

**THE REVISED AND CONSOLIDATED RULES OF  
THE ESKOM PENSION AND PROVIDENT FUND**

## **ESKOM PENSION AND PROVIDENT FUND**

**BY ROUND ROBIN RESOLUTION PASSED ON THIS THE 14<sup>TH</sup> DAY OF MAY 2021, THE BOARD OF THE ESKOM PENSION AND PROVIDENT FUND**

**RESOLVED THAT** the existing rules of the Eskom Pension and Provident Fund, as amended, be replaced by these RULES which are effective 1 April 2021, notwithstanding any prior registration of these rules by the AUTHORITY.

The reasons for replacing the RULES are as follows:

1. In general, to consolidate the RULES to include the provisions of previous amendments (there is one such amendment to the registered RULES which has been incorporated in this revision), to update the RULES to reflect legislative changes and wording most appropriate for the administration practice of the FUND and to remove RULES which have become irrelevant;
2. To change the format and numbering of the RULES to make the RULES more user-friendly and concise;
3. To ensure the RULES comply with the requirements of the Income Tax Act, 1962;
4. To align the RULES with Regulation 38 and, where applicable, Regulation 39 framed under the ACT;
5. To remove the following definitions as they are no longer required:
  - a) "CONTINGENT PENSIONER"
  - b) "EMPLOYER SURPLUS ACCOUNT"
  - c) "MEMBER SURPLUS ACCOUNT"
  - d) "REGISTRAR"
  - e) "RETIREMENT ARRANGEMENT"
  - f) "SECRETARY"
  - g) "SUFFICIENT CONSENSUS"
  - h) "TRANSLOCATION BENEFIT"
  - i) "NON-CONTRIBUTORY MEMBER"
  - j) "PENSION PRESERVATION FUND"

6. To add the following defined terms as they are necessary under the revised structure of the RULES:

- a) "ABOVE MAXIMUM PAYMENT"
- b) "APPROVED FUND"
- c) "AUTHORITY"
- d) "CODE OF CONDUCT"
- e) "DISABLED ELIGIBLE CHILD"
- f) "ELECTION POLICY"
- g) "GOVERNANCE FRAMEWORK"
- h) "INVESTMENT RETURN"
- i) "NON-MEMBER SPOUSE"
- j) "PAID-UP MEMBER"
- k) "PENSION INCREASE POLICY"
- l) "REGISTERED INSURER"
- m) "RETIREMENT BENEFITS COUNSELLING"
- n) "REVENUE AUTHORITIES"

7. To add the definition of "ABOVE MAXIMUM PAYMENT" as it is necessary to make provision in the RULES for the EMPLOYER'S practice regarding remunerating its employees;

8. To add the definition of "APPROVED FUND" and amend the RULES accordingly to allow for the transfer to APPROVED FUNDS as specified in the RULES;

9. As a result of legislative changes, to rename the definition of "REGISTRAR" to refer to "AUTHORITY";

10. To add the term "CODE OF CONDUCT" as is necessary for purposes of good governance;

11. To add the definition "DISABLED ELIGIBLE CHILD" to clarify the instances when an ELIGIBLE CHILD will be regarded as a "DISABLED ELIGIBLE CHILD" and to align with the FUND'S practice;

12. By addition the definition of "ELECTION POLICY" to make it clear that the nominations, election and voting procedures applicable to the MEMBER BOARD MEMBERS will be in line with the ELECTION POLICY as adopted and amended by the BOARD from time to time;
13. As a result of legislative changes, by adding the definition "GOVERNANCE FRAMEWORK" and to amend the RULES accordingly to make it clear that the BOARD'S system of delegation will be in accordance with the BOARD'S adopted Governance Framework, as may be amended from time to time;
14. Consistent with current practice, to clarify how the interest rate added to benefits as set out in the RULES is calculated. In this regard, a definition of the term "INVESTMENT RETURN" has been added;
15. To align with the FUND'S practice regarding terminology, by adding the term "NON-MEMBER SPOUSE";
16. As a result of legislative changes, by adding the definition "PAID-UP MEMBER". The change is also necessary to distinguish between current DEFERRED PENSIONERS and PAID-UP MEMBERS effective 1 March 2019;
17. To align with legislation and the FUND'S practice, by adding the definition of "PENSION INCREASE POLICY" in terms of which pension increases may be allocated;
18. To align with the FUND'S practice and terminology, by adding the definition of "REGISTERED INSURER";
19. As a result of legislative changes, by adding the definition of "RETIREMENT BENEFIT COUNSELLING" and to amend the RULES accordingly;
20. To align with the FUND'S practice and terminology, by adding the definition of "REVENUE AUTHORITIES";
21. To align with legislation, to add the definition "UNCLAIMED BENEFIT" and to amend the RULES accordingly to deal with unclaimed benefits;
22. To replace the term "CHAIRMAN" with the term "CHAIRPERSON" and to provide that the CHAIRPERSON will be appointed as set out in the RULES;
23. To amend the definitions of the following terms to align with the definitions of the terms as per the ACT:

- a) "ADJUDICATOR"
- b) "COMPLAINANT"
- c) "COMPLAINT"
- d) "CONTINGENCY RESERVE ACCOUNT"
- e) "DEPENDENT"
- f) "MINIMUM INDIVIDUAL RESERVE"
- g) "PERFORMANCE BONUS"
- h) "THIRTEENTH CHEQUE"
- i) "SPOUSE"
- j) "UNCLAIMED BENEFIT"

- 24. To align with the FUND'S terminology by replacing the definition of "BENEFICIARY" to state that a beneficiary is a person entitled to a benefit in terms of the FUND'S RULES;
- 25. To remove the reference in the RULES to an employee on the London Office Staff of the EMPLOYER since there are no such employees;
- 26. To amend the definition of "DEFERRED PENSION" to distinguish such person from a "PAID-UP MEMBER";
- 27. To clarify that an "ELIGIBLE CHILD" must be the child of a MEMBER or PENSIONER at the time of the MEMBER or PENSIONER'S death;
- 28. To remove reference of a MEMBER in part-time employment in the definition of "FINAL AVERAGE EMOLUMENTS" since there are no such MEMBERS of the FUND;
- 29. Consistent with the FUND'S practice, to amend the definition of "FINANCIAL YEAR";
- 30. Consistent with the FUND'S practice and to clarify who will be regarded as being in a "MARRIAGE", to replace the definition of MARRIAGE;
- 31. To remove reference to "ESKOM'S Deferred Compensation Scheme" from the definition PENSIONABLE EMOLUMENTS since there is no such scheme;
- 32. To remove reference to the "ESKOM Defined Contribution Fund" since no such fund was established by ESKOM;

33. To remove reference to the period of CONTINUOUS SERVICE after 31 December 1961 from the definition PENSIONABLE SERVICE, since no such members are remaining on the FUND to whom the RULE applies;
34. To remove reference of the FUND agreeing to performance bonuses paid by the EMPLOYER in the definition of PERFORMANCE BONUS as in practice, the FUND'S consent is not required;
35. Consistent with the FUND'S practice, to amend the definition of SERVICE to make it clear that SERVICE shall mean the period of permanent employment of an EMPLOYER;
36. To remove reference of the FUND agreeing on THIRTEENTH CHEQUES paid by the EMPLOYER in the definition of THIRTEENTH CHEQUES as in practice, the FUND'S consent is not required;
37. Consistent with the FUND'S practice, to amend the definition of TEMPORARY EMPLOYEE to make it clear that a temporary employee will include a person whose employment is not subject to a right of renewal;
38. To clarify that a WIDOW / WIDOWER shall mean the surviving SPOUSE, irrespective of whether there was a MARRIAGE;
39. To reflect that of the seven EMPLOYER BOARD MEMBERS appointed by ESKOM, at least two of the seven shall be independent experts in any fields as advised by the BOARD;
40. To add provisions relating to the term of office of the BOARD and to specifically provide that any time spent in office by a BOARD MEMBER during a particular term of office shall be considered to be a term served fully by that BOARD MEMBER for purposes of calculating the term of office; and to provide that where a BOARD MEMBER acts in the place of any other BOARD MEMBER who has ceased to hold office, that BOARD MEMBER will hold office for the unexpired part of the term of office of the BOARD MEMBER in whose place he was appointed;
41. To promote good governance by adding conditions that a BOARD MEMBER must comply with to act, or to continue to act, as a BOARD MEMBER;
42. To ensure that the business of the FUND can continue, by specifying that the BOARD shall be competent to act and make decisions despite there being at any time one or more vacancies in their number which cause the number to be fewer than fourteen BOARD MEMBERS;

43. To promote good governance by providing that one of the two independent expert EMPLOYER BOARD MEMBERS appointed by the EMPLOYER shall be elected as the CHAIRPERSON by the BOARD and to make provision for the procedures for the appointment of the CHAIRPERSON in the RULES;
44. To align the RULES with the current practice and to expand upon the RULES that apply to meetings of the BOARD (including ordinary, special or sub-committee) meetings, by:
- (a) clarifying the decision-making procedure by the BOARD;
  - (b) removing archaic practices relating to the delivery of a notice of BOARD meetings to a BOARD MEMBER (i.e. delivery of the notice to the BOARD MEMBER'S superior, or member of his household);
  - (c) specifying that the CHAIRPERSON and the PRINCIPAL OFFICER may convene a special meeting;
  - (d) specifying that BOARD MEMBERS may waive or reduce the five working days' notice period for meetings;
  - (e) providing that a notice of a meeting may be given to BOARD MEMBERS via email;
  - (f) removing reference in the RULES providing that an inadvertent failure by the CHAIRPERSON to give notice to a BOARD MEMBER of a meeting will not invalidate any meeting or any resolution passed;
  - (g) adding provisions relating to the participation in meetings by a BOARD MEMBER by telephone or other communication;
  - (h) adding to the provisions relating to a quorum by specifying that at a rescheduled meeting, a minimum of four BOARD MEMBERS present at the meeting will form a quorum provided that least two must be EMPLOYER BOARD MEMBERS and two must be MEMBER BOARD MEMBERS.
45. To align the RULES with current practice and to expand upon the RULES that apply to voting and decision making by the BOARD by:
- (a) removing reference in the RULES to decisions in respect of procedural matters; decisions in respect of matters which are obligatory in law or the RULES; decisions in respect of all other matters and to simplify the RULES by providing that at all meetings of the BOARD the decision of the majority of the shall be binding;

- (b) removing reference to "sufficient consensus" in the RULES;
  - (c) adding that a decision of the BOARD can also be taken by round-robin resolution in writing and email provided that the resolution must be agreed to by at least 75% of the BOARD MEMBERS;
  - (d) adding provisions relating to the procedure where a quorum is not present at a specific meeting of the BOARD;
  - (e) adding provisions relating to the passing of and validity of a resolution passed by the BOARD.
- 46. To expand upon the RULES relating to appointments made by the BOARD and to provide for the appointment of a deputy principal officer;
  - 47. To align the RULES with the FUND'S current practice in relation to the delegation by the BOARD in accordance with the system of delegation as set out in the GOVERNANCE FRAMEWORK and to expand upon the RULES relating to delegation of functions;
  - 48. To align with legislation; promote good governance and consistent with the FUND'S practice by expanding upon and clarifying certain of the BOARD'S duties in the RULES;
  - 49. To align with legislation; promote good governance and consistent with the FUND'S practice by expanding upon and clarifying certain of the BOARD'S powers in the RULES;
  - 50. To specify the dispute resolution and deadlocking procedures in the RULES;
  - 51. To remove archaic provisions in the RULES relating to the admission of membership since there are no longer CONTINGENT PENSIONERS of the FUND;
  - 52. To remove archaic provisions in the RULES offering employees in SERVICE on 1 July 1976 the choice to become MEMBERS of the FUND;
  - 53. To remove the provision in the RULES relating to the categorisation of all new employees who join the SERVICE of an EMPLOYER and who becomes an ELIGIBLE EMPLOYEE on or after 1 January 1987 as being a "1987 MEMBER" since this practice is outdated;
  - 54. To remove archaic provisions in the RULES relating to the change of class of a MEMBER since the period within which to change a class of MEMBER has long lapsed;



55. Consistent with the FUND'S current practice, to add provisions in the RULES relating to the requirements of MEMBERS, BENEFICIARIES and the EMPLOYER to provide the FUND with certain information;
56. To remove archaic provisions in the RULES relating to the husband of a female MEMBER to furnish the FUND with certain information;
57. To specify the conditions in the RULES relating to instances where a MEMBER or BENEFICIARY has made material misrepresentation or non-disclosure to the FUND;
58. To insert specific provisions in the RULES relating to the repayment of contributions made to the FUND if it is found that an employee did not satisfy the conditions necessary to qualify as an ELIGIBLE EMPLOYEE;
59. To insert specific provisions in the RULES relating to the repayment to the FUND of erroneously paid benefits or amounts;
60. To specify that any new EMPLOYER shall bear an equitable portion of the liabilities incurred by the FUND in admitting the new EMPLOYER to membership of the FUND and that no existing EMPLOYER shall subsidise the admission of employees of that new EMPLOYER;
61. To align the RULES with the FUND'S current practice and to simplify the provisions in the RULES in more user-friendly and concise terms relating to the payment of MEMBER, EMPLOYER and voluntary contributions to the FUND;
62. Consistent with the FUND'S practice, to remove reference to interest and/or interest and a bonus as being added to benefits and replacing the reference to interest with "INVESTMENT RETURN";
63. To amend the RULES relating to EMPLOYER and MEMBER contributions that will be payable to the FUND in the event of leave, temporary absence, suspension secondment or strike action and specifically to provide that MEMBER and EMPLOYER contributions will be payable during such events as agreed to between the MEMBER and the EMPLOYER and notified to the FUND in advance of a decision that no contributions will be paid to the FUND;
64. To amend the RULES relating to the period of leave, temporary absence, suspension secondment or strike action and to provide that if no EMPLOYER and MEMBER contributions are paid to the FUND, then the MEMBER'S years of SERVICE will be

adjusted by the ACTUARY which will impact on the benefit payable to the MEMBER in terms of the RULES;

65. As the FUND and the EMPLOYERS are separate legal entities and as certain FUND documents and information are confidential, to remove the provision in the RULES providing that the BOARD shall provide a full report on all matters relating to the FUND to each EMPLOYER;
66. To align the RULES with the FUND'S current practice and to simplify the provisions in the RULES in more user-friendly and concise terms relating to the payment of withdrawal benefits, death benefits, retirement benefits and ill-health benefits in respect of MEMBERS, PENSIONERS, DEFERRED PENSIONERS, BENEFICIARIES and PAID-UP MEMBERS, as the case may be;
67. To amend the RULES to provide that a DEFERRED PENSIONER who elected to defer his or her pension in terms of the RULES, may, prior to attaining age 55 (fifty-five) and subject to notifying the FUND in writing, elect to receive his entire withdrawal benefit in cash or to transfer his entire benefit to an APPROVED FUND and to clarify that no partial withdrawal or transfer will be permitted;
68. To amend the RULES to provide that if a DEFERRED PENSIONER did not elect in writing to receive payment of his withdrawal benefit as contemplated in the RULES before attaining age 55 (fifty-five), then such a DEFERRED PENSIONER shall be entitled to a PENSION calculated in terms of the RULES upon attaining PENSIONABLE AGE, or shall be entitled to retire early on or after attaining age 55 (fifty-five) (but before attaining PENSIONABLE AGE), in which case his benefit shall be calculated in terms of RULE 7.2;
69. To amend the RULES by providing that the BOARD has the discretion to decide whether or not to levy administration fees and/or on-going management fees on the deferred benefit on such basis and such frequency as deemed appropriate by the BOARD after consulting with the ACTUARY;
70. To clarify in the RULES that in the event of resignation or dismissal of a MEMBER, a MEMBER shall become entitled to a benefit equal to the greater of his ACCUMULATED CONTRIBUTIONS or MINIMUM INDIVIDUAL RESERVE;
71. To align the RULES with the FUND'S current practice by clarifying that where a MEMBER who has attained age 55 by the date of leaving SERVICE on account of dismissal or

resignation, he shall be required to provide adequate documentary proof to the FUND that the MEMBER will within a reasonable period after he terminated SERVICE, occupy alternative employment or self-employment. Where no such adequate documentary proof is provided then, an early retirement benefit will become payable and not a withdrawal benefit;

72. To provide flexibility to a MEMBER who has attained age 55 and over by the date of leaving SERVICE on account of dismissal or resignation by adding to the RULES that such a MEMBER may be entitled to elect that his withdrawal benefit be transferred to an APPROVED FUND instead of being paid to him as a lump sum;
73. To amend the RULES dealing with early retirement by providing flexibility to the EMPLOYER to choose to waive the reduction factor or any part thereof, or to credit the MEMBER with additional PENSIONABLE SERVICE up to his PENSIONABLE AGE, subject to the EMPLOYER making payment into the FUND of such amount as calculated by the ACTUARY;
74. To clarify in the RULES that if a MEMBER who has attained the age of 50 years and has not less than ten years' PENSIONABLE SERVICE, is retired from the SERVICE owing to retrenchment, then he may instead be granted at the discretion of the BOARD after consulting the EMPLOYER, as from the date of his leaving the SERVICE of his EMPLOYER, a PENSION as calculated in accordance with the RULES;
75. To clarify in the RULES that if a MEMBER leaves the FUND on his retrenchment, dismissal or resignation, he will receive, in addition to any amounts payable in terms of the RULES, a share from the investment reserve in accordance with Section 15G of the ACT, and a share of such contingency reserves, if any, as the BOARD deems appropriate in consultation with the ACTUARY and as contemplated in the ACT;
76. To align the RULES with Regulation 38 framed under the ACT by adding provisions specifically relating to PAID-UP MEMBERS;
77. To align the RULES with Regulation 38 framed under the ACT by removing provisions relating to the payment of benefits into the deceased PAID-UP MEMBER'S estate and instead to provide that the benefit shall be allocated and distributed in terms of Section 37C of the ACT and shall not be payable to his deceased estate;
78. To clarify the RULES relating to transferring benefits to an APPROVED FUND in the event of resignation, dismissal or retrenchment;

79. To specify that a MEMBER shall have no further claim on the FUND for a benefit after the FUND had paid the MEMBER'S benefit or transferred the MEMBER'S benefit on his behalf;
80. In line with legislation, to provide in the RULES that if a benefit is not transferred in the period determined in Section 13A of the ACT, that interest will be added to the value of the benefit from the date of expiry of the prescribed period to the actual date of transfer at a rate equal to the greater of the rate prescribed in terms of that Section and the INVESTMENT RETURN;
81. To consolidate the RULES relating to DEFERRED PENSIONERS under a separate section in the RULES and to expand upon and clarify the RULES relating to DEFERRED PENSIONERS by:
  - (a) specifying that a MEMBER may elect to become a DEFERRED PENSIONER instead of receiving his benefits in terms of the RULES;
  - (b) specifying the period within which a MEMBER must elect to become a DEFERRED PENSIONER;
  - (c) specifying conditions applicable to DEFERRED PENSIONERS;
  - (d) specifying the benefits payable to DEFERRED PENSIONERS on death and retirement;
  - (e) removing from the RULES the provision that a PENSION shall cease on the death of a DEFERRED PENSIONER who is not a partner to a MARRIAGE at the date of commencement of the PENSION; and replacing the RULES with the provision that if a DEFERRED PENSIONER, who is not a partner to a MARRIAGE, dies within five years of the date of commencement of his PENSION, then the PENSION that would have been payable over the first five years after retirement shall be paid as a lump sum death benefit in term of Section 37C of the ACT;
  - (f) clarifying that if a DEFERRED PENSIONER dies before retiring in terms of the RULES, then the deferred benefit shall be distributed by the BOARD in terms of Section 37C of the ACT;
  - (g) making provision for the payment of an ill-health benefit to a DEFERRED PENSIONER if he becomes disabled before the attainment of age 55;

82. To consolidate the RULES relating to PENSIONS under a separate section in the RULES;
83. To remove the RULE relating to a MEMBER ceasing to be a MEMBER if he attained PENSIONABLE AGE since such a MEMBER shall become entitled to a PENSION in terms of the RULES and as such will not cease to be a "member" as defined in Section 1 of the ACT;
84. To clarify the RULES relating to ill-health benefits and to provide that a medical panel appointed by the BOARD shall determine whether a MEMBER satisfies the requirements of "disability" for purposes of receiving an ill-health benefit;
85. Aligned with the FUND'S practice, to specify that the PENSION granted to an ELIGIBLE CHILD shall cease when he attains age 21, provided that in relation to a DISABLED ELIGIBLE CHILD, the PENSION shall be paid for life and will cease when the DISABLED ELIGIBLE CHILD dies or ceases to be a DISABLED ELIGIBLE CHILD;
86. To remove the provisions in the RULES relating to the establishment, implementation and communication of a policy on PENSION increases and the RULES relating to the determination by the BOARD of PENSION increases since the BOARD has adopted a PENSION INCREASE POLICY and the (revised) RULES make provision for PENSION Increases in accordance with the PENSION INCREASE POLICY;
87. To provide in the RULES that the BOARD shall communicate the PENSION INCREASE POLICY to PENSIONERS whenever it is changed;
88. To specify in the RULES that if a PENSION is suspended, no INVESTMENT RETURN will be added to the PENSION during the suspended period;
89. Consistent with the FUND'S current practice, by adding provisions in the RULES relating to the information specifically required from PENSIONERS and DEFERRED PENSIONERS and to specify that the FUND shall not be held liable for any loss suffered by a PENSIONER, DEFERRED PENSIONER or BENEFICIARY as a result of false or incorrect information;
90. To make provision for RETIREMENT BENEFIT COUNSELLING before a withdrawal benefit is paid to a MEMBER or transferred to an APPROVED FUND in terms of the RULES;

91. To make provision for RETIREMENT BENEFIT COUNSELLING six months before attaining PENSIONABLE AGE;
92. Consistent with current practice, to clarify the provisions in the RULES which apply to the payment of benefits on the death in SERVICE before PENSIONABLE AGE and death of a PENSIONER who has retired from SERVICE;
93. To remove the RULE relating to the BOARD granting a PENSION to a WIDOW or WIDOWER of a former employee who has not become entitled to a PENSION since the RULE is not aligned with the FUND'S practice;
94. To remove the RULE relating to the reduction of a PENSION payable to a WIDOW or WIDOWER of a former member as a result of his or her remarriage since the RULE is not aligned with the FUND'S practice;
95. To specify that INVESTMENT RETURN will be added to certain benefits if the FUND does not pay a benefit within the periods as specified in the RULES;
96. To clarify and expand upon the provisions in the RULES relating to a MEMBER re-joining the FUND after his resignation and to specifically provide that the previous EMPLOYER SERVICE will be condoned if the applicant repays the FUND the benefit he received together with INVESTMENT RETURN;
97. To add provisions relating to a MEMBER who has been dismissed from SERVICE by:
  - (a) specifying that if the dismissed MEMBER is subsequently reinstated into SERVICE of the EMPLOYER, the period between the date of dismissal and reinstatement shall not be treated as PENSIONABLE SERVICE unless MEMBER and EMPLOYER contributions are paid into the FUND;
  - (b) specifying that if a dismissed MEMBER has been paid his benefit and is re-instated into SERVICE of the EMPLOYER, then the MEMBER may choose to repay the FUND the benefit received together with INVESTMENT RETURN within the specified periods failing which the MEMBER will not retain his previous PENSIONABLE SERVICE and his membership period with the FUND will commence from the date of reinstatement;
  - (c) specifying that where a MEMBER re-joins SERVICE of an EMPLOYER following dismissal, unless the FUND receives MEMBER and EMPLOYER contributions for the period between the date of dismissal and reinstatement, the period between the date of dismissal and reinstatement shall not be treated as PENSIONABLE

SERVICE and will result in a MEMBER'S years of SERVICE being adjusted by the ACTUARY which will impact on the benefit payable to the MEMBER in terms of the RULES;


98. To remove the special provisions in the RULES relating to the allocation of Section 15B surplus since the FUND submitted a nil surplus apportionment scheme;
99. To remove provisions in the RULES relating to an EMPLOYER SURPLUS ACCOUNT and a MEMBER SURPLUS ACCOUNT since there are no such accounts held in the FUND;
100. To add a provision in the RULES that future surplus (Section 15C) shall be apportioned as decided by the BOARD acting on the advice of the ACTUARY;
101. To specify that the BOARD, on the advice of the ACTUARY, shall review the CONTINGENCY RESERVE ACCOUNT to provide for explicit contingencies as the BOARD may in their discretion decide;
102. To align the accounting and reserve structure of the FUND to the actual operation of the FUND and by amending the RULES relating to the accounts and reserves maintained by the FUND by –
  - (a) renaming the "Data Contingency Reserve Account" to "Data Contingency Reserve" and to specify that "Data Contingency Reserve" will be restated at each actuarial valuation, if applicable;
  - (b) renaming "Solvency Contingency Reserve Account" to "Solvency Contingency Reserve" to specify that the "Solvency Contingency Reserve" shall not be credited with INVESTMENT RETURNS and shall be restated at each actuarial valuation;
  - (c) renaming the "Contribution Shortfall Reserve" to "Contribution Reserve" and to specify that the "Contribution Reserve" shall be restated at each actuarial valuation;
  - (d) removing provisions in the RULES relating to the Pension Increase Affordability Reserve since this reserve is not held by the FUND;
  - (e) providing for an Unclaimed Benefits Reserve Account to house UNCLAIMED BENEFITS and to clarify the allowable credits and debits from the Unclaimed Benefits Reserve Account;
103. To revise the RULES relating to the termination of the FUND by -


- (a) removing provisions relating to the liquidation of the FUND in the event that ESKOM is wound-up or ceases to carry on business;
  - (b) specifying that the FUND may, at the discretion of the BOARD and after consultation with ESKOM and the ACTUARY, be liquidated or continue to operate its business in the event that ESKOM is wound-up or ceases to carry on business;
  - (c) adding provisions to apply in the event that the BOARD decides that the FUND is to continue to operate in the event that ESKOM is wound-up or ceases to carry on business;
  - (d) adding provisions to apply in the event that the FUND is liquidated;
  - (e) adding provisions to apply on partial termination of the FUND;
  - (f) removing provisions relating to ESKOM terminating the FUND on notice to the BOARD;  
and
  - (g) removing provisions relating to the continuance of the FUND without EMPLOYER contributions as voted by two-thirds of the MEMBERS in the event of termination of the FUND;
104. To remove provisions in the RULES relating to transfers of a TRANSLOCATION BENEFIT to a PENSION PRESERVATION FUND, since the RULES are amended to clarify the circumstances of transfers in and out of the FUND;
105. To allow a benefit to be transferred to the FUND following the divorce of a MEMBER and to provide that any amount transferred to the FUND will be applied as a voluntary contribution in terms of the RULES;
106. Consistent with current practice, to remove the requirement for the BOARD to obtain approval from every EMPLOYER before exercising the BOARD'S powers under section 14 of the ACT;
107. To formalise the process to be followed in the event of a COMPLAINT lodged by a COMPLAINANT against the FUND, in line with the provisions of the ACT;
108. To clarify and expand upon the provisions of the RULES relating to deductions from benefits, in line with the provisions of the ACT and the FUND'S practice;



109. To specify that where the FUND is to make a deduction from a MEMBER'S benefit in terms of a maintenance order issued in respect of a MEMBER, the ACTUARY shall reduce the MEMBER'S years of SERVICE;
110. Where the RULES previously referred to a notional account in relation to UNCLAIMED BENEFITS, to clarify and reflect the current practice that those benefits are held in an UNCLAIMED BENEFITS RESERVE ACCOUNT;
111. To clarify and expand on the provisions in the RULES relating to UNCLAIMED BENEFITS by –
- (a) specifying that UNCLAIMED BENEFITS shall be held in the Unclaimed Benefits Reserve Account;
  - (b) providing for the transfer of UNCLAIMED BENEFITS to a fund approved by the AUTHORITY to receive UNCLAIMED BENEFITS; and
  - (c) removing reference in the RULES that UNCLAIMED BENEFITS could be transferred to the Guardian's Fund;
112. To remove Appendices that no longer apply.

  
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CHAIRPERSON

  
.....  
S. Abrahams  
18 May 2021  
.....  
PRINCIPAL OFFICER

  
.....  
L. Brown  
19 May 2021  
.....  
MEMBER OF THE BOARD

  
.....  
N. K. Shandu  
19 May 2021  
.....  
MEMBER OF THE BOARD




**VALUATOR'S CERTIFICATE:** In my capacity as the Actuary of the Eskom Pension and Provident Fund, I certify that in my opinion, the rules of the Eskom Pension and Provident Fund are financially sound.

.....  
Liesel Venetia Ryan

.....18 May 2021.....

DATE

.....  
  
- Signature

.....B.Sc. FASSA.....  
Qualifications

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## **1. GENERAL**

- 1.1 The Electricity Supply Commission Pension and Provident Fund came into operation on 1 January 1950 and was registered on 21 April 1958 in terms of the ACT as a privately administered fund. With effect from 24 February 1988 the Electricity Supply Commission Pension and Provident Fund changed its name to the Eskom Pension and Provident Fund.
- 1.2 The registered office of the FUND is at EPPF Office Park, Isivuno House, 24 Georgian Crescent East, Bryanston East, 2191.
- 1.3 The object of the FUND is to provide retirement and other benefits for ELIGIBLE EMPLOYEES and former ELIGIBLE EMPLOYEES of EMPLOYERS, and benefits in the event of their death. The operations of the FUND shall have as its main objectives the following:
  - 1.3.1 sound governance;
  - 1.3.2 faultless administration; and
  - 1.3.3 appropriate investment performance suitable to the nature and term of the liabilities.
- 1.4 The FUND, in its own name, shall be capable in law of suing and of being sued and of acquiring, holding and alienating property, movable and immovable.
- 1.5 These RULES incorporate all amendments up to and including 1 April 2021 and shall replace the RULES previously in force for all MEMBERS and stakeholders at that date. Payment of benefits to or in respect of a person who either:
  - 1.5.1 became a PENSIONER or DEFERRED PENSIONER prior to 1 April 2021; or
  - 1.5.2 prior to 1 April 2021, was a WIDOW, WIDOWER or ELIGIBLE CHILD in receipt of a PENSION paid by the FUND;shall, unless these RULES specifically provide otherwise, be made in terms of the RULES in force on the date on which such person left SERVICE or became entitled to payment of such PENSION, as applicable.
- 1.6 If the registration of these RULES in terms of the ACT is effected later than 1 April 2021, the RULES shall nevertheless take effect on 1 April 2021.

## 2. DEFINITIONS

In these RULES words defined in the ACT and not in the RULES shall have the meanings assigned to them in the ACT and, unless inconsistent with the context, all words and expressions signifying the singular shall include the plural and vice versa, words and expressions implying the masculine gender shall include the feminine, and the following words and expressions shall have the following meanings:

A **"1950 MEMBER"** shall mean a male MEMBER who was a 1950 MEMBER at 30 June 1976 and who has not after that date become a 1952 MEMBER or a 1964 MEMBER or a 1976 MEMBER or a 1987 MEMBER and who elected to contribute 6% of his PENSIONABLE EMOLUMENTS, and shall include a 1952 MEMBER or a 1964 MEMBER who has reverted in terms of the RULES to being a 1950 MEMBER.

A **"1952 MEMBER"** shall mean a male MEMBER who was a 1952 MEMBER at 30 June 1976 and who has not after that date become a 1964 MEMBER or a 1976 MEMBER or a 1987 MEMBER and who elected to contribute 6% of his PENSIONABLE EMOLUMENTS, and shall include a 1964 MEMBER who has reverted in terms of the RULES to being a 1952 MEMBER.

A **"1964 MEMBER"** shall mean a male MEMBER who was a 1964 MEMBER at 30 June 1976 and who has not after that date reverted in terms of the RULES to be a 1950 MEMBER or a 1952 MEMBER and has not become a 1976 MEMBER or a 1987 MEMBER, and who elected to contribute 6% of his PENSIONABLE EMOLUMENTS.

A **"1976 MEMBER"** shall mean a MEMBER who was in the SERVICE on 31 December 1986, who is not a 1950 MEMBER or a 1952 MEMBER or a 1964 MEMBER and who elected to contribute 6% of his PENSIONABLE EMOLUMENTS.

A **"1987 MEMBER"** shall mean a male or female employee who became a MEMBER on or after 1 January 1987 or a 1950 MEMBER, a 1952 MEMBER, a 1964 MEMBER, a 1976 MEMBER or a C MEMBER who elected to become a 1987 MEMBER.

A **"C MEMBER"** shall mean a female MEMBER who elected to contribute 4% of her PENSIONABLE EMOLUMENTS.

**“ABOVE MAXIMUM PAYMENT”** shall mean that portion of a MEMBER’S increase in remuneration, as notified by the EMPLOYER to the FUND in writing at the time of payment to the FUND, that exceeds an EMPLOYER’S maximum of the remuneration scale effective from the implementation of any increase in remuneration. The ABOVE MAXIMUM PAYMENT is a one-time upfront payment for a 12-month period and shall be regarded as PENSIONABLE EMOLUMENTS. RULE 5.2.6 and RULE 5.2.7 shall apply to any ABOVE MAXIMUM PAYMENT received by the FUND from an EMPLOYER.

**“ACCUMULATED CONTRIBUTIONS”** shall mean the MEMBER’S CONTRIBUTIONS with INVESTMENT RETURN.

**“ACT”** shall mean the Pension Funds Act, 1956, as amended, and the regulations framed under the ACT.

**“ACTUARY”** shall mean a natural person who is a resident in the Republic of South Africa and admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the AUTHORITY.

**“ADJUDICATOR”** shall mean the Pension Funds Adjudicator as defined in the ACT.

**“APPROVED FUND”** shall mean a pension, pension preservation, provident, provident preservation or a retirement annuity fund as defined in the Income Tax Act, 1962 and approved by the REVENUE AUTHORITIES.

**“AUDITOR”** shall mean an auditor registered under the Auditing Profession Act, 2005, who shall not be an officer of the FUND.

**“AUTHORITY”** shall mean the Financial Sector Conduct Authority established in terms of the Financial Sector Regulation Act, 2017.

**“BENEFICIARY”** shall mean any person who is entitled to any benefit in terms of these RULES.

**“BOARD”** shall mean the BOARD constituted in terms of the RULES.

**“BOARD MEMBER”** shall mean a person who has been appointed or elected to serve as a member of the BOARD in terms of the RULES.

**“CHAIRPERSON”** shall mean the CHAIRPERSON of the FUND appointed in terms of the RULES.

**“CODE OF CONDUCT”** shall mean the CODE OF CONDUCT as adopted, and as may be amended from time to time, by the BOARD, which sets out the ethical values that guide the behaviour of the BOARD in managing the affairs of the FUND.

**“COMPLAINANT”** shall mean a complainant as defined in the ACT.

**“COMPLAINT”** shall mean a complaint as defined in the ACT.

**“CONTINGENCY RESERVE ACCOUNT”** shall mean a contingency reserve account as defined in the ACT.

**“CONTRIBUTIONS”** shall mean the amounts paid or payable by a MEMBER to the FUND, exclusive of INVESTMENT RETURN and exclusive of contributions paid in terms of RULE 5.2.

**“DEFERRED PENSIONER”** shall mean a MEMBER who has left SERVICE of an EMPLOYER and elected in writing in terms of RULE 7.1 to defer payment of his benefits to a future date which falls between his fifty-fifth (55<sup>th</sup>) and sixty-fifth (65<sup>th</sup>) birthdays. For the purposes of the RULES, a PAID-UP MEMBER is not a DEFERRED PENSIONER unless a PAID-UP MEMBER elected in writing to become a DEFERRED PENSIONER in terms of the RULES.

**“DEPENDANT”** shall mean a dependant as defined in the ACT.

**“DISABLED ELIGIBLE CHILD”** shall mean an ELIGIBLE CHILD under or over the age of 21 (twenty-one) years, whom the medical panel appointed by the BOARD has declared permanently incapacitated by reason of physical or mental infirmity from supporting himself, provided that-

- (i) the incapacity occurred prior to the death of the MEMBER or PENSIONER; and
- (ii) the application leading to such declaration was made prior to the ELIGIBLE CHILD reaching the age of 21 (twenty-one) years or later with the consent of the BOARD.

**“ELECTION POLICY”** shall mean the election policy, as adopted, and as may be amended from time to time, by the BOARD, which sets out the terms and conditions applicable to the nomination, election and voting procedure applicable to MEMBER BOARD MEMBERS.



**"ELIGIBLE CHILD"** shall mean a child of a MEMBER or PENSIONER, and shall include a posthumous child, an adopted child, and a child born out of wedlock recognised by the BOARD provided the child is under the age of 21 (twenty-one) years and that such child was a child or unborn child of a MEMBER or PENSIONER at the time of death of the MEMBER or PENSIONER.

**"ELIGIBLE EMPLOYEE"** shall mean an employee of an EMPLOYER who –

- (i) at the date of becoming a MEMBER, is under PENSIONABLE AGE;
- (ii) is not a TEMPORARY EMPLOYEE of an EMPLOYER; and
- (iii) if applicable in his case, has completed the period of SERVICE required in terms of RULE 4.1.2 to become an ELIGIBLE EMPLOYEE.

**"EMPLOYER"** shall mean ESKOM, any subsidiary of ESKOM, the EXTERNAL EMPLOYER, and any other company or organisation, admitted to participate in the FUND with the consent of ESKOM and on terms agreed with the BOARD, in terms of RULE 4.4. Where the context so requires, "EMPLOYER" shall mean the EMPLOYER in whose SERVICE that ELIGIBLE EMPLOYEE, MEMBER, DEFERRED PENSIONER, PAID-UP MEMBER or PENSIONER is or was last employed.

**"EMPLOYER BOARD MEMBER"** shall mean a BOARD MEMBER referred to in RULE 3.2.

**"ESKOM"** shall mean Eskom Holdings SOC Limited, a state-owned company duly incorporated in terms of the Companies Act, 2008, with registration number 2002/015527/06 having its principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg.

**"EXTERNAL EMPLOYER"** shall mean the FUND.

**"FINAL AVERAGE EMOLUMENTS"** shall mean the annual average of a MEMBER'S PENSIONABLE EMOLUMENTS over the last year of his PENSIONABLE SERVICE or over the months for which CONTRIBUTIONS were paid in respect of a MEMBER if the MEMBER'S PENSIONABLE SERVICE is less than one year.

**"FINANCIAL YEAR"** shall mean the period of 12 months leading to and including the FINANCIAL YEAR END.

**"FINANCIAL YEAR END"** shall mean 30 June of any year.

**“FUND”** shall mean the Eskom Pension and Provident Fund.

**“GOVERNANCE FRAMEWORK”** shall mean the FUND’S Governance Framework Policy, as adopted, and as amended from time to time, by the BOARD, which describes, amongst other things, the governance structures, decision-making processes and delegation of authority applicable to the FUND.

**“INVESTMENT RETURN”** shall mean the investment return determined by the BOARD on the advice of the ACTUARY.

**“MARRIAGE”** shall mean a marriage recognised by a South African court of law and shall include a customary union concluded in terms of customary law and custom, a civil union, and/or a union recognised as such under the tenets of any religion.

**“MEMBER BOARD MEMBER”** shall mean a BOARD MEMBER referred to in RULE 3.3.

**“MEMBER”** shall mean a person who has become or remained a MEMBER of the FUND in terms of RULE 4.1 or RULE 4.4 and who has not ceased to be a MEMBER under the provisions of these RULES.

**“MINIMUM INDIVIDUAL RESERVE”** in relation to a MEMBER shall mean the minimum individual reserve as defined in the ACT.

**“MINIMUM PENSION INCREASE”** in respect of a PENSIONER shall mean the PENSION increase determined by the BOARD in terms of RULE 8.6.4.

**“NON-MEMBER SPOUSE”** for the purposes of RULE 14.5, RULE 14.6 and RULE 11.8, shall bear the same meaning as defined in the ACT.

**“PAID-UP MEMBER”** shall mean a MEMBER who has left the SERVICE of an EMPLOYER and ceased contributions to the FUND but has not been paid his benefit and such MEMBER has not yet made a written election with regard to payment or transfer of the benefit. A PAID-UP MEMBER is not a DEFERRED PENSIONER unless the PAID-UP MEMBER specifically elected in writing to become a DEFERRED PENSIONER in terms of these RULES.

**"PENSION"** shall mean an annual sum payable in monthly instalments to a retired MEMBER, WIDOW, WIDOWER or ELIGIBLE CHILD in terms of these RULES.

**"PENSIONABLE AGE"** shall mean a MEMBER'S age at the end of the month in which he attains the age of 65 years.

**"PENSIONABLE EMOLUMENTS"** shall mean for a MEMBER his salary or wages excluding-

(a) payments for overtime work; and

(b) unless specially included by resolution of his EMPLOYER with the consent of the BOARD, all allowances and all other remuneration; provided that:

- (i) for a MEMBER referred to in RULE 5.4.1, his PENSIONABLE EMOLUMENTS during the period referred to in that RULE shall be equal to PENSIONABLE EMOLUMENTS on which he contributes in terms of that RULE;
- (ii) if after the date on which he leaves the SERVICE his emoluments are increased with effect from an earlier date, the increase shall be ignored for the purposes of this definition; and
- (iii) for a MEMBER who receives his remuneration in a foreign currency, his salary shall for the purposes of this definition be his salary expressed in Rands before conversion to the foreign currency, as notified to him by his EMPLOYER, or failing such notification, the prevailing exchange rate at the time.

**"PENSION INCREASE POLICY"** shall mean the document setting out the principles on which increases to PENSIONS shall be granted, as adopted by the BOARD after consultation with the ACTUARY, and as may be amended from time to time by the BOARD, provided that the PENSION INCREASE POLICY shall be subject to the provisions of the ACT in particular with regard to the minimum pension increase.

**"PENSIONABLE SERVICE"** shall mean the sum of:

- (i) a MEMBER'S period of PENSIONABLE SERVICE up to 31 December 1986 as defined in the rules of the FUND in force on that date;
- (ii) any period made pensionable in terms of RULE 4.4, RULE 5.3.5 or RULE 13.2;
- (iii) a period of SERVICE determined in terms of RULE 5.2.6 and RULE 5.2.7 if such period is PENSIONABLE SERVICE in terms of that RULE; and
- (iv) for a MEMBER who was in the SERVICE on 1 July 1992, one month for every complete period of twelve months of the total of his PENSIONABLE SERVICE in terms of

paragraphs (i) and (ii) up to 31 December 1991;

provided that, for the purpose of calculating any benefit, the aggregate PENSIONABLE SERVICE shall be determined in whole months, a month in respect of which a CONTRIBUTION has been paid being counted as a full month.

**"PENSIONER"** shall mean a person in receipt of a PENSION from the FUND.

**"PERFORMANCE BONUS"** shall, with effect from 1 July 2001, mean the bonus paid by an EMPLOYER to the MEMBER as notified by the EMPLOYER to the FUND at the time of payment that RULE 5.2.6 and RULE 5.2.7 shall apply.

**"PRINCIPAL OFFICER"** shall mean the officer referred to in Section 8 of the ACT appointed by the BOARD in terms of the RULES.

**"REGISTERED INSURER"** shall mean an insurer licensed under the Insurance Act, 2017, as amended.

**"RETIREMENT BENEFITS COUNSELLING"** shall mean Retirement Benefits Counselling as defined in the regulations framed under the ACT.

**"REVENUE AUTHORITIES"** shall mean the Commissioner for the South Africa Revenue Service.

**"RULES"** shall mean the RULES of the FUND registered in terms of the ACT.

**"SERVICE"** shall mean the period of permanent employment in the service of an EMPLOYER other than a TEMPORARY EMPLOYMENT.

**"SPOUSE"** shall mean a spouse as defined in the ACT.

**"TEMPORARY EMPLOYEE"** shall mean a person who is appointed for a specific purpose and whose employment will end when that purpose has been accomplished, or who is appointed for a specific period and whose employment will end at the end of that period, and in either case whose employment is not subject to a right of renewal. **"TEMPORARY EMPLOYMENT"** will have a consistent meaning.

**"THIRTEENTH CHEQUE"** shall, with effect from 1 July 2001, mean the annual bonus paid

by an EMPLOYER to the MEMBER as notified by the EMPLOYER to the FUND at the time of payment, that RULE 5.2.7 shall apply.

**“UNCLAIMED BENEFIT”** shall bear the same meaning as defined in the ACT.

**“WIDOW / WIDOWER”** shall mean a surviving SPOUSE.

### **3. MANAGEMENT OF THE FUND**

#### **3.1 GENERAL**

3.1.1 The management of the FUND shall vest in a BOARD consisting of fourteen BOARD MEMBERS, seven of whom will be appointed in terms of RULE 3.2 and seven of whom will be elected in terms of RULE 3.3 and RULE 3.4.

3.1.2 Subject to the provisions of the ACT and of these RULES, the BOARD is responsible for directing, controlling and overseeing the operations of the FUND.

#### **3.2 EMPLOYER BOARD MEMBERS**

3.2.1 ESKOM shall appoint seven EMPLOYER BOARD MEMBERS. An EMPLOYER BOARD MEMBER will hold office for a period of four years. Subject to RULE 3.5 and RULE 3.6, an EMPLOYER BOARD MEMBER may be reappointed at the end of his term of office.

3.2.2 ESKOM shall ensure that at least two of the seven EMPLOYER BOARD MEMBERS appointed by it are independent experts in any of the fields as advised by the BOARD.

3.2.3 ESKOM shall provide the FUND with the details of the EMPLOYER BOARD MEMBERS it wishes to appoint to the BOARD at least one month before the start of a BOARD term or as soon as reasonably possible after a vacancy has arisen before the expected completion date of a BOARD term.

3.2.4 ESKOM may revoke the appointment of any EMPLOYER BOARD MEMBER and upon such revocation or upon the death or resignation of any EMPLOYER BOARD MEMBER, may appoint another EMPLOYER BOARD MEMBER in his place.

3.2.5 The appointment of EMPLOYER BOARD MEMBERS shall be carried out at the same time as the elections for MEMBER BOARD MEMBERS take place.

#### **3.3 MEMBER BOARD MEMBERS**

3.3.1 There shall be seven MEMBER BOARD MEMBERS elected in accordance with RULE 3.4 and be made up as follows:

3.3.1.1 the PENSIONERS and DEFERRED PENSIONERS shall have the right to elect two MEMBER BOARD MEMBERS;

3.3.1.2 bargaining unit MEMBERS from labour organisations recognised by ESKOM to be representing employees shall have the right to elect three MEMBER BOARD MEMBERS; and

- 3.3.1.3 non-bargaining unit MEMBERS shall have the right to elect two MEMBER BOARD MEMBERS.

### **3.4 ELECTION OF MEMBER BOARD MEMBERS**

#### **3.4.1 APPOINTMENT OF INDEPENDENT ELECTORAL OFFICER**

- 3.4.1.1 The BOARD shall appoint an independent electoral officer who shall oversee the nomination and election process and shall ensure that elections are free and fair.

- 3.4.1.2 The independent electoral officer shall comply with his duties as set out in the ELECTION POLICY.

#### **3.4.2 NOMINATION, ELECTION AND VOTING PROCEDURE**

- 3.4.2.1 The nomination and election process and process for submission of nominations shall be determined in accordance with the ELECTION POLICY.

- 3.4.2.2 The election of MEMBER BOARD MEMBERS shall be conducted by secret ballot and such elections shall be held every four years.

- 3.4.2.3 Each labour organisation recognised by ESKOM shall cause its members who are MEMBERS of the FUND to nominate at least three candidates to stand for election to the BOARD as bargaining unit MEMBER BOARD MEMBERS.

- 3.4.2.4 Each non-bargaining unit MEMBER shall be entitled to nominate two candidates to stand for election to the BOARD as MEMBER BOARD MEMBERS.

- 3.4.2.5 Each PENSIONER and DEFERRED PENSIONER shall be entitled to nominate two candidates to stand for election to the BOARD as MEMBER BOARD MEMBERS.

- 3.4.2.6 All the bargaining unit MEMBER candidates nominated by labour unions recognised by ESKOM shall, subject to eligibility requirements set out in the RULES and the ELECTION POLICY, be placed on the ballot of bargaining unit MEMBER candidates standing for election.

- 3.4.2.7 The six non-bargaining unit MEMBER candidates with the highest number of nominations shall, subject to eligibility requirements set out in the RULES and the ELECTION POLICY, be placed on the ballot of non-bargaining unit MEMBER candidates standing for election.

- 3.4.2.8 The top ten PENSIONER candidates with the highest number of nominations shall, subject to eligibility requirements set out in the RULES and the ELECTION POLICY, be placed on the ballot of PENSIONER candidates standing for election.

- 3.4.2.9 The persons elected shall be ranked according to the number of votes received for each category of candidates.
- 3.4.2.10 The two PENSIONER candidates with the highest number of votes shall be PENSIONER elected BOARD MEMBERS.
- 3.4.2.11 The next two PENSIONER candidates with the highest votes after the two candidates referred to in RULE 3.4.2.10 above, shall respectively and in the relevant order be available to replace a PENSIONER elected BOARD MEMBER should he be unable to act in that capacity.
- 3.4.2.12 The two non-bargaining unit MEMBER candidates with the highest votes shall become non-bargaining unit elected MEMBER BOARD MEMBERS.
- 3.4.2.13 The next two non-bargaining unit MEMBER candidates with the highest votes after the two candidates referred to in RULE 3.4.2.12 above, shall respectively and in the relevant order be available to replace the non-bargaining unit elected MEMBER BOARD MEMBER should he be unable to act in that capacity.
- 3.4.2.14 The persons with the highest votes from each of the three labour organisations recognised by ESKOM shall become bargaining unit elected MEMBER BOARD MEMBERS.
- 3.4.2.15 The next persons with the highest votes from each of the three labour organisations recognised by ESKOM after the persons referred to in RULE 3.4.2.14 above, shall be available to replace the said bargaining unit elected MEMBER BOARD MEMBER from the same labour organisation (determined with reference to the election date) should he be unable to act in that capacity.

### **3.5 TERM OF OFFICE OF THE BOARD**

- 3.5.1 The term of office of the BOARD shall be four years.
- 3.5.2 A BOARD MEMBER shall not serve on the BOARD as a BOARD MEMBER for a period of more than two consecutive terms.
- 3.5.3 Any time spent in office by a BOARD MEMBER during the particular term of office, however insignificant, shall be considered to be a term served fully by that BOARD MEMBER for purposes of calculating two consecutive terms.
- 3.5.4 A BOARD MEMBER in the place of any other BOARD MEMBER who has ceased to hold office (for whatever reason) in terms of the RULES, will hold office for the unexpired part



of the term of office of the BOARD MEMBER in whose place he was appointed or elected.

- 3.5.5 A former BOARD MEMBER shall be eligible for re-appointment or re-election as a BOARD MEMBER after a cooling-off period of at least one term after serving on the BOARD for two consecutive terms of office.

### **3.6 ABILITY TO ACT AS A BOARD MEMBER**

- 3.6.1 No person in any of the categories listed below shall be eligible for appointment or election as a BOARD MEMBER. If a BOARD MEMBER at any time falls in any such category, he shall immediately cease to hold office:

- 3.6.1.1 an employee of the FUND;
- 3.6.1.2 an Executive Management Committee member of ESKOM or a member of its governing board;
- 3.6.1.3 a person who has been or is found guilty of fraud, theft, forgery or uttering a forged document, perjury, any offence involving dishonesty, any offence in connection with any company or public office or with the promotion, formation or management of a company or any other criminal offence by a court of law or properly constituted inquiry;
- 3.6.1.4 a person who has been or is declared insolvent, sequestrated or placed under judicial management and has not been rehabilitated;
- 3.6.1.5 a person who has been or is declared unfit to hold office as a public official, director of companies or any other position of trust due to mental incapacity, criminal record or any other reason;
- 3.6.1.6 if any of the provisions under RULE 3.7.4 apply;
- 3.6.1.7 a person who has served as a BOARD MEMBER for the preceding two consecutive terms of office;
- 3.6.1.8 a person who has been or is dismissed from the service of any employer or removed from office on account of misconduct and/or incapacity;
- 3.6.1.9 a person who is disqualified from being a director in terms of an order under the Companies Act, 2008;
- 3.6.1.10 a person who has previously been removed from office by the AUTHORITY; and/or
- 3.6.1.11 any person who fails to meet the level of skills and training as may be prescribed by the AUTHORITY from time to time within the period specified in the ACT.

- 3.6.2 Any nomination to stand for election as a MEMBER BOARD MEMBER or any appointment of an EMPLOYER BOARD MEMBER who is subject to any of the categories referred to in RULE 3.6.1 shall be rejected by the BOARD or its duly authorised representative.

### **3.7 REPLACEMENT OF BOARD MEMBERS AND FILLING OF VACANCIES**

- 3.7.1 An EMPLOYER BOARD MEMBER may at any time be replaced by ESKOM on reasonable grounds.
- 3.7.2 An EMPLOYER BOARD MEMBER may resign from his position by giving ESKOM and the CHAIRPERSON at least 30 (thirty) days written notice to that effect. In such an event, ESKOM shall appoint another EMPLOYER BOARD MEMBER to succeed him.
- 3.7.3 A MEMBER BOARD MEMBER may resign from his position by giving the CHAIRPERSON at least 30 (thirty) days written notice to that effect. In such an event, the respective person with the highest votes after the resigning BOARD MEMBER during the preceding elections will fill the vacancy.
- 3.7.4 Save as otherwise provided, a BOARD MEMBER shall cease to hold office if:-
- 3.7.4.1 two-thirds majority of the BOARD MEMBERS resolve that he is to be removed from office because of a breach of his fiduciary duty towards the FUND or its MEMBERS and PENSIONERS and/or because of a breach of the CODE OF CONDUCT, after having given him a fair hearing, conducted by the BOARD or a committee of the BOARD or any third party appointed by the BOARD; or
- 3.7.4.2 he has failed to attend two consecutive BOARD meetings without the prior written approval of the CHAIRPERSON upon good cause shown by such BOARD MEMBER; or
- 3.7.4.3 in the case of MEMBER BOARD MEMBERS who were elected in terms of RULE 3.3.1.2 or RULE 3.3.1.3, as the case may be, he ceases to be in SERVICE or, in the case of MEMBER BOARD MEMBERS who were elected by a bargaining unit as contemplated in RULE 3.3.1.2, he ceases to be a member of the bargaining unit.
- 3.7.5 A vacancy which arises as a result of a BOARD MEMBER ceasing to hold office in terms of RULE 3.7.4 during the term of the BOARD, shall be filled –
- 3.7.5.1 in the case of an EMPLOYER BOARD MEMBER, by ESKOM;
- 3.7.5.2 in the case of a MEMBER BOARD MEMBER, by the respective person with the highest votes during the preceding elections.

3.7.6 Notwithstanding any other provisions of the RULES, the BOARD shall be competent to act and make decisions despite there being at any time one or more vacancies in their number which cause the number to be fewer than fourteen (14) BOARD MEMBERS, provided that:

3.7.6.1 the composition of the BOARD complies with the quorum requirements set out in RULE 3.9.5; and

3.7.6.2 the remaining BOARD MEMBERS take all reasonable steps to fill vacancies within such time period as may be prescribed or otherwise permitted by the AUTHORITY in accordance with the provisions of the RULES.

### **3.8 CHAIRPERSON OF THE BOARD**

3.8.1 One of the two independent expert EMPLOYER BOARD MEMBERS referred to in RULE 3.3.2, shall be elected as the CHAIRPERSON by the BOARD as set out below.

3.8.2 The election of the CHAIRPERSON shall take place in the following manner:

3.8.2.1 the PRINCIPAL OFFICER shall call for nomination of a CHAIRPERSON from the BOARD;

3.8.2.2 the EMPLOYER BOARD MEMBER (that is one of the two independent EMPLOYER BOARD MEMBERS) with a majority of 50 per cent plus one of the votes shall be elected as the CHAIRPERSON of the BOARD.

3.8.3 The CHAIRPERSON will hold that office until the earliest of:

3.8.3.1 he resigns from the office of CHAIRPERSON on one month's written notice to the other BOARD MEMBERS unless a shorter period is agreed to by the BOARD or the requirement of notice is waived by the BOARD; or

3.8.3.2 he ceases to be a BOARD MEMBER for any reason set out in these RULES; or

3.8.3.3 he is by resolution of a two-thirds majority of BOARD MEMBERS removed as CHAIRPERSON in circumstances where he is not otherwise disqualified from holding office as a BOARD MEMBER, or has not vacated office as a BOARD MEMBER in terms of these RULES; or

3.8.3.4 the expiry of the BOARD term.

3.8.4 The CHAIRPERSON shall preside at all full meetings of the BOARD. Whenever the CHAIRPERSON is temporarily absent or for any reason is unable to perform his

functions as CHAIRPERSON, the BOARD shall elect a person from among its number to act as CHAIRPERSON during the absence or unavailability of the CHAIRPERSON.

**3.8.5** The CHAIRPERSON of a BOARD meeting shall be responsible for the orderly conduct of the meetings and may suspend or exclude from a meeting any BOARD MEMBER who deliberately ignores the authority of the CHAIRPERSON or who interferes with the orderly functioning of the BOARD. The CHAIRPERSON must also perform any other tasks outside of BOARD meetings that he is mandated to perform by the BOARD or which he is required to perform in terms of the ACT.

**3.8.6** Should the position of CHAIRPERSON become vacant before the expiry of his term of office, following the filling of the vacancy by ESKOM, the BOARD will elect another CHAIRPERSON for the unexpired portion of the term of office in accordance with RULE 3.8.2. Subject to RULE 3.5.2, the CHAIRPERSON on the expiry of his term may make himself available for re-election.

### **3.9 MEETINGS OF THE BOARD**

**3.9.1** The BOARD shall meet from time to time to conduct the business of the FUND; provided that the BOARD shall meet at least four times during each FINANCIAL YEAR.

**3.9.2** The CHAIRPERSON or the PRINCIPAL OFFICER may convene a special meeting of the BOARD if he regards it as necessary and in which case the notice period referred to in RULE 3.9.3 shall apply. The CHAIRPERSON, or in his absence, the PRINCIPAL OFFICER, or in his absence the Secretary of the FUND shall convene a special meeting within 15 (fifteen) working days when requested to do so by at least four of the BOARD MEMBERS; provided that the 15 (fifteen) working days' notice shall be waived or reduced before the meeting takes place or during the meeting if all BOARD MEMBERS agree thereto.

**3.9.3** At least 15 (fifteen) working days' written notice of each meeting (including an ordinary, special or sub-committee meeting) shall be given to each BOARD MEMBER by the CHAIRPERSON, or in his absence, by the PRINCIPAL OFFICER, or in his absence by the Secretary of the FUND, specifying the place, date and time of the meeting, as well as the general nature of the business to be discussed at the meeting; provided that this notice period may be waived or reduced before the meeting takes place or during the meeting. Reasons for waiving or reducing the 15 (fifteen) working days' notice period must be recorded in the FUND'S minute book.

- 3.9.4 It shall be deemed that proper written notice of the meeting has been given to a BOARD MEMBER if notice was provided via email. The period of 15 (fifteen) working days shall commence running on the day that the notice has been given by electronic means.
- 3.9.5 A minimum of eight BOARD MEMBERS shall form a quorum provided that at least four must be EMPLOYER BOARD MEMBERS and four must be MEMBER BOARD MEMBERS.
- 3.9.6 If a quorum is not present within thirty minutes from the time determined for the start of the BOARD meeting, the meeting shall be rescheduled for a date at least 7 (seven) calendar days later. At that rescheduled meeting, a minimum of 4 (four) BOARD MEMBERS present shall form a quorum provided that at least 2 (two) must be EMPLOYER BOARD MEMBERS and at least 2 (two) must be MEMBER BOARD MEMBERS for the rescheduled meeting to be deemed to be properly constituted.
- 3.9.7 At all meetings of the BOARD (including ordinary, special or sub-committee meetings) the decision of the majority shall be binding and if the votes are equal, the matter shall be referred to the next meeting of the BOARD. The CHAIRPERSON shall under all circumstances only have an ordinary vote.
- 3.9.8 Voting by the BOARD shall be by show of hands or, if requested by any BOARD MEMBER present at the meeting, by secret ballot.
- 3.9.9 A decision of the BOARD (including ordinary, special or sub-committee meetings) may also be taken by resolution in writing including by email. Any such resolution must be agreed to by at least 75% of the BOARD MEMBERS or committee members, as the case may be, and the agreement of any BOARD MEMBER or committee member to such a resolution must be indicated by the signature of that person on the resolution (which for this purpose includes any signature sent by tele-facsimile, or by way of electronic communication (email)). Each resolution in writing must be noted at the next meeting of the BOARD and must be recorded in the FUND'S minute book.
- 3.9.10 Every resolution of the BOARD certified by the CHAIRPERSON shall be accepted as sufficient proof of the resolution having been duly passed by the BOARD and every certificate signed by the CHAIRPERSON shall be accepted as sufficient evidence of the facts stated therein. This RULE shall similarly apply to all BOARD sub-committees and sub-committee chairpersons.
- 3.9.11 A BOARD MEMBER may participate in a meeting of the BOARD by telephone or other communications equipment provided all BOARD MEMBERS participating in the meeting

can hear each other, and such participation shall constitute presence in person (for quorum and decision purposes) at such meeting.

**3.9.12** An attendance register must be signed by all the BOARD MEMBERS present at each meeting of the BOARD (including ordinary, special or sub-committee meetings). The chairperson of a meeting must sign on behalf of a BOARD MEMBER participating remotely and same must accordingly be noted in the attendance register.

**3.9.13** The BOARD shall ensure that accurate minutes are kept of their meetings. The approved minutes will be maintained in the FUND'S minute book.

**3.9.14** A BOARD MEMBER who has a direct or indirect personal and/or financial interest in a decision to be taken by the BOARD shall disclose such interest before any discussion of the matter and shall not be present during such discussion and shall not vote on the matter.

### **3.10 APPOINTMENTS BY THE BOARD**

#### **3.10.1 PRINCIPAL OFFICER**

**3.10.1.1** The BOARD shall appoint a PRINCIPAL OFFICER in terms of the ACT and may appoint a deputy principal officer. The appointment shall remain in force until terminated by the BOARD or PRINCIPAL OFFICER or deputy principal officer, as the case may be.

**3.10.1.2** The PRINCIPAL OFFICER and the deputy principal officer shall be individuals who are resident in the Republic of South Africa.

**3.10.1.3** The PRINCIPAL OFFICER, and where applicable, the deputy principal officer, shall undertake such duties as are required under these RULES, by the ACT and the directions of the BOARD.

**3.10.1.4** If the PRINCIPAL OFFICER is absent from the Republic of South Africa or unable for any reason to discharge any duty imposed upon the PRINCIPAL OFFICER by any provision of the ACT, the BOARD shall appoint another person to be PRINCIPAL OFFICER within such period as may be prescribed by the AUTHORITY, after the commencement of continuing absence or inability to discharge any duty by the PRINCIPAL OFFICER.

**3.10.1.5** If the BOARD has appointed a deputy principal officer, he will act as the PRINCIPAL OFFICER when the PRINCIPAL OFFICER is absent from the Republic of South Africa or unable for any reason to discharge any duty of the PRINCIPAL OFFICER in terms of the ACT until a new PRINCIPAL OFFICER is appointed.

3.10.1.6 The PRINCIPAL OFFICER, and if applicable, the deputy principal officer, shall be entitled to such reasonable remuneration in relation to their services to the FUND as may be agreed to by the BOARD.

**3.10.2 AUDITOR**

3.10.2.1 The BOARD shall appoint an AUDITOR.

3.10.2.2 The appointment shall remain in force until terminated by the BOARD or AUDITOR, as the case may be.

3.10.2.3 The BOARD shall ensure that such accounts, entries, registers and records as are necessary for the proper management of the FUND are kept. The books of account must be closed off as at each FINANCIAL YEAR END, audited by the AUDITOR of the FUND, and submitted to the AUTHORITY in accordance with the requirements of the ACT.

3.10.2.4 The AUDITOR shall be entitled to such reasonable remuneration in relation to his services to the FUND as may be agreed to by the BOARD.

**3.10.3 ACTUARY**

The BOARD shall appoint an ACTUARY who shall be the valuator of the FUND in terms of the ACT.

**3.10.4 OTHER APPOINTMENTS**

The BOARD may appoint a secretary, other officers and service providers to the FUND for such periods and on such terms as it may determine.

**3.11 DELEGATION BY THE BOARD**

3.11.1 The BOARD may in writing and in accordance with the system of delegation as set out in the GOVERNANCE FRAMEWORK, except in instances prohibited by law, delegate any of its functions and powers under the ACT to a person or group of persons or a committee of the BOARD.

3.11.2 The BOARD is not divested or relieved of the responsibility of a function delegated under RULE 3.11.1 and may withdraw the delegation at any time.

3.11.3 For the purposes of the interpretation of the RULES, it shall be deemed that when a RULE empowers the BOARD to perform a function or duty the BOARD may delegate the power concerned in terms of RULE 3.11.1 above.

### **3.12 DECISION OF THE BOARD**

In the event of any matter arising not covered by these RULES, the decision of the BOARD shall be final and binding on all MEMBERS, BENEFICIARIES and EMPLOYERS.

### **3.13 INDEMNITY OF OFFICERS AND THE FUND**

3.13.1 The BOARD shall ensure that every BOARD MEMBER and every officer of the FUND shall be indemnified by the FUND against all proceedings, costs and expenses incurred by reason of any claim in connection with the FUND not arising from their gross negligence, recklessness, intentional unlawful acts, dishonesty or fraud.

3.13.2 The BOARD shall ensure that the FUND is indemnified against any losses owing to the negligence, dishonesty or fraud of any of its officials by means of a policy of insurance or such other indemnification as the AUTHORITY may allow, provided that loss from negligence shall not include a loss or shortfall arising:

3.13.2.1 on the realisation of a *bona fide* investment made in accordance with RULE 11.1;

3.13.2.2 from a lower than anticipated return on any investment; or

3.13.2.3 as a result of the payment of any benefits in terms of these RULES.

### **3.14 REMUNERATION OF BOARD MEMBERS**

The BOARD MEMBERS shall receive from the FUND such reasonable remuneration and allowances as the BOARD may from time to time determine. Any such payments shall be regarded as an expense within the meaning of RULE 11.2.

### **3.15 DUTIES OF THE BOARD**

3.15.1 The BOARD shall comply with their duties as set out in the ACT, the RULES as well as other applicable law, including, *inter alia*, the following duties:

3.15.1.1 ensure that proper registers, books and records of the operations of the FUND are kept, including proper minutes of all resolutions passed by the BOARD;

3.15.1.2 ensure that adequate and appropriate information is communicated to the MEMBERS, PENSIONERS, DEFERRED PENSIONERS, PAID-UP MEMBERS and other BENEFICIARIES of the FUND informing them of their rights, benefits and duties in terms of the RULES;

3.15.1.3 take all reasonable steps to ensure that the contributions are paid timeously to the FUND in accordance with the ACT;



- 3.15.1.4 obtain expert advice on matters in respect of which the BOARD may lack sufficient expertise;
- 3.15.1.5 ensure that the RULES and the operation and administration of the FUND comply with the ACT, all other applicable laws and other duties imposed by the RULES;
- 3.15.1.6 ensure that any contributions or other money received by the FUND shall, pending the investment or application thereof in accordance with the RULES, be deposited into the banking account not later than the first business day following the day on which the FUND received the contributions or other money;
- 3.15.1.7 take such measures as would ensure the efficient and secure operation of the banking account of the FUND;
- 3.15.1.8 take such measures as may be prudent to protect the assets of the FUND and pay only such benefits as are provided for in the RULES;
- 3.15.1.9 ensure that all assets of the FUND be kept in the name of the FUND or in the name of a nominee company approved by the AUTHORITY;
- 3.15.1.10 ensure that the investments shall be made in accordance with sound financial principles and investment policy and strategy developed by the BOARD;
- 3.15.1.11 ensure that the investment policy and strategy shall have due regard to the income needs and long-term interests of the FUND and its MEMBERS, PAID-UP MEMBERS, PENSIONERS, DEFERRED PENSIONERS and BENEFICIARIES and shall include guidelines on the investment objectives of the FUND, the nature of the investments appropriate to the liabilities of the FUND, the type of investments permitted or not permitted and provision for appropriate performance reviews;
- 3.15.1.12 institute effective control and risk management measures in respect of the investments of the FUND and ensure compliance with its investment policy and strategy; and
- 3.15.1.13 should the investment policy and strategy allow for the investment of assets in a financial instrument as defined in the Financial Markets Control Act, 2012, a futures contract, an option contract, loan stock or any instrument declared by the AUTHORITY by notice in the Government Gazette to be a financial instrument, take such precautions as may be prudent to control the risks associated with investments in such instruments. Provided that this duty shall not in any way derogate from the general duty of the BOARD to take due care in investing and protecting the moneys of the FUND.

3.15.2 The reference to the specific duties of the BOARD in RULE 3.15.1, shall not in any way derogate from the other common law and statutory duties of the BOARD or a BOARD MEMBER.

3.15.3 The BOARD must from time to time determine one or more code/s of ethics and/or conduct which will then be binding on each BOARD MEMBER.

### **3.16 POWERS OF THE BOARD**

3.16.1 Subject to the provisions of the ACT, the BOARD shall be empowered to carry out the objects and purposes of the FUND in accordance with the RULES and, without prejudice to the general purport of this provision, shall have the following powers:

3.16.1.1 to receive, administer and apply the monies of the FUND;

3.16.1.2 to contract on behalf of the FUND and to sign such contract or other documents on behalf of the FUND;

3.16.1.3 to institute, conduct, settle or abandon any legal action for the FUND;

3.16.1.4 to defend, settle or abandon any such action against the FUND;

3.16.1.5 to raise, borrow or lend monies, at interest or otherwise, with or without security from such persons for the purposes of the FUND; provided that borrowing shall be limited to temporary loans for bridging unforeseen cash shortages or for taking advantage of attractive investment opportunities;

3.16.1.6 to acquire, hold, alienate or otherwise deal with any movable or immovable property of the FUND subject to the provisions of Section 19 of the ACT; provided that any immovable property acquired in excess of the FUND'S own requirements at any stage may be let;

3.16.1.6.1 in pursuance of the powers in RULE 3.16.1.6, the BOARD may -

3.16.1.6.1.1 sell, convey, transfer and deliver possession of any immovable property and other assets held by them on behalf of the FUND;

3.16.1.6.1.2 cancel or cede any mortgage or other bonds and release any property from the operation of any bond;

3.16.1.6.1.3 do everything necessary to carry out or effect the purposes of the RULES.

3.16.1.7 to invest, lend, put out at interest, place on deposit, make advances of, or otherwise deal with all monies of the FUND upon such securities and in such manner as they may determine from time to time within the restrictions of the ACT. The BOARD may

delegate its powers to make investments of any nature in accordance with applicable law, and the BOARD may defray any and all expenses incurred as a result of such delegation out of the assets of the FUND;

- 3.16.1.8 subject to the provisions of Section 19 of the ACT, to make a loan to an EMPLOYER or a subsidiary of an EMPLOYER and to purchase shares in the capital of an EMPLOYER or a subsidiary of an EMPLOYER;
- 3.16.1.9 to delegate any of their powers and functions in accordance with the GOVERNANCE FRAMEWORK;
- 3.16.1.10 to make, amend and rescind FUND practice notes, codes, GOVERNANCE FRAMEWORK and any other policies in respect of any matter concerning the FUND, provided that such amendments or rescissions do not conflict with the RULES or the ACT;
- 3.16.1.11 subject to the provisions of the ACT, to transfer the assets and liabilities of the FUND or part thereof to another APPROVED FUND or to take transfer of the assets and liabilities or part thereof of another APPROVED FUND in accordance with relevant legislation;
- 3.16.1.12 to deal with any other assets transferred to the FUND not governed elsewhere under these RULES on a basis determined by the BOARD in consultation with the ACTUARY;
- 3.16.1.13 to receive and approve actuarial valuation reports and any recommendations arising from these;
- 3.16.1.14 to consider and approve the FINANCIAL YEAR END accounts and annual statutory returns;
- 3.16.1.15 to consider and approve recommendations for RULE amendments; benefit changes; ill-health retirements; manner of distribution of death benefits; benefits arising from medical reports or recommendations received from a medical panel in respect of MEMBERS and DISABLED ELIGIBLE CHILDREN; management, investment and administration fees; general matters affecting the management, administration and running of the FUND;
- 3.16.1.16 to make arrangements for the administration of the FUND that are not inconsistent with the ACT and the RULES;

3.16.1.17 to use a nominee company approved by the AUTHORITY to hold the FUND'S assets in trust on the FUND'S behalf and otherwise deal with such assets as instructed by the BOARD; and

3.16.1.18 generally, to take such steps as are, in its sole discretion, conducive to the attainment of the objects of the FUND.

3.16.2 The BOARD may do all things not inconsistent with the RULES that it deems necessary for the benefit and protection of persons in receipt of PENSIONS from the FUND.

### **3.17 DISPUTE RESOLUTION PROCEDURE AND DEADLOCK BREAKING MECHANISM**

3.17.1 Where the result of a vote on a matter before the BOARD, other than a vote or a decision in terms of RULE 3.7.4.1; RULE 3.8.2.2; RULE 3.8.3.3 or RULE 3.9.9, is the same number of votes in favour of and against the motion, then such matter shall, at the discretion of the BOARD, be:

3.17.1.1 referred to the next meeting of the BOARD for a decision; or

3.17.1.2 referred to one of the following persons, whose decision shall be final and binding upon the BOARD, provided that such decision is not inconsistent with the RULES of the FUND:

(i) an actuary who is a member of the Actuarial Society of South Africa and approved by the AUTHORITY as a valuator, provided that the actuary is not associated with an organisation which provides any services to the FUND; or

(ii) an attorney or advocate of not less than 10 (ten) years standing.

3.17.2 The persons described in (i) to (ii) above may call upon the assistance of such other persons whose advice or opinion they believe is necessary to facilitate the resolution of the dispute.

3.17.3 Where the BOARD is unable to reach a majority decision on the person in respect of RULE 3.17.1.1 or RULE 3.17.1.2 above, then the issue shall be referred to an arbitrator appointed in terms of the Arbitration Act, 1965 (as may be amended) who will decide on the appointee referred to in RULE 3.17.1.2. The arbitrator's decision shall be final.

## **4. MEMBERSHIP**

### **4.1 ADMISSION TO MEMBERSHIP**

- 4.1.1 Every person who joins the SERVICE of an EMPLOYER and who is an ELIGIBLE EMPLOYEE shall become a MEMBER of the FUND with effect from the date on which he becomes an ELIGIBLE EMPLOYEE.
- 4.1.2 The BOARD may lay down as a RULE for any category of employees that eligibility for membership of the FUND shall be conditional on the employee completing a specified period of SERVICE with an EMPLOYER.

### **4.2 CESSATION OF MEMBERSHIP**

A MEMBER shall not be permitted to withdraw from his membership while he remains in SERVICE.

### **4.3 REQUIREMENTS OF MEMBERS AND BENEFICIARIES**

- 4.3.1 A MEMBER and a BENEFICIARY must, in the manner and within the timeframe determined by the FUND, furnish to the FUND with such particulars as the FUND decides are necessary to determine his benefit from the FUND or his entitlement to benefits under the RULES.
- 4.3.2 The EMPLOYER must, in the manner and within the timeframe determined by the FUND, furnish to the FUND the particulars of a MEMBER and/or a BENEFICIARY that the FUND decides are necessary to determine their benefits from the FUND or their entitlement to benefits under the RULES.
- 4.3.3 The BOARD may rely upon the particulars received under this RULE without further enquiry and neither the FUND nor the BOARD shall be held responsible for any misstatements, errors or omissions (inadvertently or otherwise) that may be contained in those particulars.
- 4.3.4 If the information provided is false or incorrect, the FUND will not be liable for any loss suffered by a MEMBER, BENEFICIARY or EMPLOYER as a result.
- 4.3.5 If any MEMBER or BENEFICIARY fails to comply with the provisions of this RULE, the BOARD may withhold payment of benefits due to or in respect of him until the provisions are complied with.
- 4.3.6 Notwithstanding RULE 4.2.5, the BOARD may exclude from benefits or terminate the membership of a MEMBER or BENEFICIARY where the BOARD is satisfied that a MEMBER or BENEFICIARY has made a material misrepresentation or non-disclosure

of information (which includes fraud) to the FUND. In such event, the BOARD may require a MEMBER or BENEFICIARY to refund to the FUND any sum which, but for the MEMBER or BENEFICIARY'S conduct as contemplated in this RULE, the FUND would not have paid.

4.3.7 Any contributions made in respect of an employee who is found not to satisfy the conditions necessary to qualify as an ELIGIBLE EMPLOYEE shall, or in the event that the BOARD finds the employee guilty of abusing the benefits or privileges of the FUND, or making material misrepresentation or non-disclosure of information to the FUND or the EMPLOYER, be returned by the FUND to the EMPLOYER. Thereafter no further claims shall exist against the FUND in respect of that employee.

4.3.8 Any benefit or amount erroneously paid by the FUND to a MEMBER, BENEFICIARY or person shall be repaid to the FUND together with interest so as to ensure that the FUND is placed in the position it would have been had it not been for the erroneous payment. The FUND reserves its rights to take the necessary steps to recover the repayment of the erroneous benefit or amount.

#### **4.4 NEW EMPLOYERS**

4.4.1 Notwithstanding anything to the contrary in these RULES, if a company or organisation wishes, with the consent of ESKOM, to participate in the FUND, the BOARD, after consulting with the ACTUARY, admit such participation in the Fund.

4.4.2 The BOARD shall have the power to make such financial and other arrangements and impose such conditions as the BOARD thinks fit, to ensure that the admission of the employees of that company or organisation to membership of the FUND shall not be to the disadvantage of the existing MEMBERS or BENEFICIARIES; and in particular, the BOARD may require the new employer to pay such initial contribution to the FUND as is certified by the ACTUARY to be necessary.

4.4.3 Each new EMPLOYER shall bear an equitable proportion of the liabilities, incurred by the FUND, as certified by the ACTUARY in admitting the employees of each EMPLOYER to membership of the FUND and no existing EMPLOYER shall subsidise the admission of employees of any other EMPLOYER.

## **5. CONTRIBUTIONS**

### **5.1 MEMBER CONTRIBUTIONS**

- 5.1.1 Subject to the provisions of this RULE and RULE 5.4, every MEMBER shall contribute to the FUND 7,3% of his PENSIONABLE EMOLUMENTS.
- 5.1.2 No CONTRIBUTIONS shall be payable by a MEMBER for any period of SERVICE after attaining PENSIONABLE AGE.
- 5.1.3 A MEMBER'S CONTRIBUTIONS shall be deducted by his EMPLOYER from his salary or wages and paid to the FUND as prescribed in the ACT.
- 5.1.4 For any month an EMPLOYER may, for the purposes of RULE 5.1.5, recognise a date during that month in respect of each of its business units as the "cut-off date" in that month for that business unit.
- 5.1.5 If, in the month in which a person becomes or ceases to be a MEMBER, he is a MEMBER in the SERVICE on the cut-off date for the business unit in which he is employed, his contribution for that month shall be equal to the contribution that he would have paid if he had been a MEMBER in the SERVICE throughout that month; otherwise, no contribution shall be payable by him for that month.

### **5.2 ADDITIONAL CONTRIBUTIONS**

- 5.2.1 A MEMBER may pay additional voluntary contributions to the FUND for the purpose of securing such additional benefits as the BOARD, in terms of this RULE, determine.
- 5.2.2 A record shall be maintained in respect of each MEMBER'S additional voluntary contributions, to which, after deduction of any reasonable expenses, shall be added INVESTMENT RETURN. Such INVESTMENT RETURN shall be added until the date on which the claim becomes due and payable in terms of RULE 14.8.
- 5.2.3 If a MEMBER retires or is retired from SERVICE and becomes entitled to a PENSION or if a MEMBER dies and a PENSION becomes payable in respect of him, the amount of the additional voluntary contributions accumulated with INVESTMENT RETURN in terms of RULE 5.2.2 shall be utilised to provide such additional PENSION as the BOARD, after consulting the ACTUARY, determines, provided that the BOARD may commute for a lump sum the whole or part of the additional PENSION subject to the provisions of RULE 8.5.
- 5.2.4 If a MEMBER leaves the SERVICE in circumstances in which he becomes entitled to a lump sum benefit in terms of RULE 6.1 or RULE 6.2, or if a MEMBER dies and no

PENSION becomes payable in respect of him, the amount of his additional voluntary contributions accumulated with INVESTMENT RETURN in terms of RULE 5.2.2 shall be added to the lump sum benefits payable to or in respect of him.

- 5.2.5 Whenever additional benefits are provided in terms of this RULE, the BOARD shall, after consulting the ACTUARY, determine the period of SERVICE in respect of which such benefits are provided. If such SERVICE is determined in respect of a MEMBER who has made an election in terms of RULE 7, such SERVICE shall be PENSIONABLE SERVICE only for the purpose of RULE 9.3.3.
- 5.2.6 Whenever a PERFORMANCE BONUS and/or an ABOVE MAXIMUM PAYMENT is paid to a MEMBER, his EMPLOYER shall deduct from it an amount equal to the contribution that the MEMBER would in terms of these RULES have been required to make in respect of that PERFORMANCE BONUS and/or an ABOVE MAXIMUM PAYMENT, as applicable, had it been a payment of PENSIONABLE EMOLUMENTS. To be clear: whenever a PERFORMANCE BONUS is paid to a MEMBER, the EMPLOYER shall deduct 7,3% of his PERFORMANCE BONUS and/or an ABOVE MAXIMUM PAYMENT, as applicable, similar to had it been a payment of PENSIONABLE EMOLUMENTS.
- 5.2.7 At the specific request of the EMPLOYER in respect of a MEMBER, and subject to the agreement of the BOARD to such specific request, RULE 5.2.8, RULE 5.2.10 and RULE 5.2.11 shall equally apply in respect of a THIRTEENTH CHEQUE paid to such MEMBER.
- 5.2.8 Whenever an EMPLOYER deducts an amount from a PERFORMANCE BONUS or THIRTEENTH CHEQUE or an ABOVE MAXIMUM PAYMENT, as applicable, in terms of RULE 5.2.6 or RULE 5.2.7 it shall pay such amount to the FUND, together with the amount that it would in terms of these RULES have been required to contribute in respect of that PERFORMANCE BONUS or THIRTEENTH CHEQUE or an ABOVE MAXIMUM PAYMENT, as applicable, similar to had it been a payment of PENSIONABLE EMOLUMENTS.
- 5.2.9 To be clear: whenever a PERFORMANCE BONUS or THIRTEENTH CHEQUE or an ABOVE MAXIMUM PAYMENT, as applicable, is paid to a MEMBER, the EMPLOYER shall, in addition to the deduction referred to in RULE 5.2.6 or RULE 5.2.7 deduct 13.5% of his PERFORMANCE BONUS or THIRTEENTH CHEQUE or an ABOVE MAXIMUM PAYMENT, as applicable, similar to had it been a payment of PENSIONABLE EMOLUMENTS.
- 5.2.10 Any amount paid to the FUND in terms of RULE 5.2.6 and RULE 5.2.8 shall be deemed to be additional voluntary contributions paid by the MEMBER on the date on which the



PERFORMANCE BONUS or THIRTEENTH CHEQUE or an ABOVE MAXIMUM PAYMENT is paid.

- 5.2.11 In the determination of an amount to be paid to a MEMBER on the winding up of the FUND in terms of RULE 12, account will be taken of the amount of his additional voluntary contributions, if any, in terms of RULE 5.2.2.

### **5.3 EMPLOYER CONTRIBUTIONS**

- 5.3.1 Each EMPLOYER shall contribute to the FUND, subject to the provisions of RULE 5.1.5, RULE 11.3 and the special provisions applicable to 1976 MEMBERS and C MEMBERS as set out in the Appendices to these RULES, amounts equal to 13.5% of the PENSIONABLE EMOLUMENTS of those of its employees who are MEMBERS; provided that the contributions payable by the EMPLOYER may be reduced for such period and by such amounts as, on the advice of the ACTUARY, the BOARD, with the concurrence of ESKOM, may decide.
- 5.3.2 The EMPLOYER'S contributions together with the corresponding contributions deducted from the salaries and wages of the MEMBERS shall be paid directly to the FUND within a period of 7 (seven) days after the expiry of the period in respect of which the contributions are being paid.
- 5.3.3 An EMPLOYER shall pay to the FUND in respect of PENSIONS granted in terms of RULE 6.2 such portion of the amount estimated by the ACTUARY as required to cover the additional liability incurred by the granting of such PENSIONS to MEMBERS in his SERVICE.
- 5.3.4 The EMPLOYERS may make special payments to the FUND of such amounts as ESKOM may from time to time determine, on the advice of the ACTUARY, to provide the benefits prescribed herein.
- 5.3.5 An EMPLOYER may make a special payment to the FUND in order to add to the PENSIONABLE SERVICE of a MEMBER in his employ such period of past SERVICE as the BOARD, after consulting the ACTUARY, determine.

### **5.4 CONTRIBUTIONS DURING LEAVE, TEMPORARY ABSENCE, SUSPENSION, SECONDMENT AND STRIKE ACTION**

- 5.4.1 A MEMBER who, with the consent of the EMPLOYER, is temporarily absent, on leave, seconded, is temporarily laid off, suspended or partakes in a strike action, with full, reduced or no remuneration from the EMPLOYER during such period, then the MEMBER'S membership of the FUND will continue. During this period contributions may

be paid as agreed between the MEMBER and the EMPLOYER and notified to the FUND in writing in advance of a decision to be made that no contributions will be paid.

- 5.4.2 To be clear: where no contributions are received by the FUND from a MEMBER and his EMPLOYER during the period of absence, leave, secondment, temporary layoff, suspension or strike action (collectively referred to as the "absent period"), then the period between absent period and the date on which contributions recommence, shall not be treated as PENSIONABLE SERVICE and will result in a MEMBER'S years of SERVICE being adjusted by the ACTUARY which will impact on the benefit payable to the MEMBER in terms of the RULES.

## **6. WITHDRAWAL BENEFITS**

### **6.1 WITHDRAWAL BENEFIT ON RESIGNATION AND DISMISSAL**

6.1.1 If a MEMBER leaves SERVICE before attaining PENSIONABLE AGE for any reason other than retrenchment, in circumstances for which no benefit is specifically provided elsewhere in these RULES and the MEMBER elects not to become a DEFERRED PENSIONER in terms of RULE 7, he shall be entitled to a benefit equal to the greater of:

6.1.1.1 his ACCUMULATED CONTRIBUTIONS; or

6.1.1.2 his MINIMUM INDIVIDUAL RESERVE.

6.1.2 Notwithstanding anything to the contrary contained in this RULE 6.1, if the benefit payable in terms of this RULE is less than the MEMBER'S MINIMUM INDIVIDUAL RESERVE, the MEMBER'S MINIMUM INDIVIDUAL RESERVE shall be payable. The benefit in terms of this RULE shall be paid to the MEMBER as a lump sum or be transferred to an APPROVED FUND as elected by the MEMBER in writing.

6.1.3 Subject to RULE 6.1.4, a MEMBER who has attained age 55 by the date of leaving SERVICE in terms of RULE 6.1.1, shall be required to provide adequate documentary proof to the FUND within one month of termination of SERVICE that the MEMBER within a reasonable period after his termination of SERVICE, occupies alternative employment or self-employment. Where, in the FUND'S discretion, no such adequate documentary proof is provided or it is not received timeously in the prescribed period, then, an early retirement benefit will become payable in terms of RULE 8.3 and the MEMBER shall not be entitled to receive a benefit in terms of RULE 6.1.1. If any doubt arises in any particular case, the decision of the FUND shall be final and binding upon the MEMBER, the FUND and the EMPLOYER.

6.1.4 Notwithstanding RULE 6.1.3, a MEMBER who has attained age 55 and over by the date of leaving SERVICE in terms of RULE 6.1.1, shall be entitled to a benefit in terms of RULE 6.1.1 if he elects in writing that the said benefit is to be transferred to an APPROVED FUND instead of being paid to him as a lump sum.

### **6.2 WITHDRAWAL BENEFIT ON RETRENCHMENT**

6.2.1 Subject to the provisions of RULE 6.3.1 and RULE 3.9.2, if a MEMBER who has not attained PENSIONABLE AGE leaves the SERVICE owing to a reduction in or reorganisation of staff, or the abolition of his office or post, to facilitate improvements in efficiency or organisation or to retrenchment generally, he shall be paid a benefit equal to the greater of:

6.2.1.1 three times his CONTRIBUTIONS; or

6.2.1.2 his MINIMUM INDIVIDUAL RESERVE.

6.2.2 Notwithstanding anything to the contrary contained in this RULE 6.2.1, if the benefit payable in terms of this RULE is less than the MEMBER'S MINIMUM INDIVIDUAL RESERVE, the MEMBER'S MINIMUM INDIVIDUAL RESERVE shall be payable. The benefit in terms of this RULE shall be paid to the MEMBER as a lump sum.

6.2.3 If a MEMBER becomes entitled to a benefit in terms of this RULE, he may elect instead:

(a) that an amount equal to the actuarial value in respect of his SERVICE, as determined by the ACTUARY, be deemed to be a voluntary contribution made by him on the date of leaving the SERVICE; or

(b) to receive a benefit equal to his ACCUMULATED CONTRIBUTIONS and to have the balance of the actuarial value in respect of his SERVICE deemed to be a voluntary contribution so made.

Provided that in such circumstances the MEMBER shall become a DEFERRED PENSIONER and the benefit referred to in RULE 6.2.3(a) or the balance of the actuarial value in respect of his SERVICE referred to in RULE 6.2.3(b) shall be deemed to be voluntary contributions and dealt with in terms of the provisions of RULE 7.2 or 7.3.

### **6.3 RETIREMENT ON RETRENCHMENT**

6.3.1 If a MEMBER who has attained the age of 50 years and has not less than ten years' PENSIONABLE SERVICE, is retired from the SERVICE owing to a reduction in or reorganisation of staff, or the abolition of his office or post, or to facilitate improvements in efficiency or organisation or to retrenchment generally, then he may instead be granted at the discretion of the BOARD after consulting the EMPLOYER, as from the date of his leaving the SERVICE of his EMPLOYER, a PENSION in respect of his PENSIONABLE SERVICE calculated in terms of RULE 8.1, without a reduction in terms of RULE 8.3.

6.3.2 If a MEMBER'S SERVICE is terminated by due notice from his EMPLOYER, it shall be in the absolute discretion of his EMPLOYER whether he shall be entitled to a benefit in terms of this RULE or in terms of RULE 6.1.

### **6.4 ALLOCATIONS FROM CONTINGENCY RESERVES**

When a MEMBER leaves the FUND on his retrenchment, dismissal or resignation, he will receive, in addition to any amount or amounts payable in terms of these RULES, a share

from the investment reserve in accordance with Section 15G of the ACT, and a share of such contingency reserves, if any, as the BOARD deems appropriate in consultation with the ACTUARY and as contemplated in the ACT.

## **6.5 PAID-UP MEMBERS**

**6.5.1** A MEMBER who leaves SERVICE in terms of RULE 6.1 or RULE 6.2 before retirement shall automatically become a PAID-UP MEMBER.

**6.5.2** Subject to the provisions of the RULES, the benefits referred to in RULE 6.1 and RULE 6.2 shall remain in the FUND until the FUND receives a written instruction to pay, transfer or defer the benefit in terms of these RULES.

**6.5.3** The following conditions shall apply to a PAID-UP MEMBER:

**6.5.3.1** No further contributions shall be paid to the FUND by or in respect of a PAID-UP MEMBER.

**6.5.3.2** A PAID-UP MEMBER'S ACCUMULATED CONTRIBUTIONS or MINIMUM INDIVIDUAL RESERVE, whichever is greater, plus INVESTMENT RETURN shall become payable and distributed in terms of Section 37C of the Act should the PAID-UP MEMBER die before the FUND received a written instruction to pay or transfer his benefit.

**6.5.3.3** Any lawful deductions in terms of the provisions of the ACT and the RULES shall become enforceable and the relevant amounts due shall be deducted from the PAID-UP MEMBER'S benefit effective on the date of his termination of SERVICE.

**6.5.3.4** Any lawful claim against the benefit of a PAID-UP MEMBER which arises after the date of termination of SERVICE and while the PAID-UP MEMBER remains a MEMBER of the FUND and which may lawfully be deducted by the FUND, shall be deducted from the benefit of such a PAID-UP MEMBER upon the FUND being furnished with satisfactory proof of such a lawful claim.

**6.5.3.5** Reasonable expenses as determined by the BOARD, including administration costs and any costs associated with tracing the PAID-UP MEMBER or his DEPENDANTS may be deducted from the benefit.

**6.5.3.6** A PAID-UP MEMBER'S benefit may be increased from time to time in line with the provisions of the RULES.

**6.5.3.7** A PAID-UP MEMBER may elect to defer the receipt of his benefit and become a DEFERRED PENSIONER in terms of RULE 7.1. If so elected, then the RULES

applicable to a DEFERRED PENSIONER will apply to the PAID-UP MEMBER. The election to become a DEFERRED PENSIONER must be made and communicated to the FUND in writing within three (3) months of leaving SERVICE.

- 6.5.3.8 A PAID-UP MEMBER shall have access to RETIREMENT BENEFIT COUNSELLING before any benefit is paid to him or transferred to another APPROVED FUND or a REGISTERED INSURER.

**6.6 BOARD'S DECISION FINAL**

If any doubt arises in any particular case in respect of or to which RULES 6.1 or RULE 6.2 apply, the decision of the BOARD after consulting EMPLOYER shall be final and binding upon the MEMBER and the FUND.

**6.7 TRANSFER OF WITHDRAWAL BENEFIT**

- 6.7.1 Instead of receiving the benefit described in RULE 6.1 or RULE 6.2 in cash, or preserving the benefit in the FUND in terms of RULE 7.1, a MEMBER may request in writing that part or all of the benefit be transferred to an APPROVED FUND. Any such transfers to an APPROVED FUND shall be subject to the ACT, the Income Tax Act, 1962 and such conditions as the REVENUE AUTHORITIES may apply from time to time. The benefit so transferred will be equal to the maximum of the MEMBER'S ACCUMULATED CONTRIBUTIONS and the MINIMUM INDIVIDUAL RESERVE, whichever is greater.

- 6.7.2 If the benefit to be transferred in terms of this RULE is not transferred by the FUND within the period determined in terms of Section 13A of the ACT, interest will be added to the value of the benefit from the date of expiry of that period to the actual date of transfer at a rate equal to the greater of the rate prescribed in terms of that Section and the INVESTMENT RETURN.

**6.8 NO FURTHER CLAIM**

When a benefit has been paid to the MEMBER as a lump sum or transferred on his behalf in terms of the RULES, the MEMBER shall have no further claim on the FUND.

**7. OPTION TO BECOME A DEFERRED PENSIONER AND BENEFITS APPLICABLE TO A DEFERRED PENSIONER**

**7.1 OPTION TO BECOME A DEFERRED PENSIONER**

**7.1.1** A MEMBER who qualifies for a benefit in terms of RULES 6.1 or RULE 6.2, may elect to become a DEFERRED PENSIONER instead of receiving his full withdrawal benefit: provided that a MEMBER may elect in writing to receive a lump sum amount not exceeding the amount which can be taken as a tax-free withdrawal benefit in terms of the Income Tax Act, 1962. The balance of the actuarial value in respect of the MEMBER'S SERVICE, as determined by the ACTUARY, shall be deemed to be a voluntary contribution made by him on the date of leaving the SERVICE.

**7.1.2** The MEMBER'S deemed voluntary contributions shall be dealt with in terms of the provisions of RULE 7.2.2.

**7.1.3** The following conditions shall apply to DEFERRED PENSIONERS:

**7.1.3.1** A MEMBER must make a clear written election to defer payment of his withdrawal benefit from the FUND.

**7.1.3.2** The election must take place within three months from the date the MEMBER became entitled to a withdrawal benefit, but instead elected in writing to defer payment thereof in the FUND. Failure by a MEMBER to furnish the FUND with his written election within the stated period will result in the MEMBER'S withdrawal benefit being treated as an unpaid withdrawal benefit and the MEMBER shall not be entitled to elect to defer his benefit after the said period has lapsed.

**7.1.3.3** Subject to the provisions of RULE 7.1.3.6 to 7.1.3.8, an election to defer payment of the withdrawal benefit is irrevocable.

**7.1.3.4** A deferred benefit shall not be capable of being ceded or used as security for a loan.

**7.1.3.5** A DEFERRED PENSIONER shall not be entitled to make further contributions to the FUND.

**7.1.3.6** Subject to notifying the FUND in writing before attaining age 55 (fifty-five), a DEFERRED PENSIONER who elected to defer payment of his benefit in terms of RULE 7.1.3.2, shall be entitled to receive his entire withdrawal benefit in cash or to transfer his entire benefit to an APPROVED FUND. For clarity, the full withdrawal benefit must be taken or transferred, there can be no partial withdrawal or transfer. The provisions of this RULE 7.1.3.6 shall apply to every DEFERRED PENSIONER,

including a DEFERRED PENSIONER who elected to become a DEFERRED PENSIONER before 1 April 2021.

7.1.3.7 If a DEFERRED PENSIONER did not elect in writing to receive payment of his withdrawal benefit as contemplated in RULE 7.1.3.6 before attaining age 55 (fifty-five), then such a DEFERRED PENSIONER shall be entitled to a PENSION calculated in terms of Rule 8.1 upon attaining PENSIONABLE AGE, or shall be entitled to retire early on or after attaining age 55 (fifty-five) (but before attaining PENSIONABLE AGE), in which case his benefit shall be calculated in terms of RULE 7.2.

7.1.3.8 The BOARD may in its discretion decide whether to levy administration fees and/or on-going management fees on the deferred benefit on such basis and such frequency as deemed appropriate by the BOARD after consulting with the ACTUARY.

7.1.3.9 INVESTMENT RETURN shall apply to a DEFERRED PENSIONER'S benefit and shall be added from the date the FUND receives the MEMBER'S written election referred to in RULE 7.1.3.2 up to the date of retirement, withdrawal in cash, transfer to an APPROVED FUND or death.

7.1.3.10 If a DEFERRED PENSIONER re-enters SERVICE, provided he has not, prior to such re-entry into SERVICE, elected to take receipt of his deferred benefit in terms of RULE 7.1.1, he shall continue to be a DEFERRED PENSIONER and his deferred benefit shall remain separate and shall be retained as a deferred benefit until the DEFERRED PENSIONER retires from SERVICE.

## **7.2 RETIREMENT AND DEATH BENEFITS APPLICABLE TO A DEFERRED PENSIONER**

7.2.1 A DEFERRED PENSIONER may retire and take a PENSION at any time from age fifty-five but no later than PENSIONABLE AGE.

7.2.2 A DEFERRED PENSIONER who has attained age fifty-five may, subject to RULE 8.5, elect to receive in cash not more than one-third of the amount of the voluntary contributions accumulated with INVESTMENT RETURN. The balance shall be utilised to provide him with a PENSION as set out in RULE 7.2.2.1, RULE 7.2.2.2 or RULE 7.2.2.3, below, whichever is applicable:

7.2.2.1 if the DEFERRED PENSIONER is a partner to a MARRIAGE at the date of commencement of the PENSION, provision shall be made for a PENSION equal to 60 per cent of the DEFERRED PENSIONER'S PENSION to become payable to and for the lifetime of the DEFERRED PENSIONER'S WIDOW or WIDOWER on the DEFERRED PENSIONER'S subsequent death, provided such WIDOW or



WIDOWER is the person to whom the former MEMBER was MARRIED at the date the PENSION commenced;

7.2.2.2 If a DEFERRED PENSIONER, who is not a partner to a MARRIAGE at the date of commencement of the PENSION, dies within five years of the date of commencement of his PENSION, then the PENSION that would have been payable over the first five years after retirement shall be paid as a lump sum benefit in terms of Section 37C of the ACT; or

7.2.2.3 Irrespective of whether the DEFERRED PENSIONER is a partner to a MARRIAGE at the date of commencement of the PENSION, if there are ELIGIBLE CHILDREN, provision shall be made for PENSIONS to be payable to such ELIGIBLE CHILDREN on terms equivalent to those set out in RULE 9.

7.2.3 If the DEFERRED PENSIONER dies before retiring in terms of this RULE, the deferred benefit shall be distributed by the BOARD in accordance with the provisions of section 37C of the ACT.

7.2.4 If a DEFERRED PENSIONER retires in terms of RULE 7.2.2, he shall become entitled to a PENSION determined by the BOARD, after consulting the ACTUARY; provided that the BOARD may commute for a lump sum the whole or part of the PENSION subject to the provisions of RULE 8.5.

### **7.3 ILL-HEALTH BENEFIT PAYABLE TO A DEFERRED PENSIONER**

7.3.1 If a DEFERRED PENSIONER became disabled prior to attainment of age 55 and is determined to be disabled in terms of RULE 8.4.4, then such a disabled DEFERRED PENSIONER will become entitled to an ill-health benefit referred to in RULE 7.3.2.

7.3.2 The ill-health benefit will be equal to the benefit which the DEFERRED PENSIONER would have received on the date he elected to become a DEFERRED PENSIONER together with INVESTMENT RETURN until the date of his ill-health retirement. Subject to the provisions of the Income Tax Act, 1962, the ill-health benefit may be payable as a lump sum or instalments.

## **8. RETIREMENT BENEFITS**

### **8.1 PENSION RATE**

Subject to these RULES, the annual PENSION payable to a retired MEMBER shall be 1,085/600 of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

### **8.2 NORMAL RETIREMENT AT PENSIONABLE AGE**

A MEMBER who has attained PENSIONABLE AGE shall retire from SERVICE and shall be entitled to a PENSION calculated in terms of RULE 8.1.

### **8.3 EARLY RETIREMENT**

8.3.1 Notwithstanding the provisions of RULE 8.2, a MEMBER may retire from SERVICE after attaining the age of 55 years, in which case he shall be entitled, as from the date of his retirement, to a PENSION in respect of his PENSIONABLE SERVICE to the date of retirement calculated in terms of RULE 8.1 reduced by a factor equal to thirteen-fortieths of one per cent for each month by which the period from the date of his retirement to the date on which he would have attained PENSIONABLE AGE exceeds twenty-four months.

8.3.2 At the specific request of the EMPLOYER regarding a retiring MEMBER, the BOARD may agree to:

8.3.2.1 waive the reduction factor referred to in RULE 8.3.1 or part thereof; and/or

8.3.2.2 credit the MEMBER with additional PENSIONABLE SERVICE up to his PENSIONABLE AGE (or such earlier date as indicated by the EMPLOYER);

subject strictly to payment by the EMPLOYER into the FUND of such amount as is calculated by the ACTUARY as being necessary to meet the costs of such an increase in benefits.

### **8.4 ILL-HEALTH RETIREMENT**

8.4.1 Subject to RULE 8.4.5, a MEMBER who has not attained PENSIONABLE AGE and who is determined to be disabled in terms of RULE 8.4.4 below, and who has been retired from SERVICE on grounds of disability, shall be entitled to a PENSION calculated in terms of RULE 8.1 with effect from the last day of the month following that in which the determination referred to in RULE 8.4.4 is made.

**8.4.2      Meaning of “disabled” and “maximum medical intervention”:**

**8.4.2.1      For the purpose of RULE 8.4, “disabled” and/or “disability” shall mean, on a balance of probabilities, a MEMBER who is still in SERVICE and who is permanently incapable as a result of the infirmity of body or mind, of performing the duties of:-**

**8.4.2.1.1      the occupation or post in which the MEMBER was employed by the EMPLOYER at the time that the disability arose or was caused (whichever is the earlier), or**

**8.4.2.1.2      any other reasonable alternative occupation or post in his EMPLOYER'S business for which he is or may become suitable by virtue of his education, training, experience and/or ability.**

**8.4.2.2      For the purpose of RULE 8.4, “maximum medical intervention” shall mean the surgical procedure or medical treatment recommended by a doctor or the surgical procedure or medical treatment prescribed by an independent medical doctor which procedure or treatment has in no way improved the MEMBER'S condition.**

**8.4.2.3      A MEMBER shall not satisfy the requirements of disability in terms of this RULE 8.4.2 and shall not be regarded as being disabled if the maximum medical intervention has not been attained in respect of his condition/s on the basis of which his application for the disability benefit is based, or where a MEMBER has refused to undergo medical treatment prescribed by a medical doctor to cure or improve the MEMBER'S medical condition.**

**8.4.2.4      If in the opinion of the BOARD based on any recommendation it has received from the medical panel appointed by the BOARD and any further independent medical advice as the BOARD deems necessary to obtain, and notwithstanding anything to the contrary contained in the RULES and without limiting the right of exclusion for other reasons, the MEMBER becomes disabled during the first five years of his membership of the FUND, disablement directly or indirectly caused or accelerated by any injury or illness in respect of which the MEMBER received medical or surgical treatment, or about which the MEMBER could reasonably have been expected to have known during the six months prior to the commencement of his membership, shall not be regarded as disablement for the purposes of the RULES.**

**8.4.2.5      For the purpose of RULE 8.4, “maximum medical intervention” shall mean the surgical procedure or medical treatment recommended by a medical doctor or the surgical procedure or medical treatment prescribed by an independent medical doctor which procedure or treatment has in no way improved the MEMBER'S condition.**

- 8.4.3 For the purpose of determining the PENSION referred to in RULE 8.4.1, the MEMBER'S PENSIONABLE SERVICE shall be deemed to be the aggregate of:
- 8.4.3.1 his PENSIONABLE SERVICE to the date of his disablement; and
  - 8.4.3.2 75% of the SERVICE that he would have completed from that date if he had remained in the SERVICE to the date on which he would have attained PENSIONABLE AGE.
- 8.4.4 The medical panel appointed by the BOARD shall determine whether or not a MEMBER is disabled for the purposes of this RULE and the date upon which such disablement, if any, commenced. The medical panel shall make their or its decision after:
- 8.4.4.1 considering such medical evidence as to the state of the MEMBER'S health as may be supplied to it or him;
  - 8.4.4.2 consulting the MEMBER and the MEMBER'S EMPLOYER;
  - 8.4.4.3 having due regard to the disability assessment procedures established by the BOARD from time to time; and
  - 8.4.4.4 having established from the medical evidence provided by the MEMBER and, if necessary, from an independent medical doctor that the MEMBER has reached a stage of maximum medical intervention and his condition has not improved.
- 8.4.5 The BOARD shall be entitled to require that a MEMBER within 6 (six) months of the date on which he became a MEMBER to undergo to a comprehensive medical examination by one or more medical practitioners appointed by the FUND and at the cost of the FUND. The purpose of the examination shall be to ensure the fair distribution of disability benefits. The BOARD shall request the medical practitioner or practitioners to report to the FUND on the MEMBER'S health and to make recommendations as to any benefit restrictions which should be imposed upon the MEMBER in the light thereof. The BOARD shall in its discretion decide on the evidence whether or not and in what form such benefit restrictions should be imposed upon the MEMBER. Provided that irrespective of such benefit restrictions the MEMBER shall be entitled to make an election in terms of RULE 8.4.8 hereof.
- 8.4.6 The BOARD shall have the power to relax, waive or vary any benefit restrictions imposed on the MEMBER in terms of RULE 8.4.5. Provided that the MEMBER shall nevertheless be entitled to make an election in terms of RULE 8.4.8. Provided further, that the benefit restrictions shall not apply if the MEMBER is determined in terms of RULE 8.4.4 to be disabled as the result of an accident.

8.4.7 Nothing in this RULE shall be construed as conferring on a MEMBER any rights by his EMPLOYER in regard to his past or future employment, if any, or the termination thereof.

8.4.8 If in the opinion of the BOARD based on such medical advice as it deems it necessary to obtain and notwithstanding anything to the contrary contained in the RULES and without limiting the right of the BOARD to impose benefit restrictions for other reasons, the MEMBER becomes disabled during the first five years of his membership of the FUND, and his disability is directly or indirectly caused or accelerated by any injury or illness in respect of which the MEMBER received medical or surgical treatment, or about which the MEMBER could reasonably have been expected to have known during the six months prior to the commencement of his membership, the MEMBER shall be entitled to elect either:

8.4.8.1 a benefit equal to the actuarial value of his benefits in respect of his SERVICE as determined by the ACTUARY; or

8.4.8.2 a PENSION equal to 50% of the PENSION calculated in terms of RULE 8.4.1; together with the amount of his voluntary contributions in terms of RULE 5.2.3 at the date upon which his SERVICE is terminated.

## **8.5 COMMUTATION OF PENSION**

8.5.1 The BOARD may commute for a lump sum –

8.5.1.1 the whole of the PENSION that becomes payable to a retiring MEMBER, WIDOW, WIDOWER or ELIGIBLE CHILD that does not exceed the maximum amount that may be totally commuted in terms of the Income Tax Act, 1962; or

8.5.1.2 at the request of a retiring MEMBER whose PENSION exceeds the maximum amount that may be totally commuted in terms of the Income Tax Act, 1962, not more than one-third of his PENSION.

8.5.2 The amount of the lump sum shall be determined by the BOARD on the advice of the ACTUARY.

8.5.3 If a PENSION is fully commuted in terms of RULE 8.5.1.1, no PENSION or lump sum shall be payable to the WIDOW or WIDOWER or ELIGIBLE CHILDREN or DEPENDANTS of the MEMBER.

## **8.6 INCREASE IN PENSIONS**

- 8.6.1 For the purposes of this RULE, the date of granting of a PENSION to or in respect of a MEMBER or PENSIONER shall be the date on which he ceased to be in the SERVICE.
- 8.6.2 At the discretion of the BOARD and acting on the advice of the ACTUARY, PENSIONS may be increased from time to time in accordance with the FUND'S PENSION INCREASE POLICY.
- 8.6.3 The BOARD shall communicate the PENSION INCREASE POLICY to PENSIONERS whenever it is changed.
- 8.6.4 On 1 January of each year, every PENSION in force immediately before that date shall be increased as the BOARD, after consulting the ACTUARY, determine, but by not less than 3%; provided that, if the net annual rate of interest earned on the total FUND moneys, including any uninvested moneys, in the immediately preceding financial year is less than 6%, the increase shall be at such lower rate, but not less than 2%, as the BOARD, acting on the advice of the ACTUARY, determine; provided further that in respect of a PENSION granted in the twelve months preceding 1 January from which the increase is to be granted, the increase shall be one-twelfth of the percentage so determined for each complete month between the date of granting and the said 1 January.
- 8.6.5 The BOARD shall be entitled at its discretion to pay a lump sum bonus to PENSIONERS: Provided that the bonus shall be calculated according to such formula and based on such eligibility criteria and shall be of such frequency as the BOARD, acting on the advice of the ACTUARY, determines from time to time.

## **8.7 PAYMENTS OF PENSION**

- 8.7.1 Every person entitled to a PENSION shall notify the FUND in writing of his address and of any change of address.
- 8.7.2 The monthly amount of each PENSION shall be determined to the nearest cent.
- 8.7.3 Payments of PENSIONS shall be made monthly on the first day of each month upon such evidence of the PENSIONER'S survival and continued eligibility to the satisfaction of the FUND. If such evidence is not produced, the payment of the PENSION shall be suspended until the evidence is produced to the FUND, provided, that no INVESTMENT RETURN will be added to the PENSION during such suspended period.
- 8.7.4 The first payment of every PENSION that becomes payable on the death or retirement of a MEMBER shall be a full payment for the month in which the PENSION becomes payable. When a PENSION becomes payable to the WIDOW, WIDOWER, or ELIGIBLE

CHILD of a PENSIONER, or there is any change in the amount of a PENSION in terms of RULE 9, the change shall take effect from the first day of the next calendar month. The last payment of a PENSION shall be a full payment for the month in which the PENSION ceases.

**8.8 INFORMATION SPECIFICALLY REQUIRED FROM PENSIONERS AND DEFERRED PENSIONERS**

- 8.8.1 A PENSIONER or a DEFERRED PENSIONER is required to provide the BOARD with any certified documents confirming information the BOARD may reasonably require from time to time to pay a PENSION in terms of the RULES.
- 8.8.2 A PENSIONER or a DEFERRED PENSIONER must give timeous notice in writing to the FUND of the address of his place of residence and any change in that address and/or any change in his banking details.
- 8.8.3 If a PENSIONER or a DEFERRED PENSIONER fails to comply with the provisions of this RULE, the BOARD may withhold payment of benefits due to or in respect of him until the provisions are complied with.
- 8.8.4 If the information provided is false or incorrect, the FUND will not be liable for any loss suffered by a PENSIONER or a DEFERRED PENSIONER or his BENEFICIARY as a result.

**8.9 RETIREMENT BENEFIT COUNSELLING**

MEMBERS who are entitled to receive a retirement benefit from the FUND in terms of the RULES shall be given access to RETIREMENT BENEFITS COUNSELLING not less than 6 (six) months before attaining the PENSIONABLE AGE.

## 9. DEATH BENEFITS

### 9.1 In this RULE –

- 9.1.1 **"SPECIFIED PERCENTAGE"** shall at any time mean the percentage in the following table which accords with the number of ELIGIBLE CHILDREN at that time and whether there is at that time a WIDOW or WIDOWER or not:

WIDOW or WIDOWER	Number of ELIGIBLE CHILDREN	Percentage
Yes	0	60
	1	90
	2 or more	100
No	1	60
	2 or more	100

provided that whenever the BOARD is satisfied that under the provisions of RULE 9.4.4 rightful claimants from more than one MARRIAGE exist, the SPECIFIED PERCENTAGE shall not exceed 100%; and

- 9.1.2 **"POTENTIAL PENSION"** shall mean, in the case of a MEMBER, a PENSION equal to the proportion shown in RULE 8.1 of his FINAL AVERAGE EMOLUMENTS per month of the PENSIONABLE SERVICE that he would have completed if he had remained in SERVICE to the date on which he would have attained PENSIONABLE AGE; or in the case of a PENSIONER the PENSION to which he became entitled on retirement before commutation, if any, including the increases subsequently granted in terms of these RULES, if any.

## 9.2 BENEFITS PAYABLE ON DEATH IN SERVICE BEFORE PENSIONABLE AGE

- 9.2.1 Subject to Section 37C of the ACT, if a MEMBER dies in SERVICE before attaining PENSIONABLE AGE, a lump sum equal to twice the MEMBER'S annual PENSIONABLE EMOLUMENTS shall become payable.
- 9.2.2 If a WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall be paid to or in respect of such person a PENSION, the amount of which shall at any time be equal to the SPECIFIED PERCENTAGE of the MEMBER'S POTENTIAL PENSION at that time, as set out in RULE 9.1.



9.2.3 If no WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall, subject to Section 37C of the ACT, be paid to the MEMBER'S DEPENDANTS, if any, a lump sum equal to the greater of RULE 9.2.3.1 or RULE 9.2.3.2:

9.2.3.1 his annual PENSIONABLE EMOLUMENTS plus 10% of his FINAL AVERAGE EMOLUMENTS per year of PENSIONABLE SERVICE; or

9.2.3.2 twice his annual PENSIONABLE EMOLUMENTS.

9.2.4 If the FUND, within twelve months of the death of a MEMBER, does not become aware of or cannot trace any DEPENDANT or nominee of the MEMBER, an amount equal to twice his annual PENSIONABLE EMOLUMENTS shall, subject to the provisions of Section 37C of the ACT, be paid to his estate. If there is no estate, then the benefit will be held in the Unclaimed Benefits Reserve Account until a valid claim has been received by the FUND.

### **9.3 BENEFITS PAYABLE ON DEATH OF A PENSIONER WHO HAS RETIRED FROM SERVICE**

9.3.1 When a PENSIONER who has retired from SERVICE in terms of these RULES dies, the benefit set out in RULE 9.3.2 or RULE 9.3.3, whichever is applicable, shall be paid.

9.3.2 If a WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall be paid to or in respect of such person:

9.3.2.1 a lump sum equal to R 3000.00 (three thousand Rand); and

9.3.2.2 a PENSION, the amount of which shall at any time be equal to the SPECIFIED PERCENTAGE of the PENSIONER'S POTENTIAL PENSION at that time, as set out in RULE 9.1.

9.3.3 If no WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall be paid to the PENSIONER'S DEPENDANTS, if any, a benefit equal to the excess, if any, of the amount of a lump sum determined in terms of RULE 9.2.3 at the date of his retirement over the total benefit paid to him plus R 3000,00 (three thousand Rand).

9.3.4 If no claim is made within twelve months of the death of a PENSIONER, an amount equal to the excess, if any, of twice his annual PENSIONABLE EMOLUMENTS at the date of his retirement over the total benefits paid to him plus R 3000,00 (three thousand Rand) shall be paid to his estate. If there is no estate, then the benefit will be held in the Unclaimed Benefits Reserve Account until a valid claim has been received.

**9.4 MISCELLANEOUS PROVISIONS RELATING TO DEATH BENEFITS PAYABLE ON THE DEATH OF AN IN-SERVICE MEMBER OR PENSIONER**

- 9.4.1 If the WIDOW or WIDOWER or ELIGIBLE CHILD under RULE 9.2.1 or RULE 9.3.2 dies or ceases to be eligible before payment has been made to them, then payment must be made in terms of Section 37C of the ACT.
- 9.4.2 A PENSION payable in respect of an ELIGIBLE CHILD under the age of 18 (eighteen) shall usually be paid to the ELIGIBLE CHILD'S guardian or caregiver to administer on his behalf; provided that the FUND may decide that the share of an ELIGIBLE CHILD'S PENSION be paid directly to such ELIGIBLE CHILD.
- 9.4.3 If the WIDOW or WIDOWER of a deceased MEMBER or PENSIONER is not the guardian or caregiver responsible for the physical care and maintenance of the ELIGIBLE CHILD, the FUND may apportion the said lump sum benefit and ELIGIBLE CHILD'S PENSION in such proportions as may be deemed reasonable and pay the lump sum benefit and PENSION to the ELIGIBLE CHILD'S guardian, caregiver or another responsible person for the benefit of the ELIGIBLE CHILD.
- 9.4.4 If a deceased MEMBER or PENSIONER is survived by more than one WIDOW, WIDOWER or by ELIGIBLE CHILDREN from more than one MARRIAGE, a PENSION shall be granted to each WIDOW or WIDOWER equal to 60% of the MEMBER'S or PENSIONER'S POTENTIAL PENSION divided by the number of WIDOWS or WIDOWERS and a PENSION shall be granted in respect of each ELIGIBLE CHILD equal to the balance of the SPECIFIED PERCENTAGE of the MEMBER'S or PENSIONER'S POTENTIAL PENSION divided by the number of ELIGIBLE CHILDREN. Such PENSIONS shall be payable in the place of the PENSION payable in terms of RULE 9.2.2 or RULE 9.3.2.2.
- 9.4.5 The PENSION granted to a WIDOW or WIDOWER in terms of RULE 9.4.4 shall be payable until his death; provided that if the WIDOW or WIDOWER dies leaving ELIGIBLE CHILDREN the PENSION payable in respect of each such ELIGIBLE CHILD shall be increased by an amount equal to the PENSION that was payable to the WIDOW or WIDOWER at the time of his death divided by the number of ELIGIBLE CHILDREN. The PENSION granted in respect of an ELIGIBLE CHILD shall be payable until he ceases to be an ELIGIBLE CHILD. The PENSION granted to an ELIGIBLE CHILD shall cease when he attains age 21, provided that in relation to a DISABLED ELIGIBLE CHILD, the PENSION shall be paid for life.

- 9.4.6** If on the death of a MEMBER or PENSIONER neither a WIDOW or WIDOWER nor any ELIGIBLE CHILD is left, the BOARD in its discretion shall decide whether the deceased MEMBER or PENSIONER left any DEPENDANTS and in what proportions the benefits shall be paid, subject to the provisions of Section 37C of the ACT.
- 9.4.7** If no claim is made within twelve months of the death or the termination of eligibility of the last BENEFICIARY to whom payment was made in terms of RULE 9.2.1 or RULE 9.3.3, and if the total payments made in terms of RULE 9.2.1 or RULE 9.3.3, excluding any payment made in terms of RULE 9.3.2.1 or in terms of any other RULE fall short of twice the MEMBER'S annual PENSIONABLE EMOLUMENTS, then the amount of the shortfall shall be paid to such person as the BOARD in its discretion may decide subject to the provisions of Section 37C of the ACT.
- 9.4.8** Should the FUND fail to effect payment of any lump sum benefit due under RULE 9.2, RULE 9.3 or RULE 9.4 within six calendar months of the date that a valid claim is received by the FUND upon the death of a MEMBER or PENSIONER, the BENEFICIARY concerned, shall be entitled to INVESTMENT RETURN on the lump sum benefit calculated from the first day of the seventh calendar month following the date that a valid claim is received by the FUND.

## **10. GENERAL PROVISIONS IN RELATION TO RE-JOINING THE FUND**

### **10.1 RE-JOINING OF A MEMBER WHO RESIGNED**

**10.1.1** A MEMBER who resigned from SERVICE may have his previous EMPLOYER SERVICE condoned subject to the following conditions:

**10.1.1.1** The date from resignation to the date of returning to SERVICE shall not be longer than six months.

**10.1.1.2** The actual period of eligible EMPLOYER SERVICE prior to the break-in SERVICE shall be taken into consideration for PENSIONABLE SERVICE purposes.

**10.1.1.3** An application for condonation of previous EMPLOYER SERVICE shall be made in writing and received by the FUND within six months of re-joining the EMPLOYER'S SERVICE.

**10.1.1.4** An applicant for condonation of previous EMPLOYER SERVICE shall repay the FUND in a lump sum the benefit he received in terms of RULE 6, together with INVESTMENT RETURN, for the period between the date of re-joining and the date of repayment.

**10.1.1.5** Previous EMPLOYER SERVICE may be condoned more than once.

**10.1.1.6** The actual period of the break-in SERVICE shall not be regarded as SERVICE.

**10.1.1.7** An application for the condonation of previous EMPLOYER SERVICE for PENSIONABLE SERVICE purposes shall be subject to approval by the BOARD.

### **10.2 RE-JOINING OF A MEMBER WHO HAS BEEN DISMISSED**

**10.2.1** If a MEMBER has been paid his benefit in terms of RULE 6 and is reinstated into the SERVICE of the EMPLOYER after the MEMBER'S dismissal, the MEMBER may choose to repay to the FUND the benefit he had received in terms of RULE 6, together with INVESTMENT RETURN, within six months of the reinstatement date and thereby reinstate his membership with the FUND. If the MEMBER fails to exercise this option within the six-month period, he will not retain his previous PENSIONABLE SERVICE and his membership period with the FUND will commence from the date of his reinstatement.

**10.2.2** Where the MEMBER'S SERVICE has been reinstated following dismissal, the period between the date of dismissal and reinstatement shall not be treated as PENSIONABLE SERVICE unless the MEMBER exercises his option in RULE 10.2.1 above, if applicable, and pays into the FUND his CONTRIBUTIONS for the said period. The EMPLOYER shall in this case, also pay its CONTRIBUTIONS for the said period into the FUND.

- 10.2.3 To be clear: where a MEMBER re-joins SERVICE of an EMPLOYER following dismissal, unless the FUND receives MEMBER and EMPLOYER contributions for the period between the date of dismissal and reinstatement, the period between the date of dismissal and reinstatement shall not be treated as PENSIONABLE SERVICE and will result in a MEMBER'S years of SERVICE being adjusted by the ACTUARY which will impact on the benefit payable to the MEMBER in terms of the RULES.

## **11. FINANCIAL PROVISIONS**

### **11.1 INVESTMENTS**

- 11.1.1 The FUND shall open and operate a bank account in its name.
- 11.1.2 The BOARD shall have the power, subject to the provisions of Section 19 of the ACT and RULE 11.1.3, to invest, subject to the requirements of the AUTHORITY, in immovable property, and in like manner to invest, lend, put out at interest, place on deposit, make advances of, or otherwise deal with all the moneys of the FUND upon such securities and in such manner as they from time to time determine, and to dispose of immovable property, realize, vary, reinvest, or otherwise deal with such securities and other investments as they from time to time determine.
- 11.1.3 Any amount advanced on mortgage of immovable property shall not, together with any other amount that has been or can be advanced on security of a prior or *pari passu* mortgage of that property exceed 75% of the value of the property on the date of the advance.
- 11.1.4 The BOARD may obtain an overdraft from a bank, or borrow from any other party, on such terms as they think fit, such sum as they approve to complete any investment or meet any temporary unforeseen cash shortage, and for this purpose may give such security as they decide.
- 11.1.5 Every document of title to an investment shall be registered in the name of the FUND. Every title deed and other document of title belonging to the FUND shall be kept in the safes or strong rooms at the registered office of the FUND or other office or in a banking institution, as decided by the BOARD.
- 11.1.6 Every cheque, contract or other document pertaining to the FUND shall be signed by such persons as the BOARD by resolution appoint.

### **11.2 EXPENSES**

Unless provided elsewhere in the RULES, the expenses in connection with or incidental to the management and administration of the FUND and the investment thereof, including the cost of audit and actuarial investigations, shall be borne by the FUND.

### **11.3 ACTUARIAL VALUATION**

- 11.3.1 The financial condition of the FUND shall be investigated and reported on by the ACTUARY at intervals not exceeding three years to determine whether or not the FUND can continue to provide the benefits laid down in the RULES. The ACTUARY shall

embody the results of his valuation in a written report which shall be submitted to the BOARD and through the BOARD to the AUTHORITY. The BOARD shall submit a copy of the report or a summary thereof, prepared by the ACTUARY in the form prescribed by the ACT and signed by the ACTUARY to each EMPLOYER.

11.3.2 The BOARD, on the advice of the ACTUARY, shall establish and review from time to time, at their discretion, such CONTINGENCY RESERVE ACCOUNT as the BOARD deems prudent to provide for explicit contingencies.

11.3.3 Notwithstanding the provisions of RULE 14.9.1.1, if as a result of a valuation by the ACTUARY, there is a past service deficit and/or a contribution shortfall which may result or results in the FUND not being able to pay the benefits specified in the RULES and/or impacts on the FUND's financial soundness, the RULES shall be amended so that the benefits are reduced or the CONTRIBUTIONS increased as the BOARD, in consultation with the EMPLOYERS and on the advice of the ACTUARY, may decide.

11.3.4 If any actuarial surplus as defined in the ACT is revealed by an actuarial valuation by the ACTUARY, then the BOARD, on the advice of the ACTUARY, may allocate the actuarial surplus as determined by the BOARD.

#### **11.4 ACCOUNTS AND AUDIT**

11.4.1 The BOARD shall cause true and full accounts of the FUND to be kept, such accounts to be made up to the FINANCIAL YEAR END and to be audited by the AUDITOR.

11.4.2 The BOARD shall submit annually to each EMPLOYER audited annual financial statements relating to the FUND.

11.4.3 The following accounts and/or reserves will be maintained:

11.4.3.1 Data Contingency Reserve;

11.4.3.2 Solvency Contingency Reserve;

11.4.3.3 Contribution Reserve;

11.4.3.4 Unclaimed Benefits Reserve Account; and

11.4.3.5 Investment Reserve.

#### **11.5 DATA CONTINGENCY RESERVE**

The Data Contingency Reserve must make provision for an amount determined by the BOARD at each statutory actuarial valuation on the advice of the ACTUARY in respect of the risks to the FUND of incorrect or incomplete data relating to the FUND'S liabilities. The

balance in the Data Contingency Reserve will not be credited with INVESTMENT RETURNS. The Data Contingency Reserve will be restated at each actuarial valuation, if applicable.

#### **11.6 SOLVENCY CONTINGENCY RESERVE**

The Solvency Contingency Reserve must make provision for an amount determined by the BOARD on advice of the ACTUARY representing the difference between the value of the FUND'S accrued liabilities determined on a solvency basis and the value of the FUND'S accrued liabilities determined on a best estimate basis. The balance in the Solvency Contingency Reserve will not be credited with INVESTMENT RETURNS. The Solvency Contingency Reserve will be restated at each actuarial valuation.

#### **11.7 CONTRIBUTION RESERVE**

The Contribution Reserve will be utilised to protect the current benefit structure for MEMBERS in respect of their future potential SERVICE in the FUND. The contribution reserve will be credited with an amount determined by the BOARD on the advice of the ACTUARY at the date of each actuarial valuation of the FUND as required by RULE 11.3. The balance in the Contribution Reserve will not be credited with INVESTMENT RETURNS. The Contribution Reserve will be restated at each actuarial valuation.

#### **11.8 UNCLAIMED BENEFITS RESERVE ACCOUNT**

11.8.1 The Unclaimed Benefits Reserve Account shall house UNCLAIMED BENEFITS.

11.8.2 The following amounts shall be credited to the Unclaimed Benefits Reserve Account:

11.8.2.1 all monies retained in the Unclaimed Benefits Reserve Account in terms of RULE 14.5.9 and RULE 14.6; and

11.8.2.2 INVESTMENT RETURNS, if any, as per RULE 14.6.2.

11.8.3 The following amounts shall be debited to the Unclaimed Benefits Reserve Account:

11.8.3.1 Reasonable expenses, that are specific to the UNCLAIMED BENEFITS, as determined by the BOARD in terms of RULE 14.6.2;

11.8.3.2 Reasonable expenses necessary to meet the ongoing costs of the FUND to be borne by the Unclaimed Benefits Reserve Account, as determined by the BOARD; and

11.8.3.3 Payment of UNCLAIMED BENEFITS to the exited MEMBER, PENSION, DEFERRED PENSIONER, PAID-UP MEMBER, BENEFICIARY or NON-MEMBER SPOUSE, as the case may be.



## **11.9 INVESTMENT RESERVE**

The Investment Reserve will be utilised to provide for the smoothing of INVESTMENT RETURN on the accumulation of MEMBERS' CONTRIBUTIONS and contributions in terms of RULE 6.4. The BOARD on the advice of the ACTUARY will calculate any amounts to be allocated to the Investment Reserve.

## **12. DISCONTINUANCE OF THE FUND**

- 12.1** The FUND may, subject to the discretion of the BOARD and after consultation with ESKOM and the ACTUARY regarding the best interest of MEMBERS and/or specific groups of MEMBERS and/or BENEFICIARIES, be liquidated or continue to operate its business as a retirement fund.
- 12.2** Where the BOARD decides that the FUND is to continue its operations, then the provisions set out in RULE 12.3 will apply to ESKOM.
- 12.2.1** Where the BOARD decides that the FUND is to be liquidated, then the BOARD shall appoint a liquidator subject to the approval of the AUTHORITY. The appointed liquidator will discontinue the FUND in the manner described in RULE 12.2.2.
- 12.2.2** The liquidator shall discontinue the FUND by dividing the moneys of the FUND after payment of all expenses incurred in the discontinuance thereof, among the MEMBERS and persons in receipt of PENSIONS and prospectively entitled to PENSIONS in a manner recommended by the ACTUARY and approved by the liquidator; provided that -
- 12.2.2.1** the amount available for a person in receipt of a PENSION shall be used to purchase an annuity for him from a REGISTERED INSURER;
- 12.2.2.2** the amount available for a person prospectively entitled to a PENSION shall be transferred to another APPROVED FUND for his benefit, or used to purchase an annuity for him from a REGISTERED INSURER;
- 12.2.2.3** if a person to whom an amount is payable cannot be traced, the amount shall be paid to a fund approved by the AUTHORITY to receive UNCLAIMED BENEFITS, unless the ACT requires otherwise; and
- 12.2.2.4** the amount allocated to each MEMBER shall not be less than the MEMBER'S MINIMUM INDIVIDUAL RESERVE, provided that where the fair value of the assets of the FUND after the recovery of any debt owed to the FUND by the EMPLOYER in terms of Section 30(3) of the ACT is lower than the sum of the total of the MINIMUM INDIVIDUAL RESERVES for all MEMBERS who are being included in the distribution of the assets after adjustment for any benefits paid previously and the cost of annuity policies which will provide equivalent PENSIONS to all existing PENSIONERS and DEFERRED PENSIONERS, the MINIMUM INDIVIDUAL RESERVE may be proportionately reduced in the ratio which the fair value of the assets bears to the total of all MINIMUM INDIVIDUAL RESERVES adjusted for any benefits paid previously plus the cost of such annuity policies.

**12.3 If one of the EMPLOYERS, other than ESKOM (unless the BOARD exercised its discretion in terms of RULE 12.2):**

**12.3.1 establishes its own APPROVED FUND or elects to participate in an existing APPROVED FUND other than a pension preservation fund or provident preservation fund as defined in the Income Tax Act, 1962, and the MEMBERS of that EMPLOYER are transferred, voluntarily or compulsorily, to that APPROVED FUND as a result of such EMPLOYER:**

**12.3.1.1 having been directed by ESKOM to terminate its participation in the FUND, which ESKOM may do by giving at least six months' written notice to that EMPLOYER and the BOARD;**

**12.3.1.2 transferring its operations to a new organisation which is not an EMPLOYER as defined in the RULES;**

**12.3.1.3 amalgamating with another organisation which is not an EMPLOYER as defined in the RULES and such organisation does not take the place of such EMPLOYER;**

**12.3.1.4 ceasing to pay contributions to the FUND after giving the FUND at least six months' written notice of its intention to cease paying contributions;**

**12.3.1.5 amalgamates with, or the whole or a portion of its business is sold or transferred to another entity and as a consequence the MEMBERS are transferred, voluntarily or compulsory, to the APPROVED FUND in terms of Section 197 of the Labour Relations Act, 1995; or**

**12.3.1.6 is wound-up, whether voluntarily or not;**

**then the BOARD shall instruct the ACTUARY to determine the interest in the FUND of the MEMBERS in the service of such EMPLOYER on a date determined by the BOARD, and the amount of each such MEMBERS interest shall be transferred to an APPROVED FUND or deemed to be a voluntary contribution made by him on that date in terms of RULE 5.2 and such EMPLOYER and MEMBERS shall cease to be an EMPLOYER and MEMBERS with effect from that date. The amount allocated to each MEMBER shall be the greater of the actuarial reserve and the MEMBER'S MINIMUM INDIVIDUAL RESERVE.**

### **13. TRANSFER TO OR FROM OTHER FUNDS**

#### **13.1 TRANSFER TO OTHER FUNDS**

A MEMBER who becomes entitled to a cash benefit in terms of RULE 6.1 or RULE 6.2 may elect instead to transfer such cash benefit to an APPROVED FUND; provided that in making such election, the MEMBER shall forgo the right to make an election in terms of RULE 7. Any transfer to an APPROVED FUND shall be subject to the conditions prescribed in the ACT, the Income Tax Act, 1962 and by the REVENUE AUTHORITIES and shall absolve the FUND of its liabilities towards the MEMBER in respect of all benefits in terms of the RULES.

#### **13.2 TRANSFER FROM OTHER FUNDS**

- 13.2.1 A MEMBER may transfer to the FUND from any APPROVED FUND any amount payable in respect of his participation in such APPROVED FUND or an amount received from an APPROVED FUND following the divorce of the MEMBER.
- 13.2.2 Any transfer from an APPROVED FUND shall be subject to the conditions prescribed in the ACT and by the REVENUE AUTHORITIES. The amount transferred to the FUND shall be applied as a voluntary contribution in terms of RULE 5.2.2 and RULE 5.2.6.

## **14. MISCELLANEOUS PROVISIONS**

### **14.1 EFFECT ON TERMS OF EMPLOYMENT**

- 14.1.1 Nothing in the RULES shall in any way restrict the right of an EMPLOYER to terminate the employment of a MEMBER.
- 14.1.2 No person shall have any claim concerning the FUND either against the FUND or against the BOARD or an EMPLOYER except in accordance with the RULES.

### **14.2 COMPLAINTS**

- 14.2.1 A COMPLAINANT shall have the right to lodge a written COMPLAINT with the PRINCIPAL OFFICER. A COMPLAINT must be delivered at the FUND'S postal address marked for the attention of the PRINCIPAL OFFICER.
- 14.2.2 A COMPLAINT shall be properly considered and replied to in writing by the PRINCIPAL OFFICER within 30 (thirty) days after receipt thereof. If the COMPLAINANT is not satisfied with the reply or if the FUND fails to reply within 30 (thirty) days after the receipt of the COMPLAINT, the COMPLAINANT may lodge the COMPLAINT with the ADJUDICATOR.

### **14.3 RIGHT TO DOCUMENTS**

- 14.3.1 Every MEMBER, PAID-UP MEMBER, DEFERRED PENSIONER or PENSIONER is entitled, without charge and on demand, to copies of the RULES and/or the latest FINANCIAL YEAR END accounts prepared in terms of the ACT.
- 14.3.2 Every MEMBER, PAID-UP MEMBER, DEFERRED PENSIONER or PENSIONER is entitled to inspect without charge at the FUND'S registered office, a copy of the documents referred to below and may make extracts therefrom subject to payment of such amount as may be determined by the FUND from time to time:
  - 14.3.2.1 the RULES;
  - 14.3.2.2 the latest FINANCIAL YEAR END accounts prepared in terms of the ACT;
  - 14.3.2.3 the report by the ACTUARY on the latest statutory valuation of the FUND; and
  - 14.3.2.4 any scheme which is conducted by the FUND in terms of Section 18 of the ACT.

#### **14.4 PAYMENT OF BENEFITS AND VARIATION OF METHOD OF PAYMENT**

**14.4.1** If it is not desirable for the FUND to make payment of a benefit, other than a PENSION or annuity, in the manner elsewhere provided for in these RULES, then the FUND may pay the benefit in whole or in part or by instalments or by conversion to an annuity –

**14.4.1.1** to the BENEFICIARY; or

**14.4.1.2** to the DEPENDANTS of the BENEFICIARY; or

**14.4.1.3** to some other person either for the benefit of the BENEFICIARY, or of his DEPENDANTS, or of both.

**14.4.2** If the FUND makes payment of a lump sum benefit by instalments, then the FUND shall add INVESTMENT RETURNS to the part retained by it.

**14.4.3** If the person entitled to a benefit is a minor, or under some other legal disability, the BOARD may pay the benefit to the guardian of the minor or to the curator of the person under the legal disability.

**14.4.4** The FUND may from time to time vary any decision in terms of this RULE.

#### **14.5 DEDUCTION FROM BENEFITS**

**14.5.1** The BOARD shall have the power to make such deductions as permitted in terms of Section 37A and Section 37D of the ACT from any benefit to which a MEMBER or BENEFICIARY is entitled in terms of the RULES.

**14.5.2** The BOARD shall have the power to deduct from any benefit payable in respect of the MEMBER or a BENEFICIARY in terms of the RULES, any amount due by a MEMBER to his EMPLOYER on the date of his retirement or on which he ceases to be an employee of the EMPLOYER or a MEMBER of the FUND, in respect of –

**14.5.2.1** compensation (including any legal costs recoverable from the MEMBER) in respect of any damage caused to the EMPLOYER by reason of any theft, dishonesty, fraud or misconduct by the MEMBER, and in respect of which –

**14.5.2.1.1** the MEMBER has in writing admitted liability to the EMPLOYER; or

**14.5.2.1.2** judgment has been obtained against the MEMBER in any court as contemplated in Section 37D of the ACT.

**14.5.3** The BOARD shall have the power to withhold a portion or all of the MEMBER'S benefit where the EMPLOYER has instituted legal proceedings against the MEMBER and/or laid a criminal charge against the MEMBER for the recovery of any damage caused to the

EMPLOYER as contemplated in Section 37D of the ACT until the matter has been finally determined by a competent court or has been settled or formally withdrawn, provided that -

- 14.5.3.1 the BOARD is satisfied that the EMPLOYER has made out a prima facie case against the MEMBER concerned and the BOARD is satisfied on a lay analysis and on a balance of probabilities that the EMPLOYER has a reasonable chance of success in the proceedings;
- 14.5.3.2 the BOARD is satisfied that the EMPLOYER is not at any stage of the proceedings responsible for any undue delay in the prosecution of the proceedings;
- 14.5.3.3 the amount withheld does not exceed the value of the EMPLOYER'S claim against the MEMBER; and
- 14.5.3.4 upon the finalisation of the proceedings and after any compensation (and legal costs, if applicable) awarded to the EMPLOYER has been paid to the EMPLOYER, any balance remaining to the credit of the MEMBER shall be paid to the MEMBER on, or without, notice to the EMPLOYER.
- 14.5.4 The FUND shall, every four months, review the matter to satisfy itself that there are no undue delays in the finalisation of the proceedings; provided that if the FUND is of the view that the time taken to finalise the matter is unreasonable and the EMPLOYER has not taken reasonable steps to ensure that the matter is finalised, the FUND may release the benefits to the MEMBER.
- 14.5.5 The request to deduct or withhold shall be submitted in writing by the EMPLOYER to the FUND before it makes full payment to the MEMBER and shall be supported by an acknowledgement of debt or a judgement entitling the EMPLOYER to recover the money from the MEMBER or proof that action has been instituted for the recovery of the EMPLOYER'S damages.
- 14.5.6 If the FUND does not receive a written request from the EMPLOYER to withhold or deduct moneys from a MEMBER'S benefit before the FUND makes full payment of the BENEFIT, the FUND shall not have the obligation to reverse any such payment and the EMPLOYER cannot insist on such a reversal. The EMPLOYER will have to recover such amounts directly from the MEMBER.
- 14.5.7 In the event that the FUND has on record or is furnished with a valid court order issued in respect of a MEMBER in terms of Section 7(8) of the Divorce Act, 1979, or in terms of any order made by a court in respect of the division of assets of a marriage under Islamic law pursuant to its dissolution; the FUND shall, subject to the provisions of the Income

Tax Act, 1962, reduce the MEMBER'S benefit payable in terms of the RULES by any tax and the amount assigned or awarded to the NON-MEMBER SPOUSE in terms of such court order. The ACTUARY shall calculate the resultant reduction in PENSIONABLE SERVICE for the MEMBER taking into account the amount and tax that was paid or transferred out of the FUND in giving effect to the court order.

14.5.8 The payment of an amount to the NON-MEMBER SPOUSE will have the effect of the ACTUARY reducing the MEMBER'S years of SERVICE which will impact on the benefit payable to the MEMBER upon withdrawal from SERVICE, death or retirement. The provisions of this RULE shall mutatis mutandis apply to a valid maintenance order issued in respect of a MEMBER in terms of the Maintenance Act, 1998.

14.5.9 If a NON-MEMBER SPOUSE for whatever reason fails to claim the amount of pension interest due to him in terms of a valid divorce order, or if the FUND does not become aware of the NON-MEMBER SPOUSE within twenty-four months from the MEMBER'S election for the payment of his benefit in terms of the RULES, the NON-MEMBER SPOUSE'S pension interest shall be transferred to the Unclaimed Benefits Reserve Account.

#### **14.6 UNCLAIMED BENEFITS**

14.6.1 Unpaid benefits will be treated as a current liability in the books of the FUND for a period of twenty-four months from the date on which the benefit became due to a MEMBER, PENSIONER, DEFERRED PENSIONER, BENEFICIARY or NON-MEMBER SPOUSE, after which the unpaid benefits will be classified as UNCLAIMED BENEFITS and shall be retained within the FUND in the Unclaimed Benefits Reserve Account.

14.6.2 The FUND shall allocate INVESTMENT RETURNS to the UNCLAIMED BENEFIT and the FUND shall have the right to deduct any reasonable costs incurred by the FUND including but not limited to tracing costs.

14.6.3 The FUND shall on receipt of a valid claim pay an UNCLAIMED BENEFIT to a MEMBER, PENSIONER, DEFERRED PENSIONER, BENEFICIARY or a NON-MEMBER SPOUSE, as the case may be.

14.6.4 An UNCLAIMED BENEFIT may, at the discretion of the BOARD be paid to any fund approved by the AUTHORITY to receive UNCLAIMED BENEFITS. If the benefits are paid to another fund, a MEMBER, PENSIONER, DEFERRED PENSIONER, BENEFICIARY or NON-MEMBER SPOUSE shall have no claim against the FUND in respect of that amount.



## **14.7 ALIENATION OF BENEFITS**

- 14.7.1 All benefits and rights to benefits in terms of the RULES will be protected and subject to the provisions of Section 37A and Section 37B of the ACT.
- 14.7.2 No benefit or right thereto is capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated or liable to be attached or subjected to any form of execution under a judgment or order of a court of law save as specifically provided for in the ACT.
- 14.7.3 Except as provided elsewhere in the RULES, no right to a benefit in terms of these RULES shall become an asset in the deceased estate of any person entitled to a benefit in terms of the RULES.

## **14.8 INTEREST ON LATE PAYMENT OF BENEFITS**

- 14.8.1 The FUND shall effect payment of any lump sum benefit due to a MEMBER or BENEFICIARY within 14 (fourteen) days of the date on which the conditions in RULE 14.8.3 are satisfied.
- 14.8.2 If the FUND fails to effect payment in terms of RULE 14.8.1 and such failure is due to negligence on the part of the FUND, the MEMBER or BENEFICIARY, as the case may be, will be entitled to INVESTMENT RETURN except:
  - 14.8.2.1 in the case of the death of a MEMBER or PENSIONER in which event the provisions of RULE 9.4.8 will apply; and
  - 14.8.2.2 in the case of unpaid benefits in which event the provisions of RULE 14.6.2 will apply.
- 14.8.3 The benefit shall be due and payable once –
  - 14.8.3.1 the FUND is satisfied that a valid claim for the benefit has been received; and
  - 14.8.3.2 the FUND has the information which it reasonably requires to effect such payment and, in the case of benefits payable on the death of a MEMBER, to dispose of such benefits in accordance with the ACT; and
  - 14.8.3.3 the FUND has not received at the date of termination of MEMBER'S SERVICE-
    - 14.8.3.3.1 written notice from the MEMBER'S EMPLOYER of its intention to institute legal action against the MEMBER for the recovery of compensation in respect of damage caused to the EMPLOYER as contemplated in Section 37D of the ACT

and a period of three months from the date on which such notice was received has not expired without such action being instituted;

14.8.3.3.2 proof that the MEMBER has in writing admitted liability to his or her EMPLOYER for compensation for such damage;

14.8.3.3.3 the FUND has not received written notice of a claim by a NON-MEMBER SPOUSE or any other person against the FUND in terms of the ACT, the Divorce Act, 1979, the Maintenance Act, 1998 or any other law which, if successful, would result in a reduction in the amount payable as a benefit to the MEMBER, or if such notice has been received, a period of three months from the date on which such notice was received has not expired;

14.8.3.3.4 in the event that it is applicable, the conditions for the deduction of any amount due to the FUND or the EMPLOYER in terms of Section 37D of the ACT have been fulfilled.

14.8.3.4 The amount of interest to be added to the benefit in terms of RULE 14.8.2 shall be determined by the FUND after having regard to, in respect of the period from the date on which the benefit became payable and the date on which it is paid –

14.8.3.4.1 the gross rate of interest earned on the FUND'S cash deposits;

14.8.3.4.2 the rates of any other levies or taxes that may be due by the FUND from time to time;

14.8.3.4.3 the expenses relating to the management of the FUND'S cash deposits; and

14.8.3.4.4 the period of the delay starting on the day on which the benefit becomes due and payable in terms of RULE 14.8.3 and ending on the working day before payment is effected by the FUND.

## **14.9 AMENDMENTS TO RULES**

14.9.1 The BOARD may at any time amend the RULES by making a new rule or altering or rescinding any existing rule provided that any such new rules, alterations or rescissions which are not to the general advantage of MEMBERS and of persons entitled to benefits shall be agreed to by those MEMBERS or such affected persons provided that:

- 14.9.1.1 the amendment must be approved by an EMPLOYER if it results in an increase in the contributions or in any other financial risk or obligation being imposed on that EMPLOYER;
- 14.9.1.2 the amendment is not inconsistent with the provisions of the ACT or Income Tax Act, 1962 or any other applicable legislation;
- 14.9.1.3 if the REVENUE AUTHORITIES at any time refuses to approve the FUND or any part of it to enable the MEMBERS to obtain the benefit of exemption or allowance in respect of income or other tax, or if the BOARD consider it expedient, having regard to any ruling or condition of the REVENUE AUTHORITIES about income or other tax, the BOARD may alter the RULES to enable such approval to be obtained;
- 14.9.1.4 every proposed amendment to the RULES affecting the financial soundness of the FUND shall be submitted to the ACTUARY for his report before being adopted;
- 14.9.1.5 within 60 (sixty) calendar days of the date of the resolution amending the RULES, the PRINCIPAL OFFICER shall submit the amendment to the RULES to the AUTHORITY and, if applicable, to the REVENUE AUTHORITIES, in writing, for registration of the amendment; and
- 14.9.1.6 after approval and registration of any amendment to the RULES by the AUTHORITY, within six months after the FUND'S FINANCIAL YEAR END, the PRINCIPAL OFFICER shall notify the MEMBERS of all amendments to the RULES.

## **15. APPENDICES**

**15.1** Special conditions apply to certain categories of MEMBERS as set out in Appendix 1 to 7 to these RULES.

<b>Appendix</b>	<b>Description</b>
1	A 1950 MEMBER
2	A 1952 MEMBER
3	A 1964 MEMBER
4	A 1976 MEMBER
5	A C MEMBER
6	Ill-health retirement of a MEMBER other than a 1987 MEMBER
7	Death of a MEMBER or PENSIONER other than a 1976 or 1987 MEMBER or PENSIONER

**APPENDIX 1**  
**CONDITIONS FOR A 1950 MEMBER**

A 1950 MEMBER shall be subject to the provisions of the RULES with the exceptions noted below.

**RULE 2**

His "PENSIONABLE AGE" shall be his age at the end of the month in which he attains the age of 60 years.

His "FINAL AVERAGE EMOLUMENTS" shall be the annual average of his PENSIONABLE EMOLUMENTS over the last three years of his PENSIONABLE SERVICE or over the whole of his PENSIONABLE SERVICE, if less than three years.

**RULE 5.1.1**

He shall contribute 6% of his PENSIONABLE EMOLUMENTS.

**RULE 5.3**

Subject to these RULES, the annual PENSION payable to him shall be  $\frac{1}{696}$  of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

**RULE 8.3**

If he is retired through ill-health, the provisions of appendix 6 shall apply.

**RULE 8.4**

On his death the provisions of Appendix 7 shall apply.

## **APPENDIX 2**

### **CONDITIONS FOR A 1952 MEMBER**

A 1952 MEMBER shall be subject to the provisions of the RULES with the exceptions noted below.

#### **RULE 2**

His "PENSIONABLE AGE" shall be his age at the end of the month in which he attains the age of 63 years.

His "FINAL AVERAGE EMOLUMENTS" shall be the annual average of his PENSIONABLE EMOLUMENTS over the last three years of his PENSIONABLE SERVICE or over the whole of his PENSIONABLE SERVICE, if less than three years.

#### **RULE 5.1.1**

He shall contribute 6% of his PENSIONABLE EMOLUMENTS.

#### **RULE 5.3**

Subject to these RULES, the annual PENSION payable to him shall be  $\frac{1}{636}$  of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

#### **RULE 8.3**

If he is retired through ill-health, the provisions of Appendix 6 shall apply.

#### **RULE 8.4**

On his death the provisions of Appendix 7 shall apply.

**APPENDIX 3**  
**CONDITIONS FOR A 1964 MEMBER**

A 1964 MEMBER shall be subject to the provisions of the RULES with the exceptions noted below.

**RULE 2**

His "FINAL AVERAGE EMOLUMENTS" shall be the annual average of his PENSIONABLE EMOLUMENTS over the last three years of his PENSIONABLE SERVICE or over the whole of his PENSIONABLE SERVICE, if less than three years.

**RULE 5.1.1**

He shall contribute 6% of his PENSIONABLE EMOLUMENTS.

**RULE 5.3**

Subject to these RULES, the annual PENSION payable to him shall be  $1/600$  of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

**RULE 8.3**

If he is retired through ill-health, the provisions of Appendix 6 shall apply.

**RULE 8.4**

On his death the provisions of Appendix 7 shall apply.

**APPENDIX 4**  
**CONDITIONS FOR A 1976 MEMBER**

A 1976 MEMBER shall be subject to the provisions of the RULES with the exceptions noted below.

**RULE 2**

His "FINAL AVERAGE EMOLUMENTS" shall be the annual average of his PENSIONABLE EMOLUMENTS over the last three years of his PENSIONABLE SERVICE or over the whole of his PENSIONABLE SERVICE, if less than three years.

**RULE 5.1.1**

He shall contribute 6% of his PENSIONABLE EMOLUMENTS.

**RULE 5.3**

Subject to these RULES, the annual PENSION payable to him shall be  $\frac{1}{600}$  of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

**RULE 8.3**

If he is retired through ill-health, the provisions of Appendix 6 shall apply.

**RULE 8.4**

On his death the provisions of RULE 8.4 shall apply with "Appendix 4" substituted for "RULE 5.3" in the definition of "potential PENSION".



**APPENDIX 5**  
**CONDITIONS FOR A C MEMBER**

A "C MEMBER" shall be subject to the provisions of the RULES with the exceptions noted below.

"CONTINUOUS SERVICE" shall mean SERVICE in one unbroken period or the sum of the periods of SERVICE recognised by the FUND.

**RULE 2**

Her "FINAL AVERAGE EMOLUMENTS" shall be the annual average of her PENSIONABLE EMOLUMENTS over the last three years of her PENSIONABLE SERVICE or over the whole of her PENSIONABLE SERVICE, if less than three years.

**RULE 5.1.1**

She shall contribute 4% of her PENSIONABLE EMOLUMENTS.

**RULE 5.3**

Subject to these RULES, the annual PENSION payable to her shall be the following percentage of her FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

Exact age at Retirement	Percentage (A)	Percentage (B)
50	0,11494	
51	0,12069	
52	0,12644	
53	0,13219	
54	0,13793	
55	0,14368	0,12500
56	0,14525	0,12917
57	0,14682	0,13334
58	0,14838	0,13750
59	0,14995	0,14167
60	0,15152	0,14584
61	0,15455	0,15000
62	0,15758	0,15417

63	0,16061	0,15834
64	0,16364	0,16250
65	0,16667	0,16667

In calculating the percentage, allowance shall be made by interpolation for completed months of age.

## **RULE 8.2**

If she was a MEMBER on 30 June 1976, and did not elect to become a 1976 MEMBER, she may retire from the SERVICE after attaining the age of 50 years, in which case she shall be entitled, as from the date of her retirement, to a PENSION in respect of her PENSIONABLE SERVICE to the date of retirement calculated in terms of RULE 5.3 with percentage (A) applying.

If she was not a MEMBER on 30 June 1976, or was a MEMBER but elected to become a 1976 MEMBER, and has not less than ten years' CONTINUOUS SERVICE, she may retire from the SERVICE after attaining the age of 55 years, in which case she shall be entitled, as from the date of her retirement, to a PENSION in respect of her PENSIONABLE SERVICE to the date of retirement calculated in terms of RULE 5.3 with percentage (B) applying.

## **RULE 8.3**

If she is retired through ill-health, the provisions of Appendix 6 shall apply.

## **RULE 8.4**

On her death the provisions of Appendix 7 shall apply.

## **APPENDIX 6**

### **ILL-HEALTH RETIREMENT OF A MEMBER OTHER THAN A 1987 MEMBER**

Notwithstanding the other provisions of these RULES, if he is retired in terms of RULE 8.2, he shall be entitled to a PENSION calculated in terms of RULE 5.3 in respect of his PENSIONABLE SERVICE to the actual date of his retirement plus 75% for a 1976 MEMBER or 60% for any other MEMBER of the SERVICE that he would have completed from that date if he had remained in the SERVICE to the date on which he would have attained his PENSIONABLE AGE; provided that for a female MEMBER –

- (i) her PENSIONABLE AGE shall be her age at the end of the month in which she attains the age of 65 years; and
- (ii) if she is not a 1976 MEMBER, the PENSION shall be equal to 1/600 of her FINAL AVERAGE EMOLUMENTS per month of her PENSIONABLE SERVICE to the actual date of her retirement plus 60% of such potential SERVICE

## **APPENDIX 7**

### **DEATH OF A MEMBER OR PENSIONER OTHER THAN A 1976 OR 1987 MEMBER OR PENSIONER**

(1) In this Appendix -

(a) for a female MEMBER who was a 1976 MEMBER on 31 December 1986 or a female PENSIONER who retired as a 1976 MEMBER on or before 31 December 1986:

"specified percentage" shall at any time mean the percentage in the following table which accords with the number of ELIGIBLE CHILDREN who would, in the opinion of the BOARD, have been wholly or substantially dependent on her at that time but for her death:

<b>Number of ELIGIBLE CHILDREN</b>	<b>Percentage</b>
1	60
2 or more	100

(b) for a female MEMBER who was a 1976 MEMBER on 31 December 1986 or a female PENSIONER who retired as a 1976 MEMBER on or before 31 December 1986:

"specified percentage" shall at any time mean the percentage in the following table which accords with the number of ELIGIBLE CHILDREN at that time and whether there is at that time a WIDOW or WIDOWER or not:

<b>WIDOW or WIDOWER</b>	<b>Number of ELIGIBLE CHILDREN</b>	<b>Percentage</b>
Yes	0	50
	1	75
	2 or more	100
No (and in the case of a female MEMBER or PENSIONER who leaves an ELIGIBLE CHILD or	1	50

CHILDREN wholly or  
substantially, in the opinion of the  
BOARD dependent on her)

2 or more

100

(c) "potential pension" shall mean:

(aa) in the case of a MEMBER a PENSION equal to the proportion or percentage applicable to the MEMBER in terms of the appropriate appendix of his average emoluments per month of the aggregate consisting of his PENSIONABLE SERVICE to the date of his death, in months and fractions of a month, and –

(i) 75% if she was a female 1976 MEMBER on 31 December 1986; or

(ii) 60% for any other MEMBER;

of the period from the date of his death to the date on which he would have attained PENSIONABLE AGE had he lived, the said aggregate being determined in whole months in accordance with the proviso in the definition of PENSIONABLE SERVICE; provided that the percentage for any female MEMBER shall be that applicable to age 65; or

(bb) in the case of a PENSIONER the PENSION to which he became entitled on retirement before commutation, if any, including the increases subsequently granted in terms of these RULES.

(2) Subject to Section 37C of the ACT, if the MEMBER dies in the SERVICE before attaining the PENSIONABLE AGE, the benefits set out in paragraph (a) or paragraph (b) below, whichever is applicable, shall be paid:

(a) if a WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall be paid to or for such person a PENSION, the amount of which shall at any time be equal to the specified percentage of his potential PENSION at that time; or

(b) if neither a WIDOW or WIDOWER nor any ELIGIBLE CHILD is left, there shall be paid to his DEPENDANTS, if any, a benefit equal to 10% of his FINAL AVERAGE EMOLUMENTS per year of PENSIONABLE SERVICE.

(3) Subject to Section 37C of the ACT, when a PENSIONER who at retirement was a 1950

MEMBER or a 1952 MEMBER or a 1964 MEMBER, or a female MEMBER other than a 1976 MEMBER, dies, the benefit set out in paragraph (a) or paragraph (b) below, whichever is applicable, shall be paid:

- (a) if a WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall be paid to or for such person a PENSION, the amount of which shall at any time be equal to the specified percentage, at that time, of the PENSIONER'S potential PENSION; or
  - (b) if neither a WIDOW or WIDOWER nor any ELIGIBLE CHILD is left, there shall, subject to the provisions of condition (6), be paid to his DEPENDANTS, if any, a benefit equal to 10% of his FINAL AVERAGE EMOLUMENTS per year of PENSIONABLE SERVICE-less the -total amount paid to him in PENSION and commutation of PENSION.
- (4) If the beneficiaries under paragraph (a) of condition (2) or paragraph (a) of condition (3) die or cease to be eligible before payment has been made to them in terms of this RULE, the payment must be made in terms of Section 37C of the ACT.
  - (5) If no claim is made within twelve months of the death or the termination of eligibility of the last beneficiary to whom a payment was made in terms of paragraph (a) of condition (2) or paragraph (a) of condition (3) and if the total payments made to or in respect of the MEMBER fall short of the MEMBER'S ACCUMULATED CONTRIBUTIONS, the amount of the shortfall shall be paid to such person as the BOARD, in their absolute discretion, decide, subject to the provisions of Section 37C of the ACT.
  - (6) When a lump sum benefit becomes payable in respect of a PENSIONER in terms of condition (3) (b) or condition (4), the amount paid as a lump sum shall not exceed the amount determined by the REVENUE AUTHORITIES from time to time and the balance of the lump sum benefit shall be paid as an annuity, either for a fixed period or for the lifetime of a DEPENDANT, of an amount determined by the BOARD on the recommendation of the ACTUARY.
  - (7) If he is survived by more than one WIDOW or WIDOWER or by ELIGIBLE CHILDREN from more than one MARRIAGE, a PENSION shall, if condition (1) (b) applies, be granted to each WIDOW or WIDOWER equal to 50% of the MEMBER'S or PENSIONER'S potential PENSION divided by the number of WIDOWS or WIDOWERS and a PENSION shall be granted in respect of each ELIGIBLE CHILD equal to the balance of the specified percentage of the MEMBER'S or PENSIONER'S potential PENSION divided by the number of ELIGIBLE CHILDREN. Such PENSIONS shall be payable in lieu of the PENSION

payable in terms of condition (2) (a) or (3) (a). The PENSION granted to a WIDOW or WIDOWER in terms of this section shall be payable until her or his death; provided that if the WIDOW or WIDOWER dies leaving children who are ELIGIBLE CHILDREN the PENSION payable in respect of each such child shall be increased by an amount equal to the PENSION that was payable to the WIDOW or WIDOWER at the time of her or his death divided by the number of her children who are ELIGIBLE CHILDREN. The PENSION granted in respect of an ELIGIBLE CHILD shall be payable until he ceases to be an ELIGIBLE CHILD.