority within six (6) months after the end of its financial year.
- 24.3 If an actuarial report reveals an actuarial surplus, the board may apportion the actuarial surplus between stakeholders in a manner that is specified in the rules of the scheme.
- 24.4 Where the actuarial surplus referred to in clause 24.3 is apportioned to -
 - 24.4.1 a current member, it shall be used to improve benefits in terms of the rules and shall not be paid to the member until such time as the member qualifies for a benefit in terms of the rules;
 - 24.4.2 a former member, it shall be paid out in cash to the former member, less tax payable, if any, on that amount; or
 - 24.4.3 an employer, it shall be credited to an employer reserve account established in terms of the rules, and any credit balance which may be utilised at the request of the employer for such purposes as are provided in the rules.

25. Maintenance of financially sound condition

- 25.1 A pension scheme shall conduct its activities so as to remain in a financially sound condition at all times.
- 25.2 Where an actuarial report reveals an actuarial deficit or where the Regulatory authority, after examination of any return or report of a pension scheme, is of the opinion that the scheme is not in a financially sound condition, and a satisfactory arrangement setting out measures for the purpose of bringing the scheme into a sound financial condition within a reasonable period have not been submitted to it -
 - 25.2.1 the Regulatory authority shall direct the scheme to submit an arrangement setting out measures for the purpose of bringing the scheme into a financially sound condition within a period which it deems reasonable; and

- 25.2.2 the scheme shall submit such arrangement to the Regulatory authority within thirty (30) days from the date directed under paragraph 25.2.1, together with a report on the arrangement by the actuary.
- 25.3 The Regulatory authority may after considering an arrangement submitted in terms of clause 25.2 –
- 25.3.1 approve the arrangement, subject to such conditions, if any, as it deems fit; or
- 25.3.2 reject the arrangement, whereupon a scheme shall submit a new arrangement in accordance with the directions of the Regulatory authority.
- 25.4 Where, after consideration of an arrangement submitted in terms of clause 25.2, the Regulatory authority is of the opinion that it is impossible or impractical to bring a scheme into a sound financial condition within a reasonable period, the Regulatory authority may direct that the whole or any part of the business of the scheme be wound up.

PART VII – MANAGEMENT OF PENSION SCHEME

26. Duty to develop prospectus

- 26.1 A pension scheme shall -
- 26.1.1 develop a written prospectus which contains true, correct and up to date information in relation to that pension scheme; and
- 26.1.2 make the prospectus available to any prospective member or member of the scheme.
- 26.2 The prospectus shall include the information necessary for prospective members to make an informed judgment concerning the pension scheme, including details on -
- 26.2.1 the contributions;
- 26.2.2 benefits;
- 26.2.3 investments; and
- 26.2.4 risks attached to the investments and pension scheme in general.
- 26.3 The information given under clause 26.2 shall be meaningful, accurate and complete, and demonstrably written in a manner that enhances member understanding.
- 26.4 The Regulatory authority may prescribe further requirements as to the content of a prospectus.

27. Scheme information and benefit statement

- 27.1 A pension scheme shall ensure that each member is given scheme information and a benefit statement on an annual basis.
- 27.2 The Regulatory authority may prescribe requirements as to the contents and form of the scheme information and benefits statements.

28. Requests for information

- 28.1 A pension scheme shall comply with any request by a member-
- 28.1.1 for information about the scheme; or
 - 28.1.2 for information about the member's entitlements in the scheme.
- 28.2 A pension scheme shall not be obliged to comply with a request under clause 28.1 if a member had requested for information and the pension scheme had complied with such a request within six months of the previous request being made.

29. Payment of contributions to occupational and umbrella pension schemes

- 29.1 Any contribution payable in respect of a member of an occupational or umbrella pension scheme shall be paid to the scheme by or on behalf of the member within a period of seven (7) days after the expiration of the period in respect of which the contribution is being paid.
- 29.2 The board of trustees shall, not later than the first business day following the day on which the scheme received the contribution, ensure that all moneys received by the scheme are invested in accordance with the investment policy of the scheme.
- 29.3 An employer who fails to remit contributions to an occupational or umbrella pension scheme within seven (7) days of the expiry of the period for which it was due shall-
- 29.3.1 be liable to pay interest on the contributions at a rate determined by the Regulatory authority in the regulations; and
 - 29.3.2 pay the prescribed administrative penalty for each day that the remittance of the contributions remains outstanding.
- 29.4 The Regulatory authority may, by regulations, determine –
- 29.4.1 whether and to what extent an intermediary may receive and or remit contributions to an occupational or umbrella pension scheme; and
 - 29.4.2 the modalities for the collection of contributions in the case of an occupational pension scheme.

30. Payment of contributions to non-occupational pension schemes

- 30.1 The rules of a non-occupational pension scheme may provide that contributions be paid at variable intervals and amounts.
- 30.2 The Regulatory authority may, by regulations, determine -
- 30.2.1 whether and to what extent an intermediary may receive and or remit contributions to a non-occupational pension scheme; and
 - 30.2.2 the modalities for the collection of contributions for a non-occupational pension scheme.

31. Schedules of contributions

- 31.1 Subject to clause 0, a pension scheme shall prepare, maintain and, from time to time, revise a schedule of contributions showing-

- 31.1.1 the rates of contributions payable and the amounts usually paid towards the scheme by the sponsoring employer and the members, as the case may be; and
- 31.1.2 the dates on or before which such contributions are to be paid.
- 31.2 The Regulatory authority may prescribe the form and manner in which a schedule of contributions or any matters related to contributions in general shall be prepared and maintained.

32. Exclusion from member's estate

Notwithstanding anything to the contrary contained in any law or in the rules, any benefit payable by a pension scheme shall not form part of the assets of the estate of a member or be subject to any insolvency proceedings of the member's estate.

33. Allowable deductions from pension benefits

A pension scheme may deduct an amount from a member's benefit in respect of -

- 33.1 maintenance of dependants of a member by court order;
- 33.2 a debt arising from a housing loan issued or guarantee granted by the pension scheme in respect of that member's housing loan;
- 33.3 an amount for which the employee is liable under a guarantee issued by the employer for purposes of obtaining a housing loan; and
- 33.4 an amount representing the loss suffered by the employer due to any unlawful activity of the member for which judgement has been obtained against the member in a court or a written acknowledgement of liability signed by the member before a commissioner of oaths.

34. Requirement for death benefit nomination form

- 34.1 A pension scheme shall-
 - 34.1.1 require every member to fill out a death benefit nomination form detailing the nominated beneficiaries in the event of the death of the member; and
 - 34.1.2 on an annual basis, request the members to update the death benefit nomination form.
- 34.2 Where a member fails to update the death benefit nomination form as required in clause 34.1.2, the latest death benefit nomination form may be used in the event of the death of a member.

35. Death benefits

- 35.1 On the death of a member, the trustees shall, distribute the benefits within three (3) months in accordance with the death benefit nomination form, subject to the rules of the pension scheme, the inheritance laws of a Member state and any applicable law.
- 35.2 For the purposes of this clause, a payment by a pension scheme to a dependant shall be deemed to include a payment made by the scheme to -

- 35.2.1 a beneficiary fund established as contemplated in this Regulatory Framework; and
- 35.2.2 a trust account for the dependant, for the benefit of the dependant contemplated in this clause.
- 35.3 Subject to clause 35.1, where a payment is made to a beneficiary fund in terms of clause 35.2.2 -
 - 35.3.1 any assets held for the benefit of a deceased beneficiary in a beneficiary fund must be paid into the estate of such beneficiary;
 - 35.3.2 any benefit payable to a minor dependant or minor nominee, may be paid in more than one instalment in such amounts as the board of trustees may from time to time consider appropriate and in the best interest of such dependant or nominee; and
 - 35.3.3 the board of trustees of the beneficiary fund shall pay to a dependant or nominee any balance owing to such a dependant or nominee at the date on which he or she attains the age of majority.
- 35.4 A benefit dealt with in terms of this clause, payable to a major dependant or major nominee, may be paid in more than one instalment if the dependant or nominee has consented thereto in writing.
- 35.5 The amount of the instalments, payment intervals, interest to be added and other terms and conditions shall be disclosed in a written agreement between the board of trustees of the beneficiary fund and the pension scheme which may be cancelled by either party on written notice not exceeding 90 days.
- 35.6 If the agreement contemplated in clause 35.5 is cancelled, the balance of the benefit shall be paid in full to the dependent or nominee.

36. Withdrawal benefits

- 36.1 Where a member withdraws from a pension scheme in accordance with the rules of the pension scheme, the scheme shall pay the benefits to which that member is entitled within a period of three (3) months from the date of withdrawal.
- 36.2 If a pension scheme delays the payment of benefits as contemplated in clause 36.1 it shall be liable to late payment interest on the withdrawal benefits during that period and such interest shall be paid in addition to the benefits payable in respect of the member's withdrawal.
- 36.3 Nothing in this clause shall be construed to prevent a pension scheme from seeking redress against any person as a result of liability arising under clause 36.2.

37. Other benefits

All other benefits provided by a pension scheme shall be dealt with in accordance with the rules of the pension scheme.

38. Preservation of benefits

Where a member withdraws from a pension scheme, the member may either -

- 38.1 retain such benefits in the pension scheme, if the rules permit;

- 38.2 transfer the benefit to a preservation fund; or
- 38.3 transfer the benefits to a pension scheme where the person has acquired membership.

39. Unclaimed benefits

- 39.1 A pension scheme shall have a process for tracing the beneficiaries of unclaimed benefits.
- 39.2 Where a benefit remains unclaimed for a period of more than one (1) year, the pension scheme shall, in a newspaper of wide circulation and through electronic media, publicise the names of the beneficiaries of the unclaimed benefits.
- 39.3 A pension scheme holding any unclaimed benefits shall annually report such holdings to the Regulatory authority, and pay or deliver all such benefits listed in the report in a manner and time as may be prescribed by the Regulatory authority.

40. Contributions and benefits not to be assigned or pledged

- 40.1 Notwithstanding the rules of a pension scheme, except for deductions permitted in terms of clause 0, amounts paid as contribution to a pension scheme in respect of a member, member's entitlement to benefits in a pension scheme, and amounts paid out of a pension scheme by way of benefits in respect of a member, shall not -
 - 40.1.1 be capable of being assigned, or transferred, or pledged or charged or otherwise be subject to a security interest, however described; or
 - 40.1.2 be liable to be attached, sequestrated, or levied upon for or in respect of any debt or claim whatsoever.
- 40.2 A pension scheme shall not recognize, or in any way encourage or sanction, a purported assignment, transfer of, or the granting of a pledge, charge or other security interest, however described, in respect of a member's entitlements to benefits.

41. Risk management

- 41.1 The board of a pension scheme shall establish a risk management system for the pension scheme that includes setting and monitoring of standards and limits so that all major risks are identified, measured, monitored and controlled on an on-going basis.
- 41.2 The Regulatory authority may prescribe requirements relating to the risk management of a pension scheme.

42. Reporting

A pension scheme is required to -

- 42.1 submit reports to the Regulatory authority in such form and manner, and at such frequency, as may be determined by the Regulatory authority; and
- 42.2 submit any information that the Regulatory authority may request.

PART VIII - PENSION SCHEME INVESTMENTS

43. Holding of assets

- 43.1 The assets of a pension scheme shall be held separately from and shall not form part of the assets of any other person.
- 43.2 All the assets of a pension scheme, including title deeds, securities, insurance policies or units in collective investment schemes shall be registered in the name of -
 - 43.2.1 the pension scheme; or
 - 43.2.2 a nominee appointed by the board and approved by the Regulatory authority.
- 43.3 No person shall hold the assets of a pension scheme for safekeeping unless the person is authorised by the Regulatory authority to provide custody services.

44. Change of custodian

- 44.1 A pension scheme may change the safekeeping of a pension scheme's assets from one custodian to another subject to the Regulatory authority's approval.
- 44.2 Change of custodian shall be effected in a manner that ensures continuous performance of the custodial duties in respect of the pension scheme assets.
- 44.3 Where a contract with a custodian is terminated, the custodian shall release the pension scheme assets in its custody and all documents relating to the performance of its duties to a new custodian within a period agreed by the parties and without undue delay.
- 44.4 The original custodian is liable for performance of its duties until all documents in clause 44.3 and assets have been completely transferred.

45. Investment policy

- 45.1 Every pension scheme shall have a written investment policy on the investment of its assets.
- 45.2 The investment policy for pension schemes in which members make investment choices shall ensure that -
 - 45.2.1 an appropriate spread of investment options, including a default option, are provided for members;
 - 45.2.2 members have access to the information necessary to make investment decisions; and
 - 45.2.3 the investment policy shall classify the investment options according to the investment risk that members bear.
- 45.3 The Regulatory authority may prescribe requirements in respect of -
 - 45.3.1 the kind of assets, including any limits related thereto;
 - 45.3.2 the jurisdictions, including any limits related thereto;
 - 45.3.3 diversification of assets;
 - 45.3.4 the minimum contents of an investment policy;

45.3.5 the implementation, monitoring and review of the investment policy;
and

45.3.6 any other matter relating to the investment of pension scheme assets.

46. Prohibition concerning assets

46.1 The assets of a pension scheme shall not be used for any purpose other than for the interest of its beneficiaries and for the settlement of the expenses of the scheme.

46.2 No person shall manage or invest the assets of a pension scheme unless that person is -

46.2.1 a pension scheme, where authorisation has been sought from the Regulatory authority;

46.2.2 an authorised asset manager; or

46.2.3 an authorised insurance company, where that insurance company issues insurance policies to the pension scheme.

46.3 A person who invests the assets of a pension scheme shall not -

46.3.1 encumber the assets of the scheme under its management;

46.3.2 allow the assets of the scheme under its management to be held by a person other than a custodian; or

46.3.3 directly or indirectly borrow any asset of the scheme, or borrow against the security of the assets of a pension scheme, for any purpose.

46.4 The assets of a pension scheme may not be invested in derivatives for speculative purposes.

47. Invalidity of exclusion clauses

Any provision in any document to which a pension scheme is a party which purports to exempt any person that manages the assets of the scheme from liability for any failure to exercise due care and diligence in the discharge of its respective function shall be void.

48. Pension scheme assets to be invested at arm's length

48.1 A pension scheme shall not invest assets, whether by loan or otherwise, unless -

48.1.1 the scheme, or the entity acting on its behalf, and the other party to the transaction are dealing with each other at arm's length in respect of that transaction; and

48.1.2 the terms of the transaction are no more favourable to the other party than those that it is reasonable to expect would apply if the scheme, or the entity acting on its behalf, were dealing with the other party at arm's length in similar circumstances.

48.2 Clause 48.1 shall apply to any person investing the assets of a pension scheme.

PART IX – MERGERS, ACQUISITIONS AND TRANSFERS

49. Mergers, acquisitions and transfers

49.1 Subject to the provisions of this Part, and with the written approval of the Regulatory authority -

49.1.1 two or more authorised pension schemes may merge and become one pension scheme; or

49.1.2 a pension scheme may acquire all or any of the assets and liabilities of one or more pension schemes;

49.1.3 a pension scheme may transfer all or any of its assets and liabilities to another pension scheme.

49.2 No transaction involving the merger or acquisition of any business carried on by a pension scheme with any business carried on by any other person, irrespective of whether that other person is or is not a pension scheme, or the transfer of any business from a pension scheme to any other person shall have any force or effect unless -

49.2.1 a report on the proposed merger, acquisition or transfer, including a copy of every actuarial or other statement taken into account for the purposes of the merger, acquisition or transfer, have been submitted to the Regulatory authority;

49.2.2 the Regulatory authority has been furnished with such additional information or such other report as it may consider necessary;

49.2.3 the Regulatory authority is satisfied that the proposed merger, acquisition or transfer would not render any pension scheme which is a party thereto and which will continue to exist if the proposed transaction is completed, unable -

(a) to meet the requirements of these Regulatory Framework;

(b) to remain in a sound financial condition; or

(c) in the case of a scheme that is not in a sound financial condition, to attain such a condition within a period considered by the Regulatory authority to be satisfactory;

49.2.4 the Regulatory authority is satisfied that the provisions of the rules of every pension scheme which is a party to the merger, acquisition or transfer -

(a) have been complied with; or

(b) that adequate arrangements have been made to ensure that such provisions will be complied with at the appropriate time;

49.2.5 the Regulatory authority is satisfied that the proposed merger, acquisition or transfer has given full recognition to the members' rights and legitimate expectations in respect of benefits related to their membership prior to the effective date of the merger, acquisition or transfer; and

49.2.6 the Regulatory authority has forwarded a merger, acquisition or transfer certificate to a principal officer of every such scheme to the effect that all the requirements of this clause have been satisfied.

49.3 Where a new pension scheme is to be created as a consequence of the merger or transfer, a report required under clauses 49.2.1 and 49.2.2 shall include an application for authorisation of a new pension scheme.

50. Notice of merger, acquisition or transfer

50.1 Notwithstanding any provision in the rules of a scheme, the board of trustees shall give all stakeholders at least six weeks' written notice of the intention to lodge an application for merger, acquisition or transfer, together with such information as the Regulatory authority may require.

50.2 A notice referred to under clause 50.1 shall set out, in a language that the stakeholders can reasonably be expected to understand -

50.2.1 the terms of the proposed merger, acquisition or transfer;

50.2.2 the determination of the value of the scheme and the sharing of any reserves of the pension scheme; and

50.2.3 the application of the transfer value in the transferee pension scheme.

50.3 Stakeholders may in writing lodge an objection to the proposed merger, acquisition or transfer with the principal officer during the notice period specified under clause 50.1.

50.4 An objection lodged under clause 50.3 shall be considered by the board before submitting an application to the Regulatory authority, and a summary of any such objection and the action taken by the board in response to the objection shall be attached to the application submitted.

51. Rights of members upon receipt of notice of proposed merger, acquisition or transfer

51.1 A pension scheme that will cease to exist after the proposed merger, acquisition or transfer shall, prior to the effective date of the merger, acquisition or transfer -

51.1.1 inform all members of the proposed merger, acquisition or transfer;

51.1.2 give the members three (3) months to exercise their right to transfer their entitlements to a pension scheme that will result from the merger or acquisition, or to which the assets and liabilities of their pension scheme are proposed to be transferred as the case may be, or to transfer their entitlements to a pension scheme of their choice;

51.1.3 inform members of the consequences of not exercising their rights in clause 51.1.2 as per clause 51.2;

51.1.4 inform the members that they have a right to demand payment of their entitlements; and

51.1.5 inform the members about the potential tax consequences of terminating and receiving a pension pay out prior to retirement age.

51.2 A member who has not exercised his or her rights in terms of clause 51.1.1 above shall be considered to have accepted membership in a new scheme that results from the merger or acquisition, or to which the assets and liabilities of their scheme have been transferred.

52. Effects of merger, acquisition or transfer

- 52.1 Upon completion of a merger of two or more pension schemes -
- 52.1.1 any pension scheme that has ceased to have any assets and liabilities shall cease to exist and the Regulatory authority shall remove it from the register and cancel its authorisation; and
 - 52.1.2 where a new pension scheme is created as a result of the merger, the relevant assets and liabilities of the schemes that have so merged shall respectively vest in and become binding upon the resultant pension scheme.
- 52.2 Upon completion of a transfer of the assets and liabilities of a pension scheme the relevant assets and liabilities, or any portion thereof, shall respectively vest in and become binding upon the pension scheme to which they are transferred.

53. Alterations in the Register of Deeds

The officer responsible for deeds registry in which any deed or other document relating to any asset which is transferred in accordance with the provisions of clause 0 is registered shall upon service to him or her of such deed or other document make endorsements upon such deed or document and the alterations in the register kept by him or her that are necessary by reason of the merger, acquisition or transfer.

54. Rights of creditors

A merger, acquisition or transfer effected under this Part shall not deprive any creditor of any right or remedy which the creditor had prior to the date of the merger, acquisition or transfer.

PART X – TERMINATION AND WINDING UP

55. Voluntary winding up

- 55.1 A pension scheme shall not be voluntarily wound up without the prior written approval of the Regulatory authority.
- 55.2 The Regulatory authority may approve a voluntary winding up where a pension scheme, in a financially sound position, submits to the Regulatory authority a declaration that arrangements that meet the requirements prescribed by the Regulatory authority in respect of winding up procedures have been made to meet all its liabilities prior to the winding up.
- 55.3 Where the Regulatory authority approves a voluntary winding up under clause 55.2, the pension scheme shall -
- 55.3.1 immediately cease to carry on its activities, except the activities that are necessary for the purpose of effecting an orderly winding up; and
 - 55.3.2 wind up all operations undertaken.
- 55.4 A pension scheme shall -

- 55.4.1 not later than thirty (30) days from the date of receipt of approval under clause 55.2, ensure the delivery of a notice of voluntary winding up, specifying such information as the Regulatory authority may prescribe, to all the beneficiaries of the pension scheme or such other persons as the Regulatory authority may prescribe; and
- 55.4.2 cause to be published a notice of the voluntary winding up in such manner as the Regulatory authority may prescribe.
- 55.5 Where a pension scheme has fully discharged its obligations to members and beneficiaries in the manner prescribed by the Regulatory authority, the pension scheme shall cease to exist and the Regulatory authority shall remove it from the register and cancel its authorisation.

56. Winding up by Court

- 56.1 The Regulatory authority may make an application to the appropriate Court for the winding up of a pension scheme, the cost of which shall be borne by the pension scheme, where -
 - 56.1.1 the pension scheme violates the provisions of these Regulatory Framework, or any other applicable law;
 - 56.1.2 the Regulatory authority is satisfied that the pension scheme cannot be restored to a financially sound condition within a reasonable period; or
 - 56.1.3 it is in the interests of its members, beneficiaries, or the public for such winding up.
- 56.2 Where an application to the Court for the winding up of a pension scheme is made by a person other than the Regulatory authority, a copy of the application shall, at the same time, be served on the Regulatory authority who shall be entitled to be heard on the application.
- 56.3 The Regulatory authority shall be a party to any proceedings under any enactment relating to the winding up of the activities of a pension scheme, and the liquidator in such winding up shall provide the Regulatory authority with such information as the Regulatory authority may, from time to time, require about the activities of the pension scheme.

57. Provisions for winding up

The Regulatory authority may make provision for -

- 57.1 the distribution of the assets of a pension scheme in the case of winding up;
- 57.2 the distribution of the assets of a pension scheme in the case of the sponsoring employer's winding up;
- 57.3 the rights and obligations of a pension scheme and its members, beneficiaries and other interested parties in case of winding up; and
- 57.3 such other matters and procedures as it may determine.

PART XI – AUTHORISATION AND FUNCTIONS OF

ADMINISTRATORS AND INTERMEDIARIES

58. Requirement for authorisation

A person shall not act as an -

58.1 administrator; or

58.2 intermediary,

for a pension scheme in a Member state unless that person is authorised by the Regulatory authority.

59. Application for authorisation

59.1 An application to act an administrator or intermediary of a pension scheme shall be made in such form and manner as may be prescribed by the Regulatory authority.

59.2 The application shall -

59.2.1 state whether the applicant has the adequate professional, technical knowledge, experience or operational ability to perform the functions;

59.2.2 contain or be accompanied by any other information that the Regulatory authority may require for the purpose of determining the application;

59.2.3 contain the address of a place in a Member state for the service on the applicant of any notice or document required or authorised to be served on the applicant; and

59.2.4 be accompanied by the prescribed fee.

60. Authorisation of administrator or intermediary

60.1 If the Regulatory authority is satisfied that the applicant meets the criteria for authorisation in terms of clause 0, the Regulatory authority may, subject to such conditions as the Regulatory authority may determine, authorise the applicant.

60.2 Where the Regulatory authority decides to authorise the applicant in terms of clause 60.1, the Regulatory authority shall -

60.2.1 notify the applicant, in writing, of its decision to authorise the applicant; and

60.2.2 issue the appropriate certificate of authorisation to the applicant, within ninety (90) days of the receipt of a complete application.

60.3 The Regulatory authority may decline an application for authorisation, if it appears to the Regulatory authority that the applicant does not meet the prescribed requirements.

60.4 Where an application has been declined in terms of clause 60.3 -

60.4.1 the Regulatory authority shall, in writing-

(a) inform the applicant of the decision to decline the application; and

(b) indicate the reason for the decision, within ninety (90) days of the receipt of a complete application; and

60.4.2 the applicant may resubmit an application for authorisation in terms of clause 0 after having addressed the concerns raised in clause 60.4.1 (b) above.

61. Functions of administrator

- 61.1 An administrator of a pension scheme shall -
- 61.1.1 administer the pension scheme in accordance with any applicable regulations, the rules of the pension scheme and any other relevant law;
 - 61.1.2 at all times act in the best interest of the pension scheme and its members or beneficiaries;
 - 61.1.3 ensure proper administration of the pension scheme by -
 - (a) maintaining and updating the records and books of accounts of the pension scheme;
 - (b) processing contributions, benefit payments and any other transactions of the pension scheme; and
 - (c) producing accounts for audit;
 - 61.1.4 diligently prepare any other reports, statements or returns required in terms of the contract between the administrator and a pension scheme;
 - 61.1.5 generally, facilitate the proper administration of the pension scheme; and
 - 61.1.6 carry out any other function as may be prescribed by the Regulatory authority.
- 61.2 An administrator of a pension scheme shall not conduct any business other than the administration of pension schemes.

62. Functions of pension scheme intermediaries

- 62.1 A pension scheme intermediary shall -
- 62.1.1 provide potential members of a pension scheme with information and advice on the pension scheme;
 - 62.1.2 assist members in acquiring membership of a pension scheme;
 - 62.1.3 generally, assist or facilitate a member's participation in a pension scheme; and
 - 62.1.4 any other functions that the Regulatory authority may prescribe.
- 62.2 A pension scheme intermediary shall only market pension schemes that have been authorised by the Regulatory authority.

63. Pension scheme intermediary authorisation

A pension scheme intermediary shall provide, to potential members, a certificate issued by the pension scheme stating that –

- 63.1 the pension scheme intermediary is an agent of the pension scheme;
- 63.2 the pension scheme intermediary acts for and on behalf of the pension scheme in terms of a contract between the pension scheme and the pension scheme intermediary; and

63.3 the pension scheme accepts responsibility for the acts performed by the pension scheme intermediary within the scope of the contract.

64. Register of pension scheme intermediaries

64.1 A pension scheme shall maintain a register of all pension scheme intermediaries that act for and on its behalf, and the register shall be continually updated and be available to the Regulatory authority for reference or inspection purposes.

64.2 The register shall contain the name, business address and explain the specific powers the pension scheme intermediary has to act on behalf of the pension scheme.

PART XII – MARKETING AND SELLING OF PENSION SCHEMES

65. Prohibition against use of false or misleading information

65.1 No person may give false or misleading information, claims or statements, either orally or in writing, in the promotion or marketing of a pension scheme.

65.2 Where the Regulatory authority considers that information has been given in violation of clause 65.1 the Regulatory authority may prohibit continued publication or provision of such information and order that appropriate steps be taken to retract and stop continued publication or provision of such information by a specified deadline.

65.3 Any person who has acted in violation of clause 65.1 and has thereby caused loss to another person shall be fully liable for any loss suffered by that other person.

65.4 The Regulatory authority may prescribe requirements for the promotion or marketing of pension schemes and the content of any advertisement or promotional material relating to any pension scheme.

66. Undesirable business practices

66.1 The Regulatory authority may declare a particular business practice to be undesirable for -

66.1.1 all or a particular category of pension schemes; or

66.1.2 all or a particular category of persons who render services in respect of pension schemes.

66.2 Where the Regulatory authority considers that a person who renders services in respect of a pension scheme is engaging in an undesirable business practice, the Regulatory authority may direct that person to immediately cease that practice.

67. Disclosure of fees related to pension scheme membership

67.1 A person who provides services related to a pension scheme shall disclose all the fees charged or to be charged and shall properly disclose such fees to the pension scheme or any person who contemplates to become a member in a pension scheme.

- 67.2 The fees referred to in clause 67.1 shall be described in a manner that is designed to be easily understood and shall be written in easily understandable language.
- 67.3 The Regulatory authority may prescribe the format, content and other aspects regarding the disclosure of fees.
- 67.4 Any increase in the level of fees charged shall be brought to the attention of members at least six (6) months before they become effective, failing which, the fees shall not be increased.

68. Service fees

- 68.1 A authorised person shall not collect fees or commissions from any person other than the pension scheme, and shall not receive commissions or referral fees for any product or from any authorised persons.
- 68.2 The Regulatory authority may prescribe how fees may be charged and matters related thereto, including the maximum amount of fees and the method of charging the fees.

PART XIII – ANTI-MONEY LAUNDERING AND FINANCIAL CRIME

69. Duty to establish measures to prevent money laundering and financing of terrorism

- 69.1 A pension scheme and any person who provides services to a pension scheme shall establish procedures to prevent a financial crime or money laundering and financing of terrorism in accordance with the relevant legislation, including -
- 69.1.1 performing the necessary know-your-customer due diligence on the members, and fit and proper due diligence on ultimate controllers, beneficial owners and beneficiaries of the pension scheme;
 - 69.1.2 taking enhanced measures with respect to higher risk members;
 - 69.1.3 monitoring complex, unusually large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose;
 - 69.1.4 developing internal programs, including training programs, procedures, controls and audit functions to combat money laundering; and
 - 69.1.5 ensuring that its foreign branches and subsidiaries observe appropriate anti-money laundering and combating of financing of terrorism requirements.
- 69.2 The Regulatory authority may prescribe requirements to enhance further anti-money laundering and combating of financing of terrorism measures.
- 69.3 The Regulatory authority shall have the power to share information and cooperate in all ways necessary with other supervisors both domestic and foreign for anti-money laundering and combating the financing of terrorism purposes.

70. Duty to report financial crime

- 70.1 A pension scheme and any authorised person shall report immediately to the Regulatory authority any evidence of criminal activity either in a member state or elsewhere which the pension scheme or authorised person suspects is associated with the use of its institution or services.
- 70.2 The Regulatory authority may further prescribe -
- 70.2.1 circumstances in which the reports described in clause 70.1, shall be made and whether such reports should also be provided to other authorities in a Member state; and
- 70.2.2 procedures that an authorised person shall adopt to minimize the risk that the financial system in a Member state is used to facilitate criminal activity, including measures to reduce money laundering and financing of terrorism.

PART XIV – ADMINISTRATIVE SANCTIONS AND PENALTIES

71. General offences and penalties

- 71.1 A person who contravenes or fails to comply with any regulation, specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition, or restriction imposed, or any other thing howsoever done, in the exercise of any power conferred under, pursuant to, or by virtue of, any provision of any applicable law
- ;
- is liable to a fine, penalty or an administrative sanction imposed by the Regulatory authority.
- 71.2 The imposition of a fine, penalty or any administrative sanction imposed by the Regulatory authority under clause 71.1 does not absolve the person from any civil or criminal liability against the same contravention.

72. Penalty for failure to submit document or information

- 72.1 Any person that fails to -
- 72.1.1 submit or furnish to the Regulatory authority any statement, report, return or other document or information; or
- 72.1.2 notify the Regulatory authority of any name, address, change of name or address, date, appointment, termination, of appointment or other particulars, in accordance with a requirement of the relevant law within the period determined by the Regulatory authority, ,
- is liable, to a fine prescribed by the Regulatory authority for each day during which such failure persists.
- 72.2 An amount of penalty payable in terms of clause 72.1 shall constitute a debt due to the Regulatory authority by the person concerned and may be recovered by the Regulatory authority by means of proceedings instituted in any competent court.

72.3 Notwithstanding the provisions of clauses 72.1 and 72.2, the Regulatory authority may waive the payment of or refund the whole or any part of a fine payable in terms of clause 72.1, if the Regulatory authority is satisfied that failure of the person concerned to comply with a requirement contemplated in clause 72.1 was not due to wilful conduct or want of reasonable care on the part of such a person.

73. False or misleading representation, statements, reports or returns

73.1 Any person who makes or assists in making a representation, statement, report or return, whether oral or written -

73.1.1 that is required or permitted by regulation or any other law; and

73.1.2 that -

(a) contains a false statement of a material fact; or

(b) omits to state a material fact required to be disclosed to the Regulatory authority or necessary to avoid the statement or document being materially misleading,

is liable to a fine, penalty or an administrative sanction imposed by the Regulatory authority.

73.2 The imposition of a fine, penalty or any administrative sanction imposed by the Regulatory authority under clause 73.1 does not absolve the person from any civil or criminal liability against the same contravention.

73.3 A person may not be liable under clause 73.1 if the person did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

74. Other offences

A person who contravenes any provision for which no specific penalty is provided in legislation, is liable to a fine as may be prescribed by the Regulatory authority.

75. Powers of court

Notwithstanding any penalty imposed as contemplated under this Regulatory Framework, a court may, where circumstance warrant, impose a penalty less or greater than that stipulated by or under this Regulatory Framework.

PART XV - MISCELLANEOUS PROVISIONS

76. Investigations and inspections

76.1 The Regulatory authority may conduct an investigation -

76.1.1 into the affairs of any person who is not authorised whom the Regulatory authority has reason to suspect is carrying on a business of a pension scheme or authorised person; or

- 76.1.2 where the Regulatory authority has reason to suspect that -
- (a) a contravention has been or may have been committed;
 - (b) a pension scheme or authorised person is not or has not complied with the provisions of these applicable laws, or
 - (c) a person has in his possession or control any evidence that may be relevant to any matter that may be subject to any investigations under applicable law.
- 76.2 In conducting an investigation under clause 76.1, the Regulatory authority may -
- 76.2.1 require a person to produce such documentation and information as the Regulatory authority may require for purposes of the investigation, within a stated time; and
 - 76.2.2 with the consent of the person being investigated or with a search warrant, enter any premises at any reasonable time to inspect, confiscate, make copies, or take extracts from, any relevant records, documents or things in those premises.
- 76.3 A person who fails to produce any document or information required, or who prevents the Regulatory authority from entering and exercising powers conferred under clause 76.2.2 commits an offence.
- 76.4 The Regulatory authority may recover from the person 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 scheme or authorised person.
- 76.5 The regulatory authority may conduct an on-site inspection at the premises of a pension scheme or authorised person for purposes of monitoring compliance with all applicable legislation.

77. Inspection of documents

Subject to any relevant data protection legislation, the Regulatory authority may permit any person, on the payment of a prescribed fee, to inspect any document lodged with the Regulatory authority, and to obtain a copy or extract of such document.

78. Regulations

The Regulatory authority may, by regulations, make provision for -

- 78.1 the constitution and management of pensions schemes;
- 78.2 the duties and functions of the board of trustees of a pension scheme and any of the authorised persons;
- 78.3 fit and proper person requirements;
- 78.4 the rights and obligations, including the vesting rights, of a member;
- 78.5 the financial statements of a pension scheme and documents to be annexed to the statements;
- 78.6 rights to transfer benefits between pension schemes;
- 78.7 defined benefit schemes and defined contribution schemes;

- 78.8 occupational and non-occupational schemes;
- 78.9 commutation of pensions and annuities from pension schemes;
- 78.10 record keeping and the period for which those records are to be kept;
and
- 78.11 any other matter as may be required for attaining the purposes of this
Regulatory Framework or to give force and effect to its provisions.

79. Revocation of authorisation

- 79.1 The Regulatory authority may revoke the authorisation issued where the authorised person fails to comply with the provisions of the applicable pension law, regulations, notices and directives issued.
- 79.2 The Regulatory authority may revoke the authorisation issued where the authorised person fails to commence business for which the authorisation has been granted within six (6) months from the date of authorisation.

80. Right of appeal

- 80.1 A person aggrieved by any decision taken by the Regulatory authority, including refusal or cancellation of authorisation of a pension scheme, administrator or pension scheme intermediary may, within thirty (30) day from the date on which the decision was made to the person in writing, appeal against the decision by a petition, in writing to an independent body which may, uphold, reverse, revoke or vary that decision.
- 80.2 Except as provided elsewhere, the decision taken under clause 80.1 shall -
 - 80.2.1 be binding upon all parties; and
 - 80.2.2 within thirty (30) days of its taking, be transmitted in writing to the applicant.

81. Member and beneficiary complaints

- 81.1 Where a member or beneficiary is aggrieved by any decision taken or action by a pension scheme, administrator or pension scheme intermediary, the member or beneficiary may lodge a complaint with the Regulatory authority, and the Regulatory authority shall strive to resolve the complaint amicably.
- 81.2 Where the parties do not agree with any resolution under clause 81.1 they may appeal to any other body set up for that purpose.

PART XVI - TRANSITIONAL PROVISIONS

82. Transitional provisions

No person shall carry on the business of a pension scheme that is in existence at the commencement of this Regulatory Framework, for a period prescribed by the Regulatory authority after such commencement unless that business is authorised as a pension scheme in terms of clause 10.
