



# ESWATINI GOVERNMENT GAZETTE EXTRAORDINARY

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## PART A

### THE ESWATINI NATIONAL PENSION FUND BILL, 2025

(Bill No. 13 of 2025)

(to be presented by the Minister of Labour and Social Security)

#### MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is for -

- (a) the establishment and administration of the Eswatini National Pension Fund;
- (b) the conversion of the Eswatini National Provident Fund to the Eswatini National Pension Fund;
- (c) the provision of benefits to employees, self-employed persons and other workers;
- (d) enabling the co-existence of the national and private pension funds;
- (e) enabling the portability of social security benefits;
- (f) the repeal of the Eswatini National Provident Fund Order No. 23 of 1974; and
- (g) incidental matters.

**SIFISO.M.M. KHUMALO**  
*ATTORNEY GENERAL*

#### A BILL ENTITLED

**AN ACT** to provide for the establishment of the Eswatini National Pension Fund, conversion of the Eswatini National Provident Fund to the Eswatini National Pension Fund, repeal of the Eswatini National Provident Fund Order No. 23 of 1974 and incidental matters.

**ENACTED** by the King and the Parliament of Eswatini.

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### **PART I PRELIMINARY PROVISIONS**

#### ***Short title and commencement***

1. (1) This Act may be cited as the Eswatini National Pension Fund Act, 2025.

(2) This Act shall come into force on a date to be appointed by the Minister by notice in the Gazette, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

#### ***Interpretation***

2. In this Act unless the context requires otherwise -

“accrued value” means the value of the benefit of a member as determined by an actuary based on the contribution period of a member of the Fund and benefit structure as defined in this Act;

“actuary” means a professional who uses mathematics, statistics, and financial theory to analyze and manage risk, particularly in the areas of insurance, pensions, finance, and investment;

“administration costs” means costs incidental or in relation to registration of members, collection of contributions from members and disbursement of benefits of members and related costs, including personnel and operational expenses of the Fund;

“annuity” means a series of payments payable either monthly, quarterly, bi-annually or annually;

“assets” includes funds, monies and movable and immovable property;

“beneficiary” means a member and a dependent in terms of this Act, who is entitled to receive a benefit under this Act;

“benefit” means a benefit payable or otherwise claimable under this Act;

“Board” means the Board of Trustees of the Fund established under section 11;

"business" includes any trade, undertaking or establishment;

"calculation or calculated" means a calculation based on an actuarial determination;

"Charter" means the Charter of Client Rights and Duties contemplated in section 31,

"Chief Executive Officer" means the Chief Executive Officer of the Eswatini National Pension Fund appointed under section 26;

"child" includes a step child, a child born out of wedlock, a posthumous child and an adopted child;

"contingency" means a condition, including survival beyond pensionable age, inability to engage in any gainful activity due to invalidity or death of the breadwinner;

"contribution" includes statutory contribution, supplementary contribution and voluntary contribution;

"contributor" means a person, including a natural or legal person, who contributes to the Eswatini National Pension Fund established under this Act, and includes a person on whose behalf contributions have been made or remitted;

"dependant" means in relation to a member –

- (a) a person in respect of whom the member is legally liable for maintenance including-
  - (i) the spouse of a member married under the law regulating marriages in Eswatini; and
  - (ii) the child of the member.
- (b) a person in respect of whom the member is not legally liable for maintenance but that person-
  - (i) is in the opinion of the Board dependent on the member for maintenance; and
  - (ii) is in respect of whom the member would have become legally liable for maintenance, had the member not died.

"direction" means, depending on the circumstances, a direction given by either the Registrar or the Board in terms of the provisions of this Act;

"domestic employee" means any person employed for wages, in or about a private dwelling house, by the owner or occupier of such house;

"earnings" means the total value of payments, in cash, made or owing to a self-employed person or worker other than an employee in connection with the work of that self-employed person or worker other than an employee;

"employee" means a person, whether or not that person is an employee at common law, who works for pay or other remuneration under a contract of service, or under any other arrangement involving control by, or sustained dependence for the provision of work upon, another person, and includes an employee of the Government whether pensionable or non-pensionable and a domestic employee;

"enterprise scheme" means a scheme established by an employer, including commercial, industrial, labour and service organisations, non-profit organisations and non-profit religious, educational and charitable organisations;



"employer" means a person who employs another person as an employee or any legal or natural person so acting on behalf of an employer, and includes Government as employer;

"financial year" means a period of twelve (12) months commencing from the 1<sup>st</sup> July and ending on 30<sup>th</sup> June of the following year;

"Fund" means the Eswatini National Pension Fund;

"Government" means the Government of the Kingdom of Eswatini;

"immediate family" means, in relation to a person, such person's father, mother, grandfather, grandmother, stepmother, stepfather, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, wife, husband, common law wife or common law husband;

"inspector" means a person appointed under section 96;

"insured remuneration" means the level of remuneration upon which the statutory contribution is calculated;

"insured person" means a person insured in terms of this Act;

"international organisation" includes a regional organisation;

"invalidity" means a long-term or recurring physical or mental disability, which substantially limits the prospects of a member to engage in any employment.

"Medical Board" means the Medical Board established under section 87;

"member" means a person who is a member of the Eswatini National Pension Fund in terms of this Act, and includes a voluntary member;

"Minister" means the Minister responsible for social security;

"occupational scheme" means a scheme offered through an individual's employment to private or public sector employees, and does not include the Eswatini National Pension Fund;

"old age" means survival beyond the pensionable age prescribed in this Act;

"Ombudsman" means the office of the Ombudsman as established in terms of section 74 of the Financial Services Regulatory Authority Act, 2010;

"other worker" means a worker other than an employee and a self-employed person who performs work or renders services for financial gain;

"pension" means an annuity payable under any law or rules of a pension fund, provident fund or retirement annuity fund;

"pensionable age" means the age at which a retirement pension becomes payable, as prescribed in terms of this Act;

"prescribed" means prescribed in terms of this Act or by Regulation;

"Public Enterprise Unit" means the Public Enterprise Unit established under the Public Enterprises (Control and Monitoring) Act, 1989 or its successor;

"qualifying period" means the period, which could be a period of contribution, employment or residence as may be prescribed giving right to benefits under this Act, which shall be taken into account in determining whether or not a person is eligible for a benefit in terms of the provisions

of this Act;

"Regulation" means any regulation adopted in relation to or under this Act;

"Registrar" means the Registrar of Insurance and Retirement Funds, appointed in terms of the Insurance Act, 2005 and section 4 of the Retirement Funds Act, 2005;

"remuneration" means the wages or salary and any additional payments payable in cash directly or indirectly by the employer in connection with the employment of an employee, to which an employee is legally entitled;

"repealed Order" means the Eswatini National Provident Fund Order No. 23 of 1974;

"self-employed person" means a person who works for themselves rather than an employer.

"spouse" means a person who at the time of the death of a member was a spouse according to the law regulating marriages, excluding a person who becomes a spouse post retirement of the member.

"Standing Committee" means the Cabinet Standing Committee on Public Enterprises as defined under the Public Enterprises (Control and Monitoring) Act, 1989 or its successor;

"statutory contribution" means a contribution which in terms of this Act is payable in respect of or by a member of the Fund;

"supplementary contribution" means a contribution, in addition to a statutory contribution, which can in terms of this Act be paid in respect of or by a member of the Fund;

"supplementary scheme" means a voluntary scheme chosen by the member to complement benefits;

"survivor" means a spouse entitled to receive a portion of the deceased pensioner's benefit;

"trustee" means a Member of the Board and includes a Chairperson of the Board;

"voluntary contribution" includes contributions by an employee whose remuneration is below the minimum earnings threshold but voluntarily pays contributions, and contributions made by or in respect of a member who is a self-employed person or other worker.

### ***Application***

3. (1) This Act shall apply to -

- (a) businesses in the Kingdom of Eswatini regardless of size;
- (b) employers, including Government as employer;
- (c) employees, including employees in the service of Government;
- (d) self-employed persons;
- (e) other workers, namely workers other than employees and self-employed persons, who perform work or render services for financial gain;
- (f) members, including voluntary members of the Fund;
- (g) migrant workers working in Eswatini, on the same basis as Eswatini citizens, unless they can prove to the satisfaction of the Fund that they are covered by a comparable social security scheme of another country; and

(h) Eswatini residents who work outside Eswatini, subject to the provisions of this Act and the terms and provisions of cross-border social security agreements, and international and regional agreements concerning the position of migrant workers, applicable to the Kingdom of Eswatini.

(2) Special provisions regulating the application of this Act to cross-border social security arrangements may in accordance with section 95, be contained in bilateral or multilateral agreements between the Government and other governments or international organizations.

## PART II ESWATINI NATIONAL PENSION FUND

### *Establishment of Eswatini National Pension Fund*

4. (1) There is established the Eswatini National Pension Fund.

(2) The Fund is established as a Category A enterprise, under the Public Enterprise (Control and Monitoring) Act, 1989 or its successor.

(3) The Fund shall operate as a semi-autonomous entity, accountable to the Government of the Kingdom of Eswatini.

(4) The Fund shall be a defined benefit fund.

(5) The Fund shall be administered by the Board.

(6) Sums of money as may be granted by way of benefits, may be charged on, and paid out of the Fund as well as the expenses of administration, as may be authorised by this Act.

(7) The Fund shall keep and maintain one (1) or more accounts with a bank approved by the Board, in accordance with guidelines issued by the Registrar into which all monies, including income from investments and any other monies required to be paid into the Fund, shall be deposited into such account or accounts.

(8) The account mentioned in sub-section (7), shall be held by the Board in trust for the members of the Fund and be administered by the Board in accordance with the provisions of this Act.

### *Seal of the Fund*

5. (1) The seal of the Fund shall be such device as may be determined by the Board and shall be kept by the Chief Executive Officer.

(2) The affixing of the seal shall be authenticated by the Chairperson or any other person authorised to do so by a resolution of the Board.

(3) Any document purporting to be under the seal of the Fund or issued on behalf of the Fund, shall be received in evidence and shall be deemed to be executed or issued by the Fund without further proof, unless the contrary is proved.

### *Impartiality and transparency of the Fund*

6. The Fund shall carry out functions entrusted to the Fund under this Act or any other law in an objective and transparent manner.

### *Functions of the Fund*

7. The Fund shall -

- (a) pay out benefits listed under Part VIII;
- (b) receive contributions from members of the Fund; and
- (c) raise by way of loans, investments or otherwise such monies as the fund may require for the discharge of its functions.

***Powers of the Fund***

8. The Fund -

- (a) shall take, purchase or otherwise acquire, hold, charge and dispose of movable or immovable property; and
- (b) may enter into contracts and perform other acts for the proper performance of its functions under this Act.

**PART III  
CONTRIBUTION OR MEMBERSHIP TO A PENSION FUND**

***Contribution or membership***

9. (1) Subject to sub section (3), an employer, employee, self - employed and other worker shall contribute to and be a member of the Fund.

(2) A public officer employed after the commencement of this Act, shall contribute to and become a member of the Fund.

(3) A public officer employed prior to the commencement enactment of this Act, shall be granted the option to voluntarily elect to become a member of the Fund.

(4) A member may make voluntary contributions, in addition to the statutory contributions, to enhance the pension benefit.

(5) Notwithstanding subsection (1) an employer, employee, self-employed and other worker, may contribute to and be a member of an occupational and private scheme or arrangement.

***Non-discrimination in payment of benefits***

10. A person who qualifies to benefit under this Act shall receive that benefit regardless of race, gender, marital status, ethnic or social origin, nationality, pregnancy, age, invalidity and state of health.

**PART IV  
THE BOARD**

***Board of the Fund***

11. (1) There is established the Board of the Fund.

(2) The Minister in consultation with the Standing Committee shall appoint the Board under sub-section (1).

(3) The Board shall comprise of -

- (a) one (1) shall be the Principal Secretary or a representative from the Ministry responsible for social security;
- (b) one (1) shall be the Principal Secretary or a representative from the Ministry responsible for Finance;
- (c) two (2) shall be representatives elected by employers' Federations;
- (d) two (2) shall be representatives elected from workers' Federations;
- (e) one (1) shall be a representative elected by a registered organization of the retired members of the Fund;
- (f) one (1) shall be elected from a registered organization of self-employed persons to represent the interests of self-employed persons and other workers;
- (g) one (1) shall be a representative of the traditional institutions; and
- (h) the Chief Executive Officer of the Fund shall be an *ex-officio* member of the Board and shall serve as the Board secretary.

(4) The representatives referred to in subsection 3 (e) shall be eligible for Board membership after the lapse of a period of fifteen (15) years from the date of commencement of this Act.

(5) The representatives referred to in subsection 3 (f) shall be eligible for Board membership from the date of registration and active membership in the Fund.

(6) The Minister shall appoint a Chairperson and the Board members shall elect a Vice Chairperson from among themselves.

(7) The composition of this Board shall comply with the provisions in the Public Enterprise (Control and Monitoring) Act, 1989 and the Retirement Funds Act, 2005 or its successors.

#### ***Term of office***

12. A member of the Board shall, unless the appointment of that member is, sooner terminated, hold office for a period not exceeding three (3) years and shall be eligible for reappointment for not more than two (2) consecutive terms.

#### ***Power to act and validity of proceedings***

13. (1) The Board may act notwithstanding any vacancy in the membership or temporary inability of a member of the Board to perform the duties of that member.

(2) The validity of any proceedings of the Board shall not be affected by any defect in the appointment of any Member of the Board.

#### ***Remuneration and allowances***

14. (1) The Board members shall be paid an allowance and fees in accordance with the applicable Finance Circular.

(2) The allowances of the Board shall be charged to the Fund.

***Functions of the Board***

15. (1) The Board shall -

- (a) supervise the implementation of this Act;
- (b) provide and oversee the Fund's strategic direction;
- (c) approve policies relating to the Fund;
- (d) advise the Minister on any matter relating to the Fund;
- (e) control, monitor and oversee the proper and efficient administration of the Fund;
- (f) subject to the provisions of this Act, invest monies of the Fund;
- (g) monitor and oversee compliance with this Act by the Fund;
- (h) promote public awareness of the rights and obligations of employees, self-employed persons, other workers, beneficiaries and employers under this Act;
- (i) establish an accessible and transparent mechanism for the lodging and investigation of any complaints regarding the administration of this Act, including the conduct of the Fund and the employees of the Fund;
- (j) present the periodic actuarial valuation and review conducted in accordance with section 36 of this Act and submit to the Minister and the Registrar;
- (k) perform all such acts and enter into such transactions as, in the opinion of the Board, may be necessary for the proper and efficient administration of the Fund; and
- (l) ensure financial sustainability of the Fund.

(2) The Board shall in consultation with relevant stakeholders establish other schemes and grant benefits to self-employed persons and other workers, and their dependents in accordance with the provisions of this Act and any Regulations made by the Minister under this Act.

(3) The Board shall keep and maintain effective and transparent systems of financial and risk management and internal control, including a system of internal audit.

***Powers of the Board***

16. (1) The Board shall -

- (a) appoint auditors;
- (b) cause the conducting of a periodic actuarial valuation and review of the Fund as prescribed, and in particular arrange for actuarial studies for the purpose of determining and fixing the necessary contributions and the extent and scope of benefits of the beneficiaries of the Fund as its resources may permit in order to ensure adequate financing and disbursement of funds to participants of the fund;
- (c) set conditions for the appointment of employees;
- (d) set conditions for the appointment of consultants, agents and contractors in accordance with the provisions of applicable legislation;
- (e) set standards and policies for the quality of care, appropriate utilisation of services, viability of the Fund, satisfaction of members and overall objectives of the Fund

and its schemes;

- (f) establish branch offices when necessary; and
- (g) perform such other acts as are necessary to give effect to the provisions of this Act.

***Meetings of the Board***

17. (1) The provisions of the First Schedule, shall have effect in regard to meetings, decisions and proceedings of the Board and such other matters in relation to the Board Members.

- (2) The Board may invite experts to assist in the execution of its responsibilities who shall -
  - (a) not vote on any submission; and
  - (b) only attend the part of the meeting on which their advice is required.

***Disclosure of interest***

18. A member of the Board shall -

- (a) declare to the Chairperson and Board members any potential conflict of interest;
- (b) disclose to the Board any direct or indirect personal, including financial interest which that Member or any spouse, partner or close family member may have in any matter before the Board; and
- (c) withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the direct or indirect interest of the member in the matter is trivial or irrelevant.

***Disqualification for membership to the Board***

19. A person shall be disqualified for appointment for membership of the Board or be disqualified to hold office where that person -

- (a) is a declared insolvent or bankrupt;
- (b) has made an assignment to or arrangement or composition with creditors that has not been rescinded or set aside;
- (c) has, in terms of any law in force in Eswatini, within the past two (2) years immediately preceding the date of appointment, been convicted of a criminal offence of which dishonesty is an element;
- (d) is not a citizen of Eswatini who is ordinarily resident in the country;
- (e) is a citizen of Eswatini who is not ordinarily resident in Eswatini;
- (f) has, or is married to a person who has, a financial or any other interest connected directly or indirectly with the interests of the Fund;
- (g) has, within the period of five (5) years immediately preceding the date of the proposed appointment of that person, been sentenced in any country to a term of imprisonment of or exceeding six (6) months imposed without the option of a fine and has not received a free pardon; or

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- (h) is adjudged bankrupt under any written law or enters into any agreement or scheme of composition with his or her creditors, and has not been rehabilitated, or takes advantage of any law for the benefit of his or her debtors.

***Vacation of office and filling of vacancies***

20. (1) The office of a member of the Board shall become vacant -

- (a) upon death;
- (b) upon resignation;
- (c) where the member, without just cause fails to attend three (3) consecutive meetings of the Board; or
- (d) where the membership of that member is terminated in terms of this Act.

(2) A member of the Board may resign on giving a notice of one (1) month, in writing to the Minister.

(3) Where a Board member vacates office before the expiry of the term of office, the Minister shall appoint another member in place of the member who vacates office subject to section 11, but that member shall hold office only for the unexpired part of the term of office.

***Termination of appointment***

21. The Minister shall terminate the appointment of a member of the Board where the member -

- (a) has been convicted of a criminal offence or any offence involving fraud or dishonesty;
- (b) has been convicted by an independent disciplinary enquiry of misconduct or neglect of duty in terms of this Act;
- (c) is not able to perform the functions of a member of the Board in terms of this Act; or
- (d) is adjudged bankrupt under any written law or enters into any agreement or scheme of composition with his or her creditors, and has not been rehabilitated, or takes advantage of any law for the benefit of his or her debtors.

***Liability and indemnification***

22. (1) Subject to the provisions of subsection (2), a member of the Board shall be held liable where that member fails to act in accordance with the prescribed code of conduct, which a person holding any office in a fiduciary capacity on behalf of another may reasonably be expected to conform to.

(2) A member of the Board shall be indemnified against liability when defending or opposing legal proceedings arising out of any act or thing done, or omitted to be done by that member in good faith in the execution or purported execution of duties of that member.

***Establishment of committees and delegation of powers and functions of the Board***

23. (1) The Board may, in writing and subject to such conditions as it may determine, delegate any of its powers, functions or duties to a member of the Board, a committee of the Board, or the Chief Executive Officer and may at any time revoke such delegation.

(2) The Board shall not delegate the power to approve the annual budget or any supplementary budget of receipts and expenditure, the annual balance sheet or any statement of account.

(3) The Board may establish, for the performance and execution of its functions and duties, a management and any other committee as it deems necessary.

*Administration costs*

24. The Board shall keep the Fund's administration costs at a reasonable rate as recommended by the Actuary.

**PART V  
ADMINISTRATION**

*Administration of the Fund*

25. The administration of the Fund shall vest in the Chief Executive Officer subject to the oversight of the Board.

*The Chief Executive Officer*

26. (1) The Minister shall on the recommendation of the Board, and in consultation with the Standing Committee appoint a suitably qualified person as the Chief Executive Officer of the Fund.

(2) The Chief Executive Officer shall -

- (a) manage the day to day business operations and affairs of the Fund;
- (b) develop and implement internal, including operational policies of the Fund;
- (c) assist the Board in the exercise and performance of its powers and functions under this Act;
- (d) assess and collect contributions and payments under this Act;
- (e) pay benefits, and allocate the expenditure necessary for the administration of the Fund;
- (f) invest surplus funds, subject to the direction of the investment committee;
- (g) keep account of monies collected, paid or invested by the Fund;
- (h) decide on complaints and other matters coming before the Chief Executive Officer for decision; and
- (i) perform such other functions and duties contemplated under this Act and as may from time to time be conferred by the Board.

(3) The Minister may, in consultation with the Standing Committee on the recommendation of the Board, terminate the appointment of the Chief Executive Officer for -

- (a) gross misbehaviour;
- (b) inability to perform the functions of the office; or
- (c) any other sufficiently serious cause.

(4) The Chief Executive Officer may delegate any function or assign any responsibilities, referred to in subsection (2), except the investment of surplus funds, to an employee, and may at any time cancel any such delegation or assignment.

*The Chief Financial Officer*

27. (1) The Board shall in consultation with the Minister, the Public Enterprise Unit and the Standing Committee appoint a Chief Financial Officer of the Fund.

(2) The Chief Financial Officer shall report to the Chief Executive Officer and shall -

- (a) keep proper books of accounts and other books and records in relation to the funds, undertakings, activities and property of the Fund;
- (b) prepare statements of accounts as may be necessary to disclose the financial status of the Fund at the end of each financial year and at such periods as the Board may determine;
- (c) cause the accounts of the Fund to be examined, audited and reported annually by auditors appointed by the Board; and
- (d) carry out other duties assigned by the Chief Executive Officer.

(3) The Board may, in consultation with the Minister, the Public Enterprise Unit and the Standing Committee, terminate the appointment of the Chief Financial Officer of the Fund for -

- (a) gross misbehaviour;
- (b) inability to perform the functions of the office; or
- (c) any other sufficiently serious cause.

*Other employees*

28. (1) The Chief Executive Officer shall, in consultation with the Board, appoint employees at the level of executive management, subject to conditions as the Board may determine.

(2) The Chief Executive Officer may, on such terms as the Board may determine, appoint such other employees of the Fund as may be necessary.

(3) The Chief Executive Officer shall exercise supervision over the management of employees of the Fund.

*Conditions of service of the Chief Executive Officer and other employees*

29. (1) The Board shall in consultation with the Minister, in accordance with the provisions of the Public Enterprises (Control and Monitoring) Act, 1989 or its successor, determine the terms and conditions of service of the Chief Executive Officer and Chief Financial Officer.

(2) The Board shall, subject to the Public Enterprises (Control and Monitoring) Act, 1989 or its successor determine the conditions of service, including remuneration, benefits and allowances, of other employees of the Fund.

(3) The employees of the Fund, shall be remunerated out of the Fund.

***Rights of employers, members, beneficiaries and the public***

30. (1) The Fund shall offer reasonable assistance to a person, who, due to the age, disability or inability of that person to read or write, that person is unable to understand, appreciate or exercise any right or perform any duty or obligations in terms of this Act.

(2) The Fund shall publish brochures in Siswati and English setting out the rights, duties, obligations, procedures and mechanisms contemplated in this Act.

***Customer Service Charter***

31. (1) The Board of the Fund shall establish and publish a Customer Service Charter of client rights and duties.

(2) A Customer Service Charter established in terms of this section shall set out in Siswati and English language the rights of employers, members, beneficiaries and potential beneficiaries, including the right to just administrative action, and shall contain high standards of service delivery and client care.

(3) The Customer Service Charter shall be binding to the Fund, Board members, Chief Executive Officer and employees of the Fund.

(4) Where relevant, the provisions of the Custom Service Charter shall be considered in any legal proceedings involving the Fund and in performance appraisals and disciplinary proceedings involving employees of the Fund, including the Chief Executive Officer.

***Country-wide presence and accessibility***

32. The Fund shall take reasonable steps to make its facilities and services accessible to its members including vulnerable persons, in particular the aged and persons with disabilities.

***Benefit statements and information disclosure***

33. (1) The Fund shall issue a statement of the accrued value of the pension to a member every twelve (12) months.

(2) The benefit statement of the accrued value of the pension shall, to the extent relevant, set out the total amount per benefit category and the period of contributions.

(3) An employer, member and beneficiary is entitled to the disclosure by the Fund of such information as may reasonably be required for the exercise of any right in terms of this Act.

(5) A member who is unlikely to meet the minimum requirements for pension, the statement shall include -

(a) the amount of contributions; and

(b) interest earned.

(6) An information of a confidential or private nature held by the Fund may not be disclosed to another person or institution without the consent of the affected member or beneficiary.

***Stakeholder meetings***

34. (1) The Fund shall convene a meeting for representatives of employers, members, beneficiaries and other stakeholders of the Fund, at least biennially.

(2) The Chief Executive Officer shall present the annual financial statements, annual report for feedback and comments, during the stakeholder meeting.

**PART VI  
FINANCIAL PROVISIONS AND INVESTMENTS**

***Funds of the Fund***

35. (1) The sources of funds shall consist of -

- (a) such monies as may be appropriated by Parliament for the purposes of the Fund;
- (b) contributions by employees, self-employed persons, other workers or employers;
- (c) contributions from Government as an employer;
- (d) income derived from investments;
- (e) any fees, including fines and penalties, paid under this Act;
- (f) donations and bequests; and
- (g) any other income legally acquired.

(2) The Fund may, subject to the approval of the Minister in consultation with Cabinet, accept monies by way of grants or donations from a lawful source.

(3) The expenses of administering and investing the Fund shall be paid out of the Fund.

(4) The Fund may, with the approval of the Board, invest any monies of the Fund that are not immediately required for the performance of its functions, in such manner as the Fund considers appropriate.

(5) The Fund shall use its monies to meet expenses incurred in performing its functions and exercising its powers under this Act.

(6) The Government shall not act as a guarantor for the Fund.

***Annual and supplementary budget***

36. The Board shall at its meeting before the beginning of any financial year approve an annual budget of the amounts respectively -

- (a) expected to be received;
- (b) expected to be disbursed; and
- (c) expected to be utilized for capital expenditure.

***Actuarial valuation***

37. (1) The assets and liabilities of the Fund shall from time to time, as the Board or the Registrar may consider necessary, but in any event at intervals of not more than three (3) years be valued and reviewed by an actuary to assess the financial soundness.

(2) The actuarial valuation and review shall contain recommendations for the maintenance or improvement of the financial soundness of the Fund.

(3) The actuarial valuation and review shall upon completion be submitted to the Board and the Registrar.

(4) The actuarial valuation and review shall be included in the next annual report of the Board following the completion of the valuation.

***Measures to avoid or deal with underfunding***

38. (1) Where the need arises and on the basis of the findings and recommendations of an actuarial study, the Minister may, in order to avoid or deal with underfunding, in consultation with the Board -

- (a) increase the contributions of the members by a specified amount or percentage contemplated in this Act;
- (b) prescribe the principles and formulas to be used in determining the amount or percentage; and
- (c) take such other steps as may be necessary to avoid or deal with underfunding.

***Reserve Fund***

39. (1) The Fund, shall subject to subsection (2), set aside a portion of its accumulated revenues not needed to meet the costs of the current financial year's expenditures and pay such portion into a Reserve Fund.

(2) The Board in consultation with the actuary shall, from time to time, stipulate the level at which the Reserve Fund should be maintained.

***Penalty Reserve Account***

40. (1) There shall be a penalty reserve account of the Fund into which shall be paid all fines and penalties under this Act.

(2) Any fines and penalties paid into the penalties reserves created by the Board shall provide for -

- (a) payments to be made to members claiming benefit and qualifying for a benefit in terms of section 56, where the Board is satisfied that deductions were made from the wages of a member but not paid over to the Fund by any employer who was liable to pay the statutory contribution; or
- (b) payments to be made to a member claiming benefit if the Board is satisfied that a benefit has not been received by the member due to misappropriation, theft, or personification of such member.

(3) Subject to the provisions of this Act and the Fund's approved corporate social responsibility policy and programme, the Minister may authorize the expenditure of monies in the penalty reserve account on recommendation of the Board for -

- (a) the promotion;
- (b) establishment; and
- (c) support,

of any organization, institution, or scheme the objects of which consist of or include the maintenance of elderly persons, training, rehabilitation and maintenance of disabled persons.

*Annual report and financial statements*

41. (1) The Board shall -

- (a) keep full and proper records of the financial affairs of the Fund;
- (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice;
- (c) submit within four (4) months after the end of the financial year to the Registrar, the Minister, the Public Enterprises Unit and the Auditor-General -
  - (i) an annual report on the activities of the Fund during that financial year;
  - (ii) audited financial statements for that financial year; and
  - (iii) a report of the auditors on those statements, including any report by the auditors on the management and accounting practices of the Fund.

(2) The Board shall appoint auditors to audit and report on the annual financial statements of the Fund and the cost of such audit shall be paid out of the Fund.

(3) The annual report and financial statements referred to in subsection (2) shall -

- (a) present the state of affairs of the Fund, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; and
- (b) include particulars of any -
  - (i) material losses through criminal conduct and any irregular expenditure and wasteful expenditure that occurred during the financial year;
  - (ii) criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or wasteful expenditure;
  - (iii) losses recovered or written-off and the reasons thereof; and
  - (iv) other matters required by generally accepted accounting standards.

(4) The Minister shall table before Parliament the annual audited accounts.

*Collateral support*

42. The Fund shall provide collateral support to its members which shall be -

- (a) funded from supplementary contributions made on a voluntary basis; and
- (a) for the purpose of enabling a member to purchase a dwelling or land and erect a dwelling on it or making additions or alterations.

*Investment Committee*

43. There is established, for the purposes of this Act, a committee to be known as the Investment Committee.

(1) The Investment Committee shall consist of the following members -

- (a) the Principal Secretary or a representative from the Ministry responsible for Finance, who shall be the Chairperson;
- (b) the Principal Secretary or a representative from the Ministry responsible for social security;
- (c) two (2) persons experienced in financial matters who shall be not public officers appointed by the Minister; and
- (d) the Chief Executive Officer who shall be the Secretary.

(2) The quorum of the Investment Committee shall be the Chairperson, the Chief Executive Officer, and any other two (2) members.

(3) The investment Committee shall meet at such times as the Chairperson may determine and shall regulate its own procedure.

(4) The Investment Committee shall have power to assess investment proposals submitted by management, including monies, which are surplus to current needs to support the investment.

(5) The Chief Executive Officer shall provide the Investment Committee with any information required for the proper discharge of its functions.

(6) Decisions of the Investment Committee shall not be implemented unless approved by the Board.

(7) A member of the Investment Committee shall hold office for a period not exceeding three (3) years and on such other terms and conditions as may be specified in the instrument of appointment.

#### *Investment of funds and investment guidelines*

44. (1) The Investment Committee may recommend to the Board the use of the Fund assets for investment purposes.

(2) The Board shall formulate policies, standards and procedures to be applied so as to provide guidance in supervising and monitoring transactions for investing assets of the Fund.

(3) The Board shall submit to the Public Enterprise Unit and the Minister quarterly investment reports which shall be in the form and comply with the other conditions set out in the Regulations.

#### *Taxation*

45. Notwithstanding any other law -

(a) statutory contributions by employers, employees, self-employed persons and other workers covered by this Act, shall be tax deductible from the income of the respective contributors ; and

(b) income tax shall not be charged on benefits payable under this Act.

#### *Exemption from stamp duty*

46. Stamp duty shall not be payable on any receipt, contract, instrument or other document executed by any person in respect of benefits or refund of contributions under this Act.



**PART VII  
REGISTRATION AND CONTRIBUTIONS**

*Registration of employers and employees*

47. (1) A person shall be a member of the Fund upon registration as prescribed by this Act.

(2) The Minister shall publish in the Gazette and specify any class or description of-

(a) employers who shall be registered as contributing employers; and

(b) employees, self-employed persons and other workers who shall be registered as members of the Fund.

(3) A person who has been registered as a member of the Fund shall not cease to be a member solely by reason of ceasing, after registration, to be an employee, a self-employed person or any other worker.

*Contributing employers*

48. (1) The Minister may, for the purpose of the initial registration of any class or description of employers, publish in the Gazette, such class or description of employers not to be contributing employers until the date specified in the Gazette.

(2) A contributing employer who ceases to be an employer of one or more employees shall cease to be a contributing employer.

*Voluntary registration*

49. An employer who is not required to register under section 47 (2)(a) may, subject to any prescribed terms and conditions, apply to the Executive Officer for voluntary registration as a contributing employer, and any eligible employee of such employer may be registered for the purposes of paying contributions to the Fund in respect of that employment.

*Religious organisations*

50. A religious organisation that wishes to make statutory contributions in respect of a minister of religion may apply to the Fund, in the prescribed manner, for registration under this Part. Upon receiving such application, the Fund shall register -

(a) the religious organisation as an employer; and

(b) the minister of religion as an employee,

for the purposes of this Act.

*Determining rates of contributions*

51. (1) The Minister shall, subject to the outcome of an actuarial valuation of the Fund, on the recommendation of the Board and in consultation with the Actuary determine and prescribe the contribution rate by Rules.

(2) The contribution rate shall be reviewed from time to time, as may be prescribed by the Minister, on the recommendation of the Board and in consultation with the Actuary.

*Basis for calculating contributions*

52. (1) Employer and employee contributions shall be calculated on the basis of the gross

remuneration of the employee for the applicable pay period, as prescribed in the Second Schedule.

(2) The contributions shall be calculated subject to -

(a) the minimum indicated by the contributory remuneration floor, as prescribed from time to time be prescribed by the Minister; and

(b) the maximum indicated by the contributory remuneration ceiling amounts stipulated annually.

(3) The contributions payable by self-employed persons and other workers shall be calculated with reference to their earnings, as prescribed in the Regulations.

***Minimum and maximum threshold of insured remuneration***

53. (1) A minimum income threshold of insured remuneration, in the form of a contributory remuneration floor above which employees and their employers shall be required to contribute may from time to time be prescribed by the Minister on recommendation of the Board and in consultation with the Actuary, on the basis of an actuarial valuation of the Fund.

(2) The Minister may annually, on recommendation of the Board and in consultation with the Actuary, on the basis of an actuarial valuation of the Fund prescribe a maximum income threshold of insured remuneration, in the form of a contributory remuneration ceiling, for purposes of calculating compulsory employee and employer contributions.

(3) The minimum and maximum income thresholds of insured remuneration shall be as set out in the Second Schedule.

(4) An employee earning below the minimum income threshold of insured remuneration contemplated in subsection (1) may make contributions on a voluntary basis to the Fund, in addition to the statutory contributions.

***Supplementary contributions***

54. (1) An employee and an employer may make supplementary contributions on a voluntary basis to the Fund, in addition to statutory contributions payable.

(2) The rules applicable to supplementary contributions shall be prescribed by the Minister, on recommendation of the Board and in consultation with the Actuary.

***Savings accounts of members***

55. (1) The Fund shall establish and maintain for every member in respect of whom a supplementary or voluntary contribution has been made under this Act a savings account, in the form of a dedicated individual account -

(a) to which supplementary contributions made in respect of a member who is an employee under this Act, or voluntary contributions by an employee whose remuneration is below the minimum earnings threshold but voluntarily pays contributions shall be credited; or

(b) to which voluntary contributions made by or in respect of a member who is a self-employed or other worker under this Act shall be credited.

(2) Specified benefits, other than those specifically prescribed by this Act, which may include collateral for specific purposes as prescribed in the Second Schedule, may be paid out of a savings account.

*Collection and remittance of contributions*

56. (1) An employer and an employee shall contribute to the Fund.

(2) The employer shall be responsible for deducting the employee's prescribed contribution from the remuneration due to that employee in respect of the contribution period to which that statutory contribution relates.

(3) The employer's and employee's contributions shall be remitted by the employer to the Fund in the manner and form as prescribed in the Fifth Schedule.

(4) The contributions due under this section shall be paid to the Fund within seven (7) days after the end of the month in which the last day of the relevant contribution period falls, and shall be credited to the account of the person in respect of whom it is paid.

(5) The employer shall submit contributions due under this section, together with particulars as required in the form prescribed in the Fifth Schedule.

*Contributions where benefit drawn or during bankruptcy of employee*

57. (1) An employer and an employee shall not be relieved from the obligation to make contributions to the Fund, in respect of any employee.

(2) An employer shall not be relieved from the obligation to remit contributions to the Fund, in respect of any employee -

(i) who is in receipt of, or becomes entitled to any benefit payable in terms of this Act or any other law; or

(ii) during the bankruptcy of that employee.

(3) The accrued value of a member in the Fund shall, until paid out as a benefit in accordance with the provisions of this Act, remain the property of the Fund.

(4) The accrued value of a member of the Fund shall not form part of the assets of a member in the event of that member becoming insolvent or bankrupt under the laws of any country, or be liable to attachment in satisfaction of the debts.

(5) Subject to the provisions of section 42, any security, pledge, cession or assignment of that member given before or after the commencement of this Act, which purports to include any such sum or part thereof shall, to such extent be void.

(6) A debt arising from a collateral support shall not form part of the assets of the member.

*Contributions inalienable*

58. Notwithstanding anything contrary contained in any written law -

(a) no sum deducted from the remuneration of a member of the Fund who is an employee;

(b) no amount payable by the employer as contribution in respect of that member; and

(c) no amount standing otherwise to the credit of any member of the Fund,

shall be assignable, transferable or liable to be attached, or levied upon for or in respect of any debt or claim against a member or the employer.

***Unpaid contributions***

59. (1) An employer who fails to deduct the contribution of an employee or having deducted such contributions fails to remit the said contributions to the Fund, shall be liable to pay the unpaid arrear contributions as well as interest on the late remittance and a penalty to the Fund in terms of the provisions of this Act which shall be prescribed by Regulations.

(2) Where an employer fails to register with the Fund, shall upon registration be liable to pay the outstanding contributions, for the employer and employee, and in retrospect from the first month of the employment of the employee.

***Refund of contributions paid in error***

60. Where the Chief Executive Officer is satisfied that any amount has been paid to the Fund in error as contributions, such amount shall be refunded to the employee or employer, or to both.

***Database and contribution records***

61. (1) The Fund shall create and maintain a database of members.

(2) The Fund shall maintain contribution records of each member for purposes of the calculation of benefits.

(3) The Fund shall inform a member, on request, about the state of the member's account.

***Links with other databases and use of database information***

62. (1) The Fund shall cooperate with relevant Government institutions to link respective databases.

(2) A person may not access information or use information obtained from databases by that person in the performance of functions provided under this Act except -

(a) to the extent that it may be necessary for the proper administration of this Act; or

(b) for the purposes of the administration of justice.

***Keeping of records***

63. (1) An employer shall keep records in the prescribed form showing contributions of the employee which were deducted from the remuneration of that employee for the purpose of being remitted to the Fund in terms of section 56.

(2) An employer shall retain the records referred to in subsection (1) and any other prescribed documents relating to the payment of contributions at the place of business of that employer in Eswatini for a minimum period of five (5) years.

(3) An employer shall avail the records referred to in sub-section (2) for inspection on demand by an inspector or an authorized person.

***Penalties***

64. (1) Where a contribution for which an employer is liable, is not paid within the time specified in section 56(4), a sum equal to seven and one half per centum (7.5%) of the amount unpaid shall be added to the contribution for each month or part of a month during which the contribution remains unpaid, after the date by which payment was due.

(2) Where the Board is satisfied that the employer has not omitted to take reasonable action to ensure payment within the time specified by this Act, and any such additional amount shall be recoverable as a civil debt due to the Fund as if it were a contribution.

(3) The Board may relieve a defaulting employer of the whole or a part of any penalty imposed in terms of subsection (1).

#### *Recovery of contributions*

65. (1) Contributions and penalties due to the Fund shall be a debt due to the Fund, and may be recovered as such by the Board.

(2) Civil proceedings, including the filing of any claims in an insolvent estate or a company in liquidation, for the recovery of any contribution due by any person under this Act, shall be made by, and be instituted in the name of the Board or any authorized person.

(3) Where an employer becomes insolvent, or, in the case of an employer that is a company, where the company is wound up, any contribution, penalty or other amount payable to the Fund in respect of an employee shall rank as a preferential claim to the same extent and in the same manner as other preferential claims under the Insolvency Act, 1955 or its successor.

(4) Notwithstanding any other law, the messenger of a Magistrate Court or the Sheriff of the High Court, shall in the case of the sale in execution or under an order of court of any property of an employer, deduct from the proceeds of such sale any amount certified by the Chief Executive Officer as being due by the employer to the Fund under this Act and pay it to the Fund, unless the employer or any other person provides adequate security for the immediate payment to the Fund of the amount so certified.

### **PART VIII BENEFITS**

#### *Entitlement to Benefits*

66. (1) A person who is a member, or a dependent of a member, shall, subject to meeting the eligibility criteria applicable to each category of benefit, be entitled to the following benefits -

- (a) retirement benefit;
- (b) invalidity benefit;
- (c) survivors benefit; and
- (d) funeral benefit.

(2) The entitlement of a person to compensation or benefits arranged contractually, privately, or through an occupational scheme, in respect of any contingency covered under subsection (1), where such compensation or benefits are based on supplementary and voluntary contributions to such schemes, shall not be affected by the provisions of this Act.

#### *Periodical benefits*

67. The benefits payable in terms of this Act, unless explicitly stated elsewhere in this Act, shall be in the form of periodical payments and shall be granted throughout the contingency.

#### *Minimum benefit*

68. The Minister may, on the recommendation of the Board and in consultation with the

Actuary, prescribe and periodically adjust by Regulation, a minimum benefit amount in relation to any benefit category, to be paid to a person.

***Restriction on double benefit***

69. (1) A beneficiary shall not be entitled to receive more than one (1) cash benefit paid out in respect of the same contingency provided by the Fund or any other contributory public scheme or arrangement.

(2) Subject to subsection (1), the additional cash benefit funded from supplementary contributions, shall not be affected by the restriction on double benefit.

(3) A beneficiary who qualifies for more than one (1) cash benefit from a contributory public scheme or arrangement in respect of the same contingency, which is not an additional cash benefit contemplated in subsection (2), shall be entitled to be paid the benefit which is the highest.

(4) The provisions of section 54 are not affected by the provisions of this section.

(5) The benefits paid under this section shall have no bearing on the benefits provided by an occupation pension scheme.

***Indexing of benefits and of interest on supplementary accounts***

70. (1) The Board, based on the outcome of an actuarial valuation, shall consider increasing benefits on an annual basis.

(2) The Board shall determine a rate of interest to be paid on the accounts of members after the end of each financial year, on the balances outstanding at the beginning of that year and contributions made during that year, and such interest shall be credited to these accounts.

(3) The Board shall determine the rate of interest, taking into account the net income of the Fund for the financial year, after allowing for administration expenses of the Fund. The rate shall not exceed the net income of the Fund for the financial year.

(4) Notwithstanding subsection (3), a member and a beneficiary shall be entitled to have interest at the rate of not less than three per centum (3%) per annum, credited to the account of the member.

***Qualifying criteria***

71. The qualifying criteria for entitlement to a benefit payable to a particular benefit type, shall be through an actuarial valuation indicating the need for adjustment, recommended by the Board and approved by the Minister through Regulations.

***Restrictions to benefit***

72. A beneficiary shall not be entitled to benefits -

- (a) on failure to comply with any provision of this Act;
- (b) where suspended from receiving benefits under section 73; or
- (c) on failure to furnish the required information as provided under this Act.

***Manner of making claims for benefit***

73. (1) A person who is entitled to benefit from the Fund shall -

- (a) submit a claim to the Fund; and
  - (b) produce certificates, documents, information and evidence for the purpose of determining the right to a benefit.
- as prescribed in Regulations.

(2) An employer may be required to furnish records, or reports for the purpose of establishing any entitlement of that person to a benefit, as prescribed in Regulations.

***Protection of benefits***

74. (1) A benefit payable under this Act shall not -

- (a) be assigned;
- (b) be attached by order of any court, except a court order that relates to maintenance of children; or
- (c) be set off against any debt due except for a debt used as a collateral in terms of section 42 (b).

(2) On bankruptcy of a beneficiary, the benefit shall not pass to any trustee or other person acting on behalf of creditors.

***Suspension of right to benefits***

75. (1) The Chief Executive Officer may suspend the payment of a benefit to a person where the person -

- (a) makes a false statement in an application relating to that benefit; or
- (b) is suspected of a fraudulent conduct.

(2) The Chief Executive Officer shall provide an opportunity to the person referred to in subsection (1) to make representations before the suspension of the benefit.

***Retirement pension in the event of old age***

76. (1) A retirement pension shall, in the event of old age, be paid to a retired member who contributed as an employee and who has -

- (a) attained the pensionable age of sixty (60) years; and
- (b) made not less than one hundred and eighty (180) monthly contributions.

(2) The retirement pension contemplated in subsection (1) shall be -

- (a) based on an annual accrual rate; and
- (b) based on an average insured career remuneration, calculated by revaluation the past insured remuneration to the level of the current remuneration and by utilizing the average of the revalorized insured remunerations of the whole contribution period, calculated in accordance with the applicable formula actuarially determined as stipulated in the Second Schedule.
- (c) The revaluation rate will equate to the percentage change in the maximum insured salary on annual basis.

***Duration of retirement pension***

77. The retirement pension payment shall commence from the month following the month in which the retired member satisfies the conditions in section 76 and shall end in the month following the death of the member.

***Reduced retirement pension and lump-sum payment***

78. (1) A member who contributed as an employee and who has attained pensionable age and has retired from employment, but does not satisfy the conditions for pension payment under section 76, shall be entitled to a reduced pension payment, calculated in accordance with the applicable formula to be determined actuarially, if a member has made not less than one hundred and twenty (120) monthly contributions.

(2) A member who contributed as an employee and who has attained pensionable age and has retired from employment, but who does not satisfy the conditions for a retirement pension under subsection (1) of this section, shall be entitled to the payment of a lump sum, calculated in accordance with the applicable formula to be determined actuarially.

***Loss of employment or earnings before early retirement***

79. A member who loses employment or earnings before the age of early retirement and has not contributed for at least one hundred and twenty (120) months, shall be paid a lump sum calculated in accordance with the applicable formula determined by actuarial evaluation.

***Early retirement***

80. (1) A member who contributed as an employee shall qualify for early retirement if that member is within ten (10) years of pensionable age and has paid contributions for at least one hundred and twenty (120) months.

(2) The amount of the pension paid on early retirement under subsection (1) shall be the amount that would be payable under section 84 (2) reduced in accordance with an applicable formula to be determined actuarially, or the minimum pension amount indicated in the Second Schedule to this Act, whichever is the greatest.

(3) The early retirement benefit contemplated in this section shall be payable irrespective of whether the member has voluntarily or involuntarily retired early.

***Employment after reaching pensionable age***

81. (1) A member who has reached pensionable age may assume employment irrespective of the fact that member is entitled to or has been receiving retirement benefits in accordance with the provisions of this Part of the Act.

(2) A member who has assumed employment after reaching pensionable age, and the employer of that member, where applicable, may make contributions for purposes of retirement benefits under the provisions of this Part of the Act.

***Right to an invalidity pension***

82. (1) An invalidity pension shall be paid to a member who has been determined by the Medical Board, to suffer from a long-term or recurring physical or mental disability, which substantially limits the prospects of a member to engage in employment and has made not less than one hundred and twenty (120) monthly contributions.

(2) The invalidity pension contemplated in subsection (1) shall be -



- (a) based on an annual accrual rate;
- (b) based on an average insured career remuneration, calculated by revaluating the past insured remuneration to the level of the current remuneration and by utilizing the average of the revaluated remunerations of the whole contribution period; and
- (c) calculated in accordance with the formula as determined by actuarial valuation and stipulated in the Second Schedule.

(3) The Minister may, on the recommendation of the Board and in consultation with the Actuary and through Regulations adjust the invalidity pension.

***Duration of invalidity pension***

83. The invalidity pension payment shall commence from the month following the month in which the invalid member satisfies the conditions in section 84 and shall end in the month in which -

- (a) the invalid member reaches pensionable age, if at that time the member is entitled to a retirement pension at the same or higher rate;
- (b) the invalid member dies; or
- (c) the invalidity ceases to exist, upon assessment by the Medical Board.

***Reduced invalidity pension and lump-sum payment***

84. (1) A member who has been contributing as an employee and who suffers from a disability contemplated in section 82(1), and has made less than one hundred and twenty (120) monthly contributions, shall be entitled to a reduced invalidity pension payment.

(2) The reduced benefit, shall be calculated in accordance with an applicable formula to be determined actuarially, if that member has made not less than one hundred and eight (108) monthly contributions.

(3) A member who suffers from a disability contemplated in section 82 (1), but who does not satisfy the conditions for a reduced invalidity pension under subsection (2), shall be entitled to the payment of a lump sum, calculated in accordance with an applicable formula to be determined actuarially.

***Invalidity benefits not payable when qualifying for Workmen's' Compensation benefits***

85. (1) A member is not entitled to receive invalidity benefits where that member is entitled to or is receiving annuity benefit other than a lump sum benefit under the provisions of the Workmen's Compensation Act No. 7 of 1983 or its successor.

(2) The Fund shall review the position to continue paying the benefit, where the employee has a claim insured under the Workmen's Compensation Act No. 7 of 1983 or its successor or under the Motor Vehicle Accident Fund, upon finalization of the claim from either of the mentioned institutions.

***Invalidity assessment and Medical Board***

86. (1) An invalidity benefit shall be paid where the Medical Board has conducted an invalidity assessment for this purpose.

(2) The Minister shall, on the advice of the Medical Board make Regulations for undertaking invalidity assessments.

(3) The Ombudsman shall determine a complaint lodged against the Medical Board invalidity assessment.

(4) The Chief Executive Officer may, at any time after the award of an invalidity pension, refer that person to the Medical Board to determine the state of the invalidity.

(5) A beneficiary of an invalidity pension shall cease to receive invalidity pension where the beneficiary fails to appear for an invalidity assessment without just cause and to supply all necessary documents or information as may be necessary for the purposes of determining the continued entitlement.

***Establishment of Eswatini National Pension Medical Board***

87. (1) There is established a medical board to be known as the Eswatini National Pension Medical Board, which shall be appointed by the Minister in consultation with the Minister responsible for health.

(2) The Medical Board shall consist of the following members -

- (a) Chairperson, who shall be a medical practitioner employed by Government;
- (b) medical practitioner nominated by employer's federations; and
- (c) medical practitioner nominated by employee's federations.

(3) The Minister shall appoint a Secretary with a qualification in the field of law.

(4) The Medical Board may, invite any person to attend a meeting of the Medical Board and give evidence on any matter before the Medical Board.

(5) A member of the Medical Board shall hold office for a period not exceeding three (3) years.

(6) The members of the Medical Board shall be paid such allowances, retainer fees and where applicable, re-imbursement for travelling expenses, in accordance with the applicable Finance Circular.

(7) Two (2) Medical Board members shall constitute a quorum, where an agreement is not reached, it shall be deferred for decision to a full meeting of the Medical Board.

***Functions of the Medical Board.***

88. (1) The Medical Board shall -

- (a) conduct invalidity assessments to ascertain the degree and duration of invalidity;
- (b) advise the Minister on Regulations or guidelines for undertaking invalidity assessments; and
- (c) any other matter related to the medical examination and treatment of a member.

(2) The Medical Board shall issue out a decision in writing to the Chief Executive Officer on any matter or dispute referred to the Medical Board and that decision shall be final and binding.

***Rehabilitation measures***

89. Where a member is entitled to receive invalidity benefits, the Chief Executive Officer may, on the recommendation of the Medical Board, provide rehabilitation services to the member with a view to restoring, as far as practicable, the member's health, independence, and capacity to participate in the labour market and society.

***Pension of a survivor and right to such pension***

90. (1) The pension of a survivor shall be paid to a dependent of a deceased member, where at the time of death the member -

- (a) has made not less than one hundred and eighty (180) monthly contributions, or, in the case of invalidity, one hundred and twenty (120) monthly contributions;
- (b) was in receipt of a retirement pension or an invalidity pension; or
- (c) had met the conditions for entitlement to a retirement pension or an invalidity pension.

(2) The pension of a survivor as contemplated in subsection (1) shall be calculated in accordance with the applicable formula contained in the Second Schedule.

(3) The amount of a pension of a survivor available for distribution shall be determined as follows -

- (a) in the event of dependent of a deceased member who was receiving a retirement or invalidity pension before the death of the member, a percentage of the retirement pensions calculated in accordance with an actuarial formula ; and
- (b) in the event of dependent of a deceased member who would have been entitled to an invalidity pension or who was entitled to but not yet receiving retirement pension, a percentage of the assumed invalidity pension calculated in accordance with an actuarial formula and approved by the Board.

(4) The pension of a survivor as contemplated in subsection (1) shall be paid to any member of the family of the deceased in such proportions as the member of the Fund may have, nominated in writing and delivered to the Chief Executive Officer.

(5) The member mentioned in subsection (4) may at any period in writing update the nomination and may nominate another member of the family.

(6) The marriage of a member shall be deemed to revoke any prior nomination made by such member under subsection (4).

(7) The application of subsection (4) is subject to the evaluation of the Board of the prevailing situation in relation to the member's dependents' status.

(8) The Minister may, on the recommendation of the Board and in consultation with the actuary, through Regulations adjust the pension of the survivor.

***Duration and distribution of pension of a survivor***

91. The total amount of pension of a survivor shall be set at a maximum of one hundred percent (100%) and shall be allocated in the following proportions, namely -

- (a) fifty percent (50%) to the surviving spouse or spouses where there are no children

to be shared equally by the spouses, payable until the death of the surviving spouse;

- (b) thirty percent (30%) to the surviving spouse or spouses where there are children to be shared equally by the spouses, payable until the death of the surviving spouse, and twenty percent (20%) shared equally with the surviving children until a child reaches twenty-one (21) years of age or completes full-time education but not later than the age of twenty-five (25) or, if the child is an invalid, for life; or
- (c) where there is no surviving spouse, twenty percent (20%) to a surviving child, to a maximum of eighty percent (80%) in aggregate, where the children exceed four (4), the eighty percent (80%) aggregate shall be distributed equally to all surviving children payable until a child reaches twenty-one (21) years of age or completes full-time education but not later than the age of twenty-five (25) or, if the child is an invalid, for life.

***Reduced pension of a survivor and lump-sum payment***

92. (1) A dependant shall be entitled to a reduced survivors pension, calculated in accordance with an applicable formula to be determined actuarially, where the deceased member has made not less than one hundred and twenty (120) monthly contributions.

(2) A dependant who does not satisfy the conditions for a survivors' pension under section 88, shall be entitled to the payment of a lump sum, and calculated in accordance with an applicable formula to be determined actuarially.

***Funeral benefit***

93. (1) A funeral benefit, in the form of a lump-sum, shall be paid to the immediate family of that member.

(2) The funeral benefit shall be determined through Regulations by the Minister on the recommendation of the Board and in consultation with the Actuary.

***Recovery of benefits paid in error***

94. (1) A person who has been paid benefits to which the person was not entitled shall repay the paid amount to the Fund in full.

(2) The Fund shall report a criminal case in respect of benefits which were paid out or received as a result of criminal conduct.

(3) The Fund may institute civil proceedings for the recovery of benefits paid in error.

***Arrangements for transfer of benefits outside Eswatini***

95. (1) The Minister may make Regulations to enable the transfer of certain benefits to persons who were or are members of the Fund or dependents who reside outside of the Kingdom of Eswatini.

(2) An agreement between the Government of the Kingdom of Eswatini and other governments or international organisations may prescribe conditions and procedures for the -

- (a) transfer of membership or funds and accrued entitlements when a person transfers to employment outside the borders of the Kingdom of Eswatini, or to employment within the borders of the Kingdom of Eswatini, respectively; and
- (b) cross-border portability of certain benefits to which a person has become entitled under the provisions of this Act, under the provisions of a law of a country or

arrangements applicable to an international organisation which is a party to a bilateral or multilateral agreement involving the Kingdom of Eswatini.

(3) The arrangement contemplated in subsection (1) and agreements contemplated in subsection (2) may differentiate between different categories of beneficiaries and different categories of benefits, and may envisage an incremental approach, in terms of which portability arrangements -

- (a) may initially apply only to certain categories of beneficiaries or certain categories of benefits; and
- (b) could be extended to incrementally cover also other categories of beneficiaries or other categories of benefits.

(4) The agreements contemplated in subsection (2) between the Government of the Kingdom of Eswatini and other governments or international organisations shall regulate -

- (a) liability, including the sharing of liability, for payment of benefits to eligible persons; and
- (b) administrative co-operation between the Fund and other relevant schemes in other countries or falling under the auspices of international organisations.

#### **PART IX ENFORCEMENT AND COMPLIANCE PROVISIONS**

##### ***Inspectors***

96. (1) The Fund shall appoint persons who are employees of the Fund to be inspectors for the purpose of this Act.

(2) The Fund shall set up a proper enforcement and compliance system, which shall include the appointment of inspectors.

##### ***Database to support enforcement and compliance system***

97. (1) The enforcement and compliance system contemplated in this Act shall be supported by a computerized database of verified employer, member and beneficiary information.

(2) Board shall have regard to the provisions of section 62, when creating and maintaining the database contemplated in subsection (1).

##### ***Functions and powers of inspectors***

98. (1) The Fund shall provide an inspector with a certificate of appointment.

(2) An inspector shall -

- (a) at reasonable times enter any premises or place where there is a reasonable cause to believe that persons are being employed in respect of whom contributions are payable under this Act, and make any examination or inquiry which is considered necessary; and
- (b) require the production for examination of any book, register, account, receipt or other document relating to contributions and may copy or make extracts of such document.

(3) An inspector may notify the employer or the representative of the employer of the visit to the premises or place under subsection (2).

***Accountability for Employer compliance***

99. The Chief Executive Officer shall report to the Board on the compliance by the employer with the provisions of this Act.

***Offences***

100. (1) A person who commits an offence under this Act, shall on conviction be liable to pay a fine not exceeding fifteen thousand Emalangeni (E15, 000.00) or to imprisonment for a term not exceeding three (3) years or both where that person -

- (a) for the purpose of evading payment of any contribution by that person, who knowingly makes any false statement, or furnishes a false document; or
- (b) for the purpose of obtaining any self-benefit or refund -
  - (i) misrepresents or fails to disclose any material fact;
  - (ii) fails to pay to the Fund within seven (7) days after the end of the month in which the last day of the relevant contribution period falls;
  - (iii) fails to comply with Regulations, as a result of which there is loss to the Fund or as a result of which the individual insured person, records or contribution cannot be maintained;
  - (iv) fails without just cause to produce required or relevant documents;
  - (v) obtains consent for nonpayment of contributions from employees or beneficiaries through duress or undue influence;
  - (vi) knowingly deducts from the remuneration of an employee any sum in respect of contribution to the Fund, greater than the share of the employee of the statutory or voluntary contribution;
  - (vii) misrepresents or fails to disclose any material fact as a result of which that person obtains benefits from the Fund to which that person would have not been entitled;
  - (viii) hinders or obstructs an inspector in the performance of duties;
  - (ix) by colluding in association with other persons in order to derive benefit unlawfully; or
  - (x) violates any provision of this Act.

(2) An employer, employee including self-employed and other worker, who contravenes section 8, commits an offence, and shall on conviction, be liable to imprisonment for a period not exceeding fifteen thousand Emalangeni (E15, 000.00) or to imprisonment for a term not exceeding three (3) years or both.

(3) Proceedings in respect of any offence under this Act may be commenced at any time when it comes to the knowledge of the Chief Executive Officer that there is evidence to justify a prosecution for the offence.

*Legal proceedings*

101. An action for the recovery of contributions under this Act, may be instituted by the Chief Executive Officer, on behalf of the Fund.

*Protection of contributions*

102. Where a judgment or Order has been obtained against a contributor, no execution, attachment or process of any nature shall be issued against the contributions.

**PART X  
DECISIONS**

*Decisions*

103. (1) A person shall be provided with written reasons for any decision made by the Head of department, responsible for a benefit payment.

(2) A person, who is affected by a decision of the officer under subsection (1), may in writing within a period of thirty (30) days of such decision, appeal to the Chief Executive Officer.

(3) The Chief Executive Officer may on good cause shown, condone the late filing of an appeal by the person contemplated in subsection (2).

(4) The Chief Executive Officer shall, within ninety (90) days of receiving a written request made in terms subsection (1), respond in writing.

(5) A person who is not satisfied with the decision made by the Chief Executive Officer in subsection (4), may in writing lodge an appeal to the Ombudsman in terms of the Financial Services Regulatory Act, 2010.

**PART XI  
TRANSITIONAL PROVISIONS**

*Incorporation of members of the Eswatini National Provident Fund*

104. (1) Members of the Eswatini National Provident Fund, including their dependents, shall be deemed to be members or dependents, as the case may be, of the Eswatini National Pension Fund established under this Act, as from the date of commencement of this Act.

(2) Notwithstanding membership in the Eswatini National Provident Fund, a person shall not be entitled to a pension benefit under this Act unless they meet the qualifying conditions set out in the Third Schedule.

*Transfer of assets and liabilities*

105. (1) Assets and liabilities of the Eswatini National Provident Fund shall, from a date to be determined by the Minister by Notice, vest in the Eswatini National Pension Fund.

(2) Any legal proceedings which were instituted under the repealed Order are pending before any court, shall be continued and conducted as if they were instituted under this Act.

(3) A person who was liable to pay any sum of money to the repealed Fund under its enabling law, shall make such payment to the Fund as if the liability had arisen under this Act.

(4) Rights and obligations arising out of any contract, agreement or otherwise subsisting immediately before the commencement date, shall vest in the Fund.

**PART XII**  
**MISCELLANEOUS PROVISIONS**

***Exemptions and gradual implementation***

106. (1) The Minister may, by notice publish in the Gazette, exempt -

- (a) an employer;
- (b) employee, including domestic workers;
- (c) self-employed person; or
- (d) other worker,

from participating in the Eswatini National Pension Fund.

(2) The exemption contemplated in subsection (1) may take the form of a temporary or partial exemption and may indicate modalities and timelines for gradual compliance with the provisions of this Act.

***Existing Schemes***

107. (1) An employer shall participate in an existing pension scheme or provident fund of the employer and shall not be exempted from contributing to the Fund in respect of such employees.

(2) Where an employer is liable to make a statutory contribution under this Act, the employer shall amend the rules of the existing occupational scheme to take into account contributions to be made to the Fund, within a period of twelve (12) months.

(3) Nothing in subsections (1) and (2) shall be construed so as to -

- (a) authorize the amendment of an occupational scheme in such a way that the members are worse off; or
- (b) require an employer to contribute to the occupational scheme and the Fund an amount in excess of that paid by the employer to the scheme for any comparable period before becoming a contributing employer under this Act.

***Amendment of Schedules***

108. The Minister may, on recommendation of the Board in consultation with the Actuary, amend the schedules to this Act.

***Regulations***

109. (1) The Minister may make Regulations under this Act.

(2) Subject to an actuarial valuation, the Minister may make Regulations for the -

- (a) continuation of the current provident fund arrangement for excluded and exempted persons, for periods regarded necessary to ensure a smooth transition to the Fund;
- (b) transfer of amounts accumulated in and of vested rights in the Eswatini National Provident Fund to the Fund;



- (c) transfer and continuation in service of employees of the Eswatini National Provident Fund to the Fund;
- (d) transfer of property, assets and obligations which immediately before the coming into operation of any part of this Act were vested in the Eswatini National Provident Fund to the Fund, on the basis of no transfer costs, fees and taxes being payable; and
- (e) transfer of administration from the Eswatini National Provident Fund to the Fund.

### ***Repeal***

110. (1) The Eswatini National Provident Fund Order No. 23 of 1974 is repealed.

(2) Notwithstanding the repeal, subordinate legislation made under the repealed Order, on the commencement of this Act, and is not inconsistent with the provisions of this Act, shall remain in force until revoked.

## **FIRST SCHEDULE**

(Under Sections 18)

### **MEETINGS, DECISIONS AND PROCEEDINGS OF THE BOARD**

#### ***Meetings***

1. (1) The Board shall meet at least once every three (3) months.

(2) An ordinary meeting of the Board shall be convened by the Chairperson and the notice specifying the place, date and time of the meeting shall be sent to each Member of the Board not less than seven (7) days before the date of such meeting.

(3) Where the Chairperson is unable to attend the meeting, the Vice-Chairperson shall convene such a meeting.

(4) The Chairperson may convene a special meeting of the Board, upon a written request by a majority of the Members of the Board.

(4) The members of the Board shall appoint among themselves a member to preside over the meeting in the absence of the Chairperson and Vice-Chairperson.

#### ***Quorum***

2. The quorum for the Board meeting, shall be six (6) members provided it includes at least one (1) member representing employees and one (1) member representing employers.

#### ***Decisions***

3. (1) A decision of the majority of the Members of the Board present and voting shall be deemed to be a decision of the Board.

(2) The Chairperson of the Board shall have a casting vote in the event of an equality of votes.

(3) The Chairperson of the meeting may invite any person who is not a Member of the

Board to participate in the deliberations of the Board, but such person shall not be entitled to vote.

***Minutes of meetings.***

4. The minutes of each meeting of the Board shall be recorded and confirmed by the Board at the next meeting, and signed by the Chairperson and the Secretary of the meeting.

***Application of official seal and execution of contract***

5. The application of the official seal of the Board shall be authenticated by two (2) signatures, namely -

- (a) the signature of the Chairperson of the Board or some other Member of the Board authorised by the Board for that purpose; and
- (b) the signature of the Chief Executive Officer or some other employee authorised by the Board.

***Board procedure***

6. The Board shall regulate its own proceedings.

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**SECONDS CHEDULE**

**ESWATINI NATIONAL PENSION FUND: DESIGN OF THE SCHEME**  
(Sections 52(2), 53(3), 69 70, 78(2), 80(1), 85(2), 91(2), 95(2))

***Benefit formulae***

**Minimum contribution period to qualify for Benefit.**

**Formula**

**Retirement**

15 years

**Invalidity**

10 years

**Survivors**

15 years

***Funeral benefit***

As determined in accordance with the provisions of section 93.

The annual accrual rate is one and one tenth percent (11/10%). The average career remuneration is computed by revalorizing the past remuneration to the level of the current remuneration and by taking the average of the revalorized remunerations of the whole contribution period.

The invalidity benefit maximum pension is the same as retirement pensions, to which an insured person would have been entitled after the contributory period completed upon occurrence of the invalidity and until pensionable age. The annual accrual rate is one and one tenth percent (11/10%). The average career remuneration is computed by revalorizing the past remuneration to the level of the current remuneration and by taking the average of the revalorized remunerations of the whole contribution period.

**Survivor Benefits** are provided to children of the deceased and the widow(s) or widower of that deceased person. Where the principal pensioner is at least seven (7) years older than the spouse, the pension that will be paid shall be reduced by two percent (2%) per annum or pro-rata if not a complete year, for every year that the age gap is in excess of seven (7) years. This reduction will also be applied to the minimum pension where applicable.

The minimum pension shall be applied as follows:

| <b>Contributory years by retirement or invalidity</b> | <b>Minimum pension as a percentage of full minimum pension</b> |
|---|--|
| 15  | 50%  |
| 16  | 60%  |
| 17  | 70%  |
| 18  | 80%  |
| 19  | 90%  |
| 20+   | 100%   |

- (a) A linear interpolation shall be applied between integer years;
- (b) The minimum pension in respect of a survivors pension shall be subject to 50% of the minimum pension stated in the table above.

**Indexation of pensions:**

A pension shall be increased in accordance with a pension increase policy.

**Financing:**

The contribution rate is ten percent (10%), equally split between employers and employees.

**Contributory remuneration floor**

The remuneration contributory floor shall be a salary of eight hundred emalangenzi (E800.00) per month or as advised by the Minister through the gazette on the advice of the Board in consultation with the Actuary.

**Contributory remuneration ceiling**

The ceiling of the contributory remuneration of the Fund shall be reviewed annually.

### **THIRD SCHEDULE**

(Under Section 104 (3))

#### **TRANSITION ARRANGEMENTS FOR RETIREMENT PENSIONS**

- (a) Insured members, who are forty-five (45) years old or younger, at the commencement of the scheme, shall make contributions to the pension scheme, as prescribed in terms of this Act.
- (b) The existing balance under the Provident Fund shall be used to purchase past years of contributions in a formula as actuarially determined.

- (c) Insured members older than forty-five (45), whose individual reserves make up fifteen (15) years of contribution based on calculated past years at the time of the commencement of the new pension scheme, are given the choice of a lump sum or of a pension. Such members shall exercise their choice at the time of commencement of the new scheme.
- (d) Insured members who are older than forty-five (45) at the commencement of the scheme and who do not satisfy the condition that their calculated past years of contribution plus the years up to the retirement is equal to or more than fifteen (15) years, are given a choice of -
  - (i) purchasing past years of contributions based on actuarial calculations; or
  - (ii) the payment of a lump sum as actuarially determined.

#### FOURTH SCHEDULE

##### REGISTRATION

###### *Registration*

1. (1) An employer and employee, including self-employed person and any other worker who becomes a member of the Fund, shall be registered and issued with a registration number under this Act.
- (2) Employers shall formally lodge an application for membership of the Fund on behalf of employees in accordance with the provisions of subsection (4).
- (3) Self-employed persons and other workers who become members of the Fund, once the modalities of their coverage are developed by the Fund in consultation with relevant stakeholders, shall lodge an application for membership with the Fund.
- (4) An employer shall from the date of commencement of this Part of the Act or the date when the person concerned becomes an employer, as the case may be -
  - (a) complete and return to the Fund all prescribed forms;
  - (b) complete and forward to the Fund particulars of employees registered as contributors to the Fund; and
  - (c) cause employees in employment to be registered in accordance with subsection (1).
- (5) Where there is a change of the employer's address, business name or designation, the employer shall within thirty (30) days from the date of such change, notify the Fund.
- (6) An employer shall notify the Fund of the date when a member ceases to be in employment and furnish to the Fund such information as may be necessary for the whereabouts of such member.
- (7) Where there is a transfer or change of employment, the new employer shall furnish the Fund within the first month of paying monthly contributions.

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**FIFTH SCHEDULE**

**Submission of contributions NPF200 form**

The employer shall submit contributions due under section 56, together with particulars as required in the NPF200 form prescribed in this Schedule.