

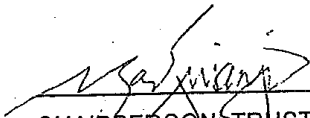
**GOVERNMENT INSTITUTIONS
PENSION FUND
RULES**

GOVERNMENT INSTITUTIONS

PENSION FUND

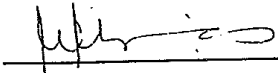
RULES

We, the undersigned, hereby certify that these are the revised RULES of the Government Institutions Pension Fund which are effective from the REVISION DATE, and that the resolution in terms whereof these revised RULES have been accepted as the RULES of the FUND, has been adopted in accordance with the provisions of the RULES of the FUND.



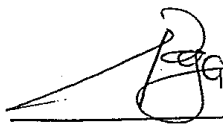
CHAIRPERSON TRUSTEES

23-09-1999
DATE



TRUSTEE

23-09-99
DATE



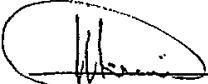
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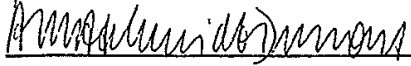
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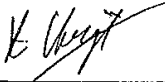
23-09-99
DATE



PRINCIPAL OFFICER

30-09-99
DATE

I, the undersigned, hereby certify that the accompanying RULES are financially sound.



per.- R. VOIGT
VALUATOR

29/9/1999
DATE

**GOVERNMENT INSTITUTIONS
PENSION FUND
R U L E S**

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1. INTRODUCTION

1.1 PREAMBLE

In the RULES, unless inconsistent with the context, words and expressions defined in the ACT and not in the RULES shall bear the meanings thus assigned to them in the ACT and words and expressions denoting the singular shall include the plural and vice versa. Headings and subheadings are solely for ease of reference and are not to be taken into account in the interpretation of the RULES.

1.2. NAME AND COMMENCEMENT DATE

On the recommendation of the Public Service Commission, the Government Institutions Pension Fund was established with effect from 1 October 1989. As from the COMMENCEMENT DATE, certain of the assets and liabilities of the OLD FUND shall devolve upon the FUND. With effect from 1 October 1999 the RULES of the FUND were revised. These rules are the RULES of the FUND which are effective from the REVISION DATE.

1.3. OBJECT

The object of the FUND is to provide retirement and ancillary benefits for the BENEFICIARIES as described in the RULES.

1.4. LEGAL STATUS

The FUND is a separate legal entity, distinct from its BENEFICIARIES and is capable in law, in its own name, of suing and of being sued, and of acquiring holding and alienating property, movable and immovable.

1.5. REGISTERED OFFICE

The registered office of the FUND shall be situated at 1st Floor, GIPF BUILDING, corner of Umland and Goethe Street, Windhoek or at such other address as may be determined by the TRUSTEES from time to time.

1.6. DEFINITIONS

Unless inconsistent with the context, the following words and expressions shall bear the meanings assigned to them below:

ACT: the Pension Funds Act, 1956 (Act No. 24 of 1956), as amended, and the regulations framed thereunder;

ACTUARY: an actuary approved by the REGISTRAR, who is a fellow of an institute, faculty or society of actuaries approved by the REGISTRAR and is appointed as valuator of the FUND in terms of Rule 10.7;

ADMINISTRATOR: the person or body appointed by the TRUSTEES in terms of Rule 10.4(4) to administer the FUND and, if applicable, registered as an administrator in terms of the ACT;

APPROVED PENSION FUND: a fund registered in terms of the ACT and/or approved as a pension fund in terms of the INCOME TAX ACT;

APPROVED RETIREMENT ANNUITY FUND: a fund registered in terms of the ACT and/or approved as a retirement annuity fund in terms of the INCOME TAX ACT;

AUDITOR : an auditor registered in terms of the Public Accountants and Auditors Act, 1951 (Act No. 51 of 1951), appointed by the TRUSTEES in terms of Rule 10.5(l);

BENEFICIARY : any person who is entitled to benefits in terms of these RULES;

COMMENCEMENT DATE : 1 October 1989;

COMMISSION : the Public Service Commission established under section 2(1) of the Public Service Commission Act, 1990 (Act No. 2 of 1990);

DEFERRED PENSIONER : a person who has preserved his/her benefit in terms of Rule 7.2(2)(a) in the FUND, until payment of his/her benefit commences;

DEPENDANT of a MEMBER, PENSIONER or DEFERRED PENSIONER : a person in respect of whom the MEMBER, PENSIONER or DEFERRED PENSIONER :

- (i) is legally liable for maintenance;
- (ii) is not legally liable for maintenance if such person is -
 - (a) considered by the TRUSTEES as having been in fact dependent on the MEMBER, PENSIONER or DEFERRED PENSIONER for maintenance at the time of the death of the same;
 - (b) the spouse of the MEMBER, PENSIONER or DEFERRED PENSIONER, including a party to a RECOGNISED MARITAL UNION with the MEMBER, PENSIONER or DEFERRED PENSIONER;
 - (c) A QUALIFYING CHILD of a MEMBER; PENSIONER; or DEFERRED PENSIONER.

- (iii) would have become legally liable for maintenance, had the MEMBER, PENSIONER or DEFERRED PENSIONER not died;

ELIGIBLE EMPLOYEE: an employee in the SERVICE of an EMPLOYER, excluding an employee who –

- (a) is remunerated solely by means of fees or allowances;
- (b) does not qualify for an identity document referred to in section 3 of the Identification of Persons Act, 1979 (Act No. 2 of 1979);
- (c) is employed under a contract which expressly provides for the payment of a sum upon the expiry thereof;
- (d) belongs to a class or category of persons which the TRUSTEES, in consultation with the COMMISSION, from time to time exempt from membership; and
- (e) is employed as a seasonal worker, casual worker, relief unit or holiday worker, or is re-appointed after retiring from service on PENSION, or is employed for a certain period or assignment, or is dismissed or resigns before being formally admitted to the FUND.;

EMPLOYER : in relation to any MEMBER, the employer in whose SERVICE he/she is, which shall be the Government of the Republic of Namibia and an institution or body established by or under law and which –

- (a) was declared to be a statutory institution for the purposes of the OLD FUND; or
- (b) has applied to the TRUSTEES for membership and been admitted by the TRUSTEES as an EMPLOYER, and which therefore participates in the FUND,

provided that any EMPLOYER which withdraws from the FUND in terms of Rule 11.9 shall simultaneously cease to be an EMPLOYER for the purposes of the RULES;

FINAL SALARY : the annualised average of the MEMBER'S PENSIONABLE EMOLUMENTS during the 12 successive months immediately preceding his/her retirement, or if less than 12, during the number of months completed in his/her term of PENSIONABLE SERVICE;

FUND : the Government Institutions Pension Fund;

FUND ANNIVERSARY : the 1st April in each year following the COMMENCEMENT DATE;

FUND YEAR : a period of 12 calendar months or such other period as the REGISTRAR may approve at the request of the TRUSTEES, commencing on the FUND ANNIVERSARY and terminating on the day prior to the subsequent FUND ANNIVERSARY;

INCOME TAX ACT : the Income Tax Act, 1981 (Act No. 24 of 1981) as amended;

INSURER : an insurer registered under the Long Term Insurance Act, 1998 (Act No. 5 of 1998) to transact long term insurance business;

MEMBER : an ELIGIBLE EMPLOYEE who has been admitted to membership in terms of Rule 2 as long as he/she remains a MEMBER in terms of these RULES;

NOMINEE : a person who has been nominated in writing by a MEMBER as entitled to receive all or part of the death benefits provided by the FUND in terms of Rule 4;

NORMAL RETIREMENT AGE : the age of 60 years or, in the case of a member of a specific class, or category, the age determined in terms of the Public Service Act, 1995 (Act No. 13 of 1995) in respect of such MEMBER, or approved by the Prime Minister on recommendation of the COMMISSION;

NORMAL RETIREMENT DATE : the last day of the month in which a MEMBER retires in terms of Rule 3.1(1). If a MEMBER retires on his/her NORMAL RETIREMENT DATE, he/she will be deemed to be on retirement with effect from the first day of the succeeding month;

OLD FUND : the Statutory Institutions Pension Fund introduced under the Statutory Institutions Pensions Act, 1980 (Act No. 3 of 1980);

ORGANISED LABOUR : registered trade unions recognised by the Government of the Republic of Namibia in terms of section 58 of the Labour Act, 1992 (Act No. 6 of 1992), as representing the majority of the employees in the employ of the Government and as such being representative of members of the Public Service and the FUND;

PARTICIPATION DATE : the COMMENCEMENT DATE; provided that if a EMPLOYER is admitted to the FUND after such date, PARTICIPATION DATE means the date on which such EMPLOYER is admitted to the FUND;

PENSION : the annual benefit amount payable for the lifetime of the

BENEFICIARY or, in the case of a PENSION payable in respect of a child of the MEMBER, the annual benefit amount payable for as long as such child remains a QUALIFYING CHILD;

PENSIONABLE EMOLUMENTS : the MEMBER'S basic annual salary or wages and any other regular amounts which are regarded as pensionable by the TRUSTEES at the request of the EMPLOYER;

PENSIONABLE SERVICE : in regard to –

- (a) a MEMBER who has exercised the option referred to in section 3 of the Pension Matters of Government Institutions Proclamation, 1989 (Proclamation AG 56 of 1989), all uninterrupted SERVICE as a MEMBER of the FUND, subject to Rules 2.4(2)(a) and (c); and
- (b) any other MEMBER, all uninterrupted SERVICE as a MEMBER of the FUND, plus the period of pensionable service under the OLD FUND which has been transferred to the FUND, and a period during which the MEMBER has worked for an EMPLOYER or elsewhere and which is recognised for PENSION purposes by the TRUSTEES, and in respect of which contributions to the FUND, as determined by the TRUSTEES, were or are made, subject to Rules 2.4(2)(a) and (c).

PENSIONABLE SERVICE shall be calculated in years and completed months;

PENSIONER : a MEMBER who has retired and who is in receipt of a PENSION in terms of these RULES; including a BENEFICIARY who is in receipt of a PENSION in terms of Rule 4;

PORTFOLIO MANAGER: a portfolio manager approved in terms of section 4 of the Stock Exchanges Act, 1985 (Act No. 1 of 1985) appointed in terms of Rule 10.9(1);

PRIME MINISTER: the Prime Minister appointed in terms of Article 32 (3) (i) (aa) of the Constitution of the Republic of Namibia;

QUALIFYING CHILD of a MEMBER :

- (a) a biological child of the MEMBER or a legally adopted child, under the age of 18 years and unmarried; or
- (b) a step-child, under the age of 18 years and unmarried, who, in the opinion of the TRUSTEES, was substantially dependent on the MEMBER at the time of his/her death;

and shall include

- (i) at the discretion of the TRUSTEES, a child as defined in (a) or (b) above who is over the age of 18 years but under the age of 25 years, who is substantially dependent on the MEMBER; and
- (ii) a child born after the death of the MEMBER who, but for such death would have been a QUALIFYING CHILD in terms of (a) or (b) above,

but shall exclude a child as defined in (a) or (b) above who was adopted or became a step-child after the MEMBER'S NORMAL RETIREMENT AGE, or the date of the MEMBER'S actual retirement, if earlier.

It is a proviso that in the case of doubt the TRUSTEES shall, within their discretion, determine whether a child is a QUALIFYING CHILD;

It is a further proviso that the TRUSTEES may, in exceptional circumstances, ignore the maximum age of 25 years stated above, provided the EMPLOYER contributes such additional amounts to the

FUND as the ACTUARY deems necessary to provide the relevant benefit;

QUALIFYING SPOUSE of a MEMBER or PENSIONER: the surviving partner of the MEMBER or PENSIONER in a RECOGNISED MARITAL UNION existing at the time of the death of the MEMBER or PENSIONER;

RECOGNISED MARITAL UNION : a legal marriage or a union according to customary law or a union recognised as a marriage under any religion, or a cohabitation or dependence (by virtue of finance or other maintenance) of a MEMBER or PENSIONER and another person, which is deemed a RECOGNISED MARITAL UNION by the TRUSTEES; provided that a RECOGNISED MARITAL UNION may, at the discretion of the TRUSTEES, include a legal marriage which has been dissolved but where the other person is still financially dependent upon the MEMBER or PENSIONER;

REGISTRAR : the Registrar of Pension Funds appointed in terms of the ACT;

REVISION DATE: 01 October 1999.

RULES: these Rules as amended from time to time;

SERVICE : service as an ELIGIBLE EMPLOYEE of one or more of the EMPLOYERS;

TRUSTEES : the persons appointed as such in terms of Rule 10.1(1) to manage and control the FUND.

2. MEMBERSHIP

2.1 ELIGIBILITY AND ADMISSION

- (1) Each ELIGIBLE EMPLOYEE shall become a MEMBER of the FUND as from the first day of the month coincident with or next following his/her becoming an ELIGIBLE EMPLOYEE. Such MEMBER, on joining the FUND, will have to comply with the RULES of the FUND.
- (2) An ELIGIBLE EMPLOYEE who becomes a MEMBER in terms of (1) above shall produce such evidence as to the state of his/her health as the TRUSTEES, at the expense of the FUND, may require. Such evidence of health shall be submitted to the FUND as soon after the date on which membership commences as is reasonably possible, but no later than 90 days after the date on which membership commences. If the TRUSTEES, after consultation with the EMPLOYER, find that such MEMBER is not in good health, he/she shall be subject to such restrictions in benefits as the TRUSTEES, acting on the advice of the ACTUARY, shall determine. It is a proviso that the restricted benefit may not be less than a refund of the MEMBER'S own contributions, together with interest thereon at the rate provided for in Rule 7.1(1). The MEMBER shall be notified in writing of any restriction or condition imposed in terms of this Rule.
- (3) Membership of the FUND is a condition of SERVICE for every person who becomes an ELIGIBLE EMPLOYEE on or after the PARTICIPATION DATE.

- (4) Each ELIGIBLE EMPLOYEE who is admitted to membership shall be given notification thereof in the manner prescribed by the TRUSTEES in consultation with the ADMINISTRATOR.

2.2 TERMINATION

No MEMBER may terminate his/her membership of the FUND while he/she remains in SERVICE; and his/her membership shall cease upon termination of his/her SERVICE, unless otherwise provided for in these RULES.

2.3 NON-DISCLOSURE

- (1) If a MEMBER fails to undergo a medical examination when requested to do so by the TRUSTEES or, if such MEMBER makes a false declaration or knowingly fails to disclose, when being medically examined, that he/she has suffered or suffers from an illness or condition and such illness or condition would have caused the TRUSTEES to impose any condition or restriction on the benefit as provided in Rule 2.1.(2) had the TRUSTEES been aware of such MEMBER'S true state of health, the benefit payable to or in respect of such MEMBER shall be determined by the TRUSTEES as if such condition or, restriction had been imposed as provided in Rule 2.1 (2).
- (2) The provisions of Rule 2.3(i) shall apply mutatis mutandis if a MEMBER makes a false declaration regarding his/her age or makes any other false material declaration or fails to disclose any other material fact.

2.4. TEMPORARY ABSENCE

(1) With full remuneration

Membership of the FUND and the benefits and contributions payable shall not be affected by a MEMBER'S absence from SERVICE while he/she is in receipt of his/her full normal remuneration from the EMPLOYER.

(2) Approved temporary absence

- (a) When a MEMBER, other than a MEMBER described in Rule 2.4(2)(c), is permitted to be absent with either decreased or no PENSIONABLE EMOLUMENTS he/she shall, before the commencement of such absence, exercise an option in writing as to whether he/she wishes to continue contributing during his/her absence. The EMPLOYER concerned shall continue to pay contributions in respect of such MEMBER during such absence. The contributions payable by the EMPLOYER shall be calculated according to the MEMBER'S PENSIONABLE EMOLUMENTS (if any) during such absence. The contributions payable by the MEMBER in terms of Rule 8.1(1) shall be calculated according to the MEMBER'S PENSIONABLE EMOLUMENTS at the commencement date of the said absence. In addition to such contributions, the MEMBER shall also contribute to the FUND the difference between the contributions that would have been payable by the EMPLOYER, had the EMPLOYER'S contributions been calculated according to the MEMBER'S PENSIONABLE EMOLUMENTS at the commencement of such absence, and the contributions payable by the EMPLOYER in terms of this Rule 2.4(2)(a).

Any period of absence during which no contributions are paid by and in respect of a MEMBER shall not rank as PENSIONABLE SERVICE.

- (b) A MEMBER described in Rule 2.4.2(a) will continue to be covered for the death, funeral and disability benefits in terms of Rules 4, 5 and 6 for a maximum period of 36 months. Any benefit which may become payable during such period of absence will be based on the MEMBER'S PENSIONABLE EMOLUMENTS immediately prior to the commencement of such absence, or such lesser amount as the EMPLOYER may decide.
- (c) When a MEMBER is permitted to be absent on maternity leave as envisaged in section 41 (1) of the Labour Act, 1992 (Act No. 6 of 1992) with either decreased or no PENSIONABLE EMOLUMENTS, membership of the FUND and the benefits and contributions payable shall not be affected by her absence from SERVICE. Such period of absence shall rank as PENSIONABLE SERVICE.
- (d) A MEMBER referred to in Rule 2.4.2(c) will continue to be covered for the death, funeral and disability benefits in terms of Rules 4, 5 and 6. Any benefit which may become payable during such period of absence shall be based on the higher of the MEMBER'S PENSIONABLE EMOLUMENTS immediately prior to the commencement of such absence or the MEMBER'S PENSIONABLE EMOLUMENTS as at the date of the incident giving rise to a claim to any such benefit.

(3) **Reinstatement of membership upon return to SERVICE**

If a MEMBER leaves SERVICE and returns to SERVICE and becomes an ELIGIBLE EMPLOYEE within twelve months thereafter and before any benefit has been paid to him/her by the FUND, or if a benefit has been paid to him/her and it is refunded to the FUND together interest at a rate determined by the TRUSTEES, in consultation with the ACTUARY, he/she shall become a MEMBER again as from the first day of the month coincident with or next following his/her becoming an ELIGIBLE EMPLOYEE, and his/her benefits shall be reinstated.

2.5 CHANGE IN EMPLOYMENT STATUS

If a MEMBER'S employment status is changed from full-time to part-time employment or vice versa or if the working hours of a part-time employee are changed (other than due to a general change in working hours for all part-time employees) the PENSIONABLE SERVICE accrued prior to such change will be changed to a period as calculated by the the ACTUARY taking into account, inter alia, the period of accrued PENSIONABLE SERVICE completed immediately prior to the change in employment status, to ensure that the MEMBER'S accrued pension rights are not affected by the change.

3. RETIREMENT

3.1. NORMAL RETIREMENT

- (1) A MEMBER may retire from SERVICE on reaching his/her NORMAL RETIREMENT AGE.
- (2) Upon retirement in terms of Rule 3.1.(I), the MEMBER shall receive a PENSION vesting on the first day of the following month. Such PENSION shall be calculated as 2,4 percent of the MEMBER'S FINAL SALARY, multiplied by the MEMBER'S term of PENSIONABLE SERVICE.
- (3) The PENSION of a MEMBER who retires in terms of Rule 3.1(1) shall commence on the MEMBER'S NORMAL RETIREMENT DATE and the first payment of the PENSION shall be due at the end of the month in which NORMAL RETIREMENT DATE falls.

3.2. EARLY AGE RETIREMENT

With the consent of the EMPLOYER, a MEMBER may retire from SERVICE upon or after having attained the age of 55 years, but before his/her NORMAL RETIREMENT AGE, or if a MEMBER is dismissed from SERVICE in circumstances other than those described in Rule 3.4 upon or after having attained the age of 55 years and the EMPLOYER regards such dismissal as early retirement, such MEMBER shall receive a PENSION vesting on the first day of the following month. Such PENSION shall be calculated in accordance with Rule 3.1(2), reduced by 0,25 percent for every complete month by which the MEMBER'S PENSIONABLE SERVICE is terminated prior to his/her NORMAL RETIREMENT AGE.

3.3. EARLY ILL-HEALTH RETIREMENT

With the approval of the TRUSTEES, a MEMBER who is in ill-health of a protracted nature caused through no fault of his/her own and who, in terms of a decision by the COMMISSION, does not qualify for the benefits set out in Rule 6, may retire early at any time prior to his/her NORMAL RETIREMENT DATE; provided that the TRUSTEES receive proof satisfactory to them of the MEMBER'S ill-health. For the purposes of this Rule, the TRUSTEES shall satisfy themselves as to whether a MEMBER is in ill-health and should they so decide, the MEMBER shall be deemed to have retired and shall receive a PENSION vesting on the first day of the following month. Such PENSION shall be calculated in accordance with Rule 3.1(2.).

3.4 EARLY RETIREMENT FOR REASONS OTHER THAN AGE OR STATE OF HEALTH

- (1) A MEMBER may retire from SERVICE prior to his/her NORMAL RETIREMENT DATE in the following instances:
 - (a) with the approval of the TRUSTEES, owing to dismissal as a result of the re-organisation of his/her EMPLOYER;
or
 - (b) with the approval of the TRUSTEES, owing to dismissal in terms of section 24(4) (h) of the Public Service Act, 1995 (Act No. 13 of 1995); or
 - (c) owing to unsuitability for duty or inability to carry out duties in an efficient manner, provided such a MEMBER has completed at least ten years' PENSIONABLE SERVICE; or

- (d) with the approval of the TRUSTEES, owing to his/her dismissal for reasons other than his/her unsuitability or inability, in order to promote efficiency or economy of his/her EMPLOYER

Such MEMBER shall receive a PENSION vesting on the first day of the following month. Such PENSION shall be calculated as 2,4 percent of the MEMBER'S FINAL SALARY multiplied by the MEMBER'S term of PENSIONABLE SERVICE, subject to (2) below.

(2) It is provided that -

- (a) in the case of a MEMBER who retires in terms of Rule 3.4 (1) (a) or 3.4 (1)(d) above, such PENSION shall be increased by-
 - (i) one-third of the period of the MEMBER'S PENSIONABLE SERVICE; or
 - (ii) the period between the date on which the MEMBER so retires and the date on which the MEMBER would have attained the NORMAL RETIREMENT AGE; or
 - (iii) a period of five years,

whichever is the shortest;

- (b) any additional liability as determined by the ACTUARY, and incurred by the FUND as the result of the retirement of a MEMBER in terms of Rule 3.4 (1) (a) or 3.4 (1)(d) shall be paid to the FUND by the EMPLOYER of the MEMBER, unless the TRUSTEES, acting on the advice of the ACTUARY, determine otherwise;

- (c) in the case of a member of the COMMISSION who retires upon the expiry of his/her term of office as stipulated in section 2(3) of the Public Service Commission Act, 1990 (Act No. 2 of 1990) or who retires in terms of sections 4(l)(a)(i), 4(l) (a)(iv) or 4(2)(a) of the said Act, his/her PENSIONABLE SERVICE shall be increased by -
 - (i) a period equal to -
 - (aa) one-third of the period of the MEMBER'S PENSIONABLE SERVICE; or
 - (bb) the period between the date on which the MEMBER so retires and the date on which the MEMBER would have attained the NORMAL RETIREMENT AGE; or
 - (cc) a period of five years,

whichever is the shortest, and
 - (ii) one-half of the period during which he/she occupied the office referred to in section 2(3) of the Public Service Commission Act, 1990 (Act No. 2 of 1990).

Any increase in a MEMBER'S PENSIONABLE SERVICE in terms of the foregoing provisions may not result in such MEMBER'S PENSIONABLE SERVICE commencing prior to his/her eighteenth birthday.

If on request in terms of section 4(2)(a)(ii) of the Public Service Commission Act, 1990 (Act No. 2 of 1990) the President of Namibia determines that a member of the COMMISSION retire in terms of section 24(3)(a) of the Public Service Act, 1995 (Act No. 13 of 1995) his/her PENSIONABLE SERVICE shall not be increased by the periods referred to in (i) and (ii).

For the purposes of Rule 3.4(l)(a) -

- (a) the term "PENSIONABLE SERVICE" where it occurs in (aa) above, shall exclude the period during which a MEMBER occupied the office referred to in section 2(3);
- (b) "one half of the period" refers to half of a completed term and also half of a completed extended term referred to in section 2(3); and
- (c) in the case of a PERMANENT SECRETARY as contemplated in section 37(2)(a) of the Public Service Act, 1995 (Act No. 13 of 1995), who retires at the expiry of his/her term of office or in terms of section 24(4)(a), (b) or (c) of the Public Service Act, 1995 (Act No. 13 of 1995) or who is permitted to retire in terms of section 14(l)(c)(i) of the Public Service Act, 1980 (Act No. 2 of 1980), read in conjunction with section 37(2)(a) of the Public Service Act, 1995 (Act No.13 of 1995), his/her PENSIONABLE SERVICE

shall be increased by the amounts referred to in Rules 3.4(2)(c)(i) and 3.4(2)(c)(ii) above.

3.5 LUMP SUM BENEFIT

At the request of a retiring MEMBER made at the time of retirement, the MEMBER may choose to receive, as a lump sum benefit, up to one-third of his/her PENSION (or up to the whole thereof if permitted by the INCOME TAX ACT), payable on the first day of the month immediately following the MEMBER'S retirement from SERVICE. The lump sum benefit shall be determined by the ACTUARY.

3.6. SPECIAL PROVISIONS APPLICABLE TO CERTAIN MEMBERS WHO WERE MEMBERS AS AT 1 APRIL 1996

Notwithstanding the provisions of Rules 3.1 to 3.5, a MEMBER who was a MEMBER on 1 April 1996 and who, not later than 31 December 1996, irrevocably elected to retain the retirement benefits payable in terms of rule 5 of the rules of the FUND in force immediately prior to 1 April 1996 shall enjoy retirement benefits calculated in accordance with the provisions of Annexure "C" to the RULES.

3.7. PAYMENT OF PENSIONS

- (1) PENSIONS shall commence on the first day of the month following the MEMBER'S retirement date and shall be payable monthly in arrear.
- (2) Each monthly payment shall be equal to one - twelfth of the annual PENSION.
- (3) A PENSION is payable for as long as a PENSIONER may live.

4. DEATH

4.1 DEATH BENEFITS

- (1) Death in SERVICE prior to NORMAL RETIREMENT AGE
 Subject to the provisions of section 37C of the ACT, quoted in Annexure "A" to the RULES, and subject to the provisions of Rules 9.1, 9.2 and 9.3, the benefits set out below shall be payable on the death of a MEMBER while in SERVICE prior to NORMAL RETIREMENT AGE or while in receipt of a disability pension in terms of Rule 6.
- (i) A lump sum equal to twice the MEMBER'S PENSIONABLE EMOLUMENTS; plus
- (ii) A PENSION to his/her QUALIFYING SPOUSE equal to 40% of the MEMBERS' PENSIONABLE EMOLUMENTS immediately before his/her death, provided that the TRUSTEES manage to locate the QUALIFYING SPOUSE within twelve months of the MEMBER'S death; plus
- (iii) A PENSION in respect of QUALIFYING CHILDREN of the MEMBER equal in total to a percentage of the MEMBER'S PENSIONABLE EMOLUMENTS immediately before his/her death, in accordance with the following table

Number of

Percentage of

QUALIFYING	MEMBER'S PENSIONABLE
<u>CHILDREN</u>	<u>EMOLUMENTS</u>
1	10%
2	20%
3 or more	30%

Subject to Rule 4.2(2), the PENSION payable in respect of QUALIFYING CHILDREN of a MEMBER is doubled for any month for which no PENSION is payable to a QUALIFYING SPOUSE of the MEMBER in terms of (ii) above.

(2) DEATH AFTER RETIREMENT

On the death of a PENSIONER his/her PENSION shall cease as provided for in Rule 9.1(3). The following shall then be payable:

- (a) If the PENSION in respect of a MEMBER who has no DEPENDANTS has been paid for a period of less than 60 months as from the date of retirement, the equivalent value of the outstanding PENSION payments shall be paid in a lump sum in accordance with the provisions of section 37C of the Act, quoted in Annexure "A" to the RULES, or

If the PENSION in respect of a MEMBER who is survived by a QUALIFYING SPOUSE has been paid for a period of less than 60 months as from the date of retirement, payment of the PENSION shall continue until 60 monthly instalments have been paid.

In addition, there shall also be payable:

- (b) a PENSION to his/her QUALIFYING SPOUSE, commencing on the PENSIONER'S death or 60 months after the commencement of the PENSIONER'S PENSION, whichever occurs last, equal to 50% of the PENSION payable immediately prior to the commencement of the PENSION to the QUALIFYING SPOUSE. It is a proviso that where the

PENSIONER entered into a RECOGNISED MARITAL UNION with such QUALIFYING SPOUSE after the date of the PENSIONER'S retirement, the PENSION payable to the QUALIFYING SPOUSE shall be reduced by a percentage thereof, as determined by the TRUSTEES, acting on the advice of the ACTUARY, for each year by which the age of the PENSIONER exceeds the age of the QUALIFYING SPOUSE.

4.2 PAYMENT OF PENSIONS OF QUALIFYING SPOUSES AND QUALIFYING CHILDREN

- (1) On the death of a MEMBER or PENSIONER, at the request of his/her QUALIFYING SPOUSE, the TRUSTEES may in their discretion commute for a cash payment to the QUALIFYING SPOUSE up to one-third of the PENSION payable to the QUALIFYING SPOUSE (or up to the whole thereof if permitted by the INCOME TAX ACT), provided that such commutation takes place within six months of the MEMBER'S or PENSIONER'S death and before the first instalment of the spouse's PENSION is paid. The amount of the PENSION payable to the QUALIFYING SPOUSE shall thereafter be reduced by such proportion of the total PENSION as is commuted for a cash payment.

The amount of the cash payment shall be decided by the TRUSTEES after consultation with the ACTUARY.

In event of such commutation

- (a) any PENSION payable in respect of QUALIFYING CHILDREN of the MEMBER during the lifetime of the QUALIFYING SPOUSE will not be affected;
 - (b) the PENSION payable in respect of QUALIFYING CHILDREN of the MEMBER after the death of the QUALIFYING SPOUSE will not be doubled but will be adjusted as decided by the TRUSTEES after consultation with the ACTUARY.
- (2). If the deceased MEMBER or PENSIONER, other than a female PENSIONER who retired prior to 1 April 1992, leaves more than one QUALIFYING SPOUSE, the TRUSTEES shall decide to which of them and in what proportion the benefits shall be paid, provided that the total QUALIFYING SPOUSES' PENSION shall be equal to the PENSION that would have been payable had there been only one QUALIFYING SPOUSE.
- (3) PENSIONS in respect of QUALIFYING CHILDREN of the MEMBER shall be paid to or for the benefit of such QUALIFYING CHILDREN in such proportions as the TRUSTEES may decide.

4.3 SPECIAL PROVISIONS APPLICABLE TO CERTAIN MEMBERS WHO WERE MEMBERS AS AT 1 APRIL 1996

Notwithstanding the provisions of Rules 4.1 and 4.2, the benefits payable on the death of a MEMBER who was a MEMBER of the FUND on 1 April 1996 and who, not later than 31 December 1996, irrevocably elected to retain the

death benefits payable in terms of rule 6 of the rules of the FUND in force immediately prior to 1 April 1996 shall be calculated in accordance with the provisions of Annexure "C" to the RULES.

5. FUNERAL BENEFITS

On the death of a MEMBER while in SERVICE prior to his/her NORMAL RETIREMENT AGE or while in receipt of a disability pension in terms of Rule 6, or on the death of a MEMBER'S QUALIFYING SPOUSE or a MEMBER'S QUALIFYING CHILD prior to such MEMBER'S NORMAL RETIREMENT AGE, a funeral benefit, as stated below, shall be payable.

DECEASED	AMOUNT
MEMBER	N\$5 000,00
QUALIFYING SPOUSE	N\$5 000,00
QUALIFYING CHILD aged 1 year or older	N\$1 000,00
QUALIFYING CHILD younger than 1 year (including a stillborn child)	N\$ 500,00

The benefits in terms of this Rule are subject to the provisions of Rule 9.3

6. DISABILITY

6.1. DISABILITY BENEFITS

If at any time prior to NORMAL RETIREMENT DATE the COMMISSION considers a MEMBER to have become totally and permanently disabled as a result of disease or illness, to the extent that such MEMBER can no longer pursue his/her own or a similar occupation for which he/she would be qualified by his/her training and experience, the following provisions will apply:

- (a) A disability income benefit equal to 75% of the MEMBER'S PENSIONABLE EMOLUMENTS at date of disablement shall be payable.
- (b) After the first twenty-four months of disablement, the disability income benefit in (a) above will be reduced to 50% of PENSIONABLE EMOLUMENTS as at the date of becoming disabled, provided that the disability income benefit of a MEMBER who becomes disabled as a result of one of the conditions below, will not be reduced in terms of this provision.
 - (i) A traumatic bodily injury which was accidental, violent, external, visible and resulted in immediate hospitalisation with specialist treatment by a physician,
 - (ii) cancer;
 - (iii) stroke;
 - (iv) central nervous system disorders which are organic in origin and severely degenerative;

- (v) kidney failure requiring regular renal dialysis-
 - (vi) hepatic failure;
 - (vii) blindness;
 - (viii) disablement from activities of daily living (assessment criteria available on request);
 - (ix) cognitive disablement which is irreversible and organic in origin to such an extent that the MEMBER requires continual personal assistance or direct supervision.
 - (x) chronic obstructive pulmonary disease;
 - (xi) connective tissue disorders, such as rheumatoid arthritis;
 - (xii) coronary artery disease, heart valve disease or cardiomyopathy.
- (c) The first payment of the disability income benefit shall be made on the last day of the month following the date on which the COMMISSION decides that the MEMBER is disabled for purposes of the FUND. The last payment shall be made on the last day of the month prior to the month in which the MEMBER dies or retires from SERVICE in terms of Rule 3.

6.2. CONDITIONS GOVERNING DISABILITY BENEFITS

The disability income benefit in terms of Rule 6.1 shall be subject to the provisions of Rule 9.3 and the following conditions

- (a) On the attainment of his/her NORMAL RETIREMENT AGE the disability income benefit described above shall cease and the MEMBER will receive an annual PENSION, calculated in accordance with the provisions in Rule 3.1.2, as if the MEMBER had been in SERVICE to his/her NORMAL RETIREMENT AGE.
- (b) The TRUSTEES shall call for and obtain such medical evidence as they may require to determine the nature, cause and extent of the MEMBER'S disablement. The TRUSTEES shall be bound to consult with the EMPLOYER as to whether the MEMBER is disabled.
- (c) The TRUSTEES shall be entitled, from time to time, to call for and obtain such medical evidence as they may require to determine the extent of continuous disablement of a MEMBER who is in receipt of a disability income benefit in terms of this Rule. If, in the opinion of the TRUSTEES, the MEMBER is no longer disabled as contemplated above, the disability income benefit granted in terms of Rule 6.1 above shall cease and the MEMBER shall thereafter receive a PENSION equal to the PENSION that would have been payable to him/her had he/she not been disabled, as calculated by the ACTUARY.
- (d) If, in the opinion of the TRUSTEES, the disablement of the MEMBER is the result of a disease or illness which existed at the commencement of the MEMBER'S SERVICE with the EMPLOYER, and in respect of which benefits are being paid to the MEMBER, the TRUSTEES may exclude the disability income benefit provided for in this Rule.
- (e) The MEMBER will remain a MEMBER of the FUND, contributions by and in respect of him/her will continue to be payable and he/she will remain entitled to all rights and benefits in terms of the RULES.

- (f) The MEMBER'S PENSIONABLE EMOLUMENTS will, for purposes of the RULES, be his/her PENSIONABLE EMOLUMENTS immediately prior to the date of disablement, subject to increases from time to time as determined by the TRUSTEES in terms of Rule 9.7(2).

- (g) If, in the opinion of the TRUSTEES, such accident, disease or illness was caused by the MEMBER'S own action or neglect, the TRUSTEES may reduce or exclude the benefit provided for in Rule 6.1 above.

6.3 SPECIAL PROVISIONS APPLICABLE TO CERTAIN MEMBERS WHO WERE MEMBERS AS AT 1 APRIL 1996

Notwithstanding the provisions of Rules 6.1 and 6.2, a MEMBER who was a MEMBER on 1 April 1996 and who, not later than 31 December 1996, irrevocably elected to retain the disability benefits payable in terms of rule 5 of the rules of the FUND in force immediately prior to 1 April 1996 shall enjoy disability benefits calculated in accordance With the provisions of Annexure "C" to the RULES.

7. WITHDRAWAL

7.1 CASH WITHDRAWAL BENEFIT

- (1) If a MEMBER leaves SERVICE as a result of resignation or dismissal prior to his/her NORMAL RETIREMENT AGE and is not entitled to benefits under any other Rule, an amount equal to A + B shall be paid to him/her, where "A" and "B" have been calculated according to the following formulae:

Formula for "A" (applicable to service rendered prior to 1 April 1992)

$[1+(0,0275 \times T)]^I \times C \times T \times K + 1$, where –

C = half the sum of the MEMBER'S PENSIONABLE EMOLUMENTS on the commencement of his/her PENSIONABLE SERVICE and his/her PENSIONABLE EMOLUMENTS on 31 March 1992;

T = the period of the MEMBER'S PENSIONABLE SERVICE to 31 March 1992, excluding any backdated PENSIONABLE SERVICE in respect of which payment by the MEMBER has not yet been made by the FUND;

K = the rate at which the MEMBER contributed to the FUND;

I = interest on "A" before the inclusion of "I", calculated at a rate of 10% per annum from 1 April 1992 to the date of withdrawal from SERVICE;

Formula for "B" (applicable to service rendered on or after
1 April 1992)

$[0,07 \times (1+0,05T)] \times C \times T$, where;

C = half the sum of the MEMBER'S PENSIONABLE EMOLUMENTS on 1 April 1992 and his/her PENSIONABLE EMOLUMENTS on the date of withdrawal from the FUND, in the case of a MEMBER who became a MEMBER prior to 1 April 1992;

or

C = half the sum of the MEMBER'S PENSIONABLE EMOLUMENTS on the commencement of his/her PENSIONABLE SERVICE and his/her PENSIONABLE EMOLUMENTS on the date of withdrawal from the FUND, in the case of a MEMBER who became a MEMBER on or after 1 April 1992;

T = the period of the MEMBER'S PENSIONABLE SERVICE as from 1 April 1992, excluding any backdated PENSIONABLE SERVICE.

(2) The TRUSTEES may, in their absolute discretion, withhold payment of the cash withdrawal benefit in terms of this Rule for a maximum period of three months from the date on which the MEMBER left SERVICE. Any payment made after this initial three month period shall attract interest of 12%, compounded annually.

7.2. PRESERVATION BENEFIT

- (1) A MEMBER may elect in writing to the TRUSTEES within thirty-one days of termination of his/her SERVICE, to preserve his/her full entitlement in terms of Rule 7.1 above, in which case the MEMBER'S withdrawal benefit shall be equal to his/her ACTUARIAL RESERVE.
- (2) A MEMBER who preserves his/her benefit in terms of (1) above may elect to preserve such benefit :
 - (a) in the FUND if the MEMBER has completed at least ten years' PENSIONABLE SERVICE and the TRUSTEES agree thereto, in which case he/she will become a DEFERRED PENSIONER, or
 - (b) By transferring such amount to an APPROVED PENSION FUND or an APPROVED RETIREMENT ANNUITY FUND of his/her choice.

7.3. DEFERRED PENSION PROVISIONS

- (1) Should the MEMBER elect to preserve his/her benefit or part thereof in the FUND in terms of Rule 7.2(2)(a) he/she will become a DEFERRED PENSIONER with benefits to be determined as follows:
 - (a) Upon the DEFERRED PENSIONER'S attainment of his/her NORMAL RETIREMENT AGE, he/she shall receive a PENSION vesting on the following day, based on his/her accrued ACTUARIAL RESERVE, as determined by the ACTUARY. The DEFERRED PENSIONER'S accrued

ACTUARIAL RESERVE will be applied to purchase a PENSION in respect of the DEFERRED PENSIONER. Payment of the deferred PENSION may be accelerated in accordance with Rule 3.2 or 3.3.

- (b) No further contributions will be payable by or on behalf of the DEFERRED PENSIONER on or after the date of his/her withdrawal from SERVICE.
 - (c) The DEFERRED PENSIONER shall not be entitled to benefits other than those provided for under this Rule 7.3.
- (2) On the death of a DEFERRED PENSIONER before the PENSION in terms of (2) above becomes payable, the cash value of the MEMBER'S deferred PENSION as at the date of his/her death, together with increases (if any) in terms of Rule 9.7, shall be payable in accordance with section 37C of the ACT, quoted in Annexure "A" to the RULES.

8. CONTRIBUTION

8.1. MEMBER CONTRIBUTIONS

- (1) Each MEMBER shall contribute an amount equal to 7% of one twelfth of his/her PENSIONABLE EMOLUMENTS to the FUND.
- (2) Contributions are deducted monthly from the MEMBER'S remuneration.
- (3) An EMPLOYER may enter into an agreement with the TRUSTEES, in terms of which payments shall be made to the FUND to secure benefits, additional to those provided for elsewhere in the RULES, for MEMBERS in its SERVICE. Conditions relating to the extent of these benefits shall be determined by the TRUSTEES after consultation with the ACTUARY. The MEMBER shall be notified of such additional benefits in writing.
- (4) If a MEMBER'S PENSIONABLE EMOLUMENTS are reduced, he/she may choose to continue contributing the same amount as before the reduction. The choice shall be communicated to his/her EMPLOYER in writing within thirty days of the MEMBER having been informed (of the said reduction), and shall be subject to approval by the EMPLOYER. If the MEMBER concerned continues contributing at the rate of his/her PENSIONABLE EMOLUMENTS prior to the said reduction such emoluments shall, for the purposes of the FUND, be deemed to be his/her PENSIONABLE EMOLUMENTS.

8.2. EMPLOYER CONTRIBUTIONS

- (1) The EMPLOYER shall contribute to the FUND each month an amount equal to the balance of the cost of providing the benefit in terms of these RULES, after taking into account the MEMBERS' contributions to the FUND in terms of Rule 8.1(1). Such amount shall be determined by the TRUSTEES in consultation with the ACTUARY, after which such increase shall be submitted to the COMMISSION and THE PRIME MINISTER for their recommendation and approval respectively.
- (2) The TRUSTEES, in consultation with the ACTUARY, shall determine what further contributions shall be paid to the FUND by the EMPLOYER to cover the cost of greater benefits and pension increases granted in terms of Rule 9.7 and retirement benefits granted in terms of Rule 3.4(1)(a) or (d).

8.3. PAYMENT OF CONTRIBUTIONS

Contributions are payable to the FUND monthly, in arrears.

The EMPLOYER shall deduct the. MEMBER'S contributions in terms of Rule 8.1 from the MEMBER'S remuneration at the end of each payperiod. The first deduction shall be that at the end of the payperiod during which the MEMBER became a MEMBER in terms of the RULES. These contributions and the EMPLOYER contributions in terms of Rule 8.2 shall be paid over to the FUND within seven days of the end of the calendar month to which such contributions relate, subject to the provisions of section 13A of the ACT. Interest, at a rate determined by the TRUSTEES, in consultation with the ADMINISTRATOR, shall be payable on overdue amounts.

9. MISCELLANEOUS PROVISIONS REGARDING BENEFITS

9.1. PAYMENT OF BENEFITS

- (1) Amounts payable in respect of a BENEFICIARY during his/her lifetime shall be paid to such BENEFICIARY, subject to Rules 9.1(7), 9.2(l) and 9.2(2).
- (2) PENSIONS are payable in equal payments monthly or, at the request of the retiring MEMBER, quarterly, half-yearly or annually in arrears, the proportionate amount being derived from the annual PENSION calculated in terms of these RULES.
- (3) If PENSIONS are payable monthly, the first payment shall be due at the end of the calendar month following the month in which

(a) a MEMBER retires or dies, or

(b) a PENSIONER dies, and

the last payment shall be that due at the end of the calendar month in which:

(a) a PENSIONER dies, subject to the provisions of Rule 4.1 (1);

(b) the QUALIFYING SPOUSE dies in the case of a QUALIFYING SPOUSE'S PENSION; -

(c) a QUALIFYING CHILD dies or ceases to be eligible for a pension, in the case of a QUALIFYING CHILD'S PENSION;

(d) a designated DEPENDANT dies in the case of a designated DEPENDANT'S PENSION.

These provisions shall apply, mutatis mutandis, if PENSIONS are payable quarterly, half-yearly or annually at the request of the retiring MEMBER.

- (4) Whenever a PENSION commences, is changed or terminates, payments due at the end of the month concerned will be made based on the circumstances applying immediately prior to such commencement, change or termination.
- (5) Whenever a benefit is payable to any BENEFICIARY, the BENEFICIARY shall be deemed to have requested payment thereof by means of electronic transfer to such BENEFICIARY'S banking account, of which the BENEFICIARY shall inform the TRUSTEES in writing. However, the TRUSTEES may, at the request of the BENEFICIARY, agree to payment of the benefit in some other manner.
- (6) Subject to the provisions of Rules 9.1(7) and 9.2 (2), a benefit that becomes payable upon a MEMBER'S death shall be dealt with by the TRUSTEES in accordance with the provisions of Annexure "A" to the RULES.
- (7) Notwithstanding the provisions of Rules 9.1(1) and 9.1(6), a benefit payable to a BENEFICIARY who is a minor shall be paid to such minor's de jure guardian.

9.2. PAYMENT OTHER THAN SPECIFIED

- (1) Should the TRUSTEES decide that there are sound and adequate reasons why a benefit should not be paid to a MEMBER, they may, notwithstanding the provisions of Rule 9.1 (1), pay the benefit as follows:
 - (a) Wholly or partially to the MEMBER'S DEPENDANTS or to a trustee or guardian for the benefit of such DEPENDANTS, if the MEMBER attempts to contravene the provisions of Rule 9.4(l); or
 - (b) to the MEMBER'S curator for the benefit of the MEMBER, subject to the provisions of section 37B of the ACT.

- (2) Should the TRUSTEES decide that there are sound and adequate reasons why a benefit, which has arisen upon the death of a MEMBER, DEFERRED PENSIONER or PENSIONER should not be paid to a BENEFICIARY, they may, notwithstanding the provisions of Rules 9.1(1), 9.1(7) and 9.1 (8), pay the benefit as follows:
 - (a) Wholly or partially to the SENEFICIARY'S dependents or to a trustee or guardian for the benefit of such dependents, if the BENEFICIARY attempts to contravene the provisions of Rule 9.4(1); or
 - (b) to the BENEFICIARY'S curator for the benefit of the BENEFICIARY, subject to the provisions of section 37B of the ACT; or

- (c) to a trustee contemplated in the Trust Monies Protection Act, 1934 (Act No. 34 of 1934) for the benefit of the BENEFICIARY.
- (3) A decision of the TRUSTEES in terms of this Rule (other than a decision to make payment to a trust and such payment has already been effected) may be varied by them from time to time in their sole discretion.
- (4) A payment made in terms hereof shall not be made in a manner which conflicts with the provisions of the ACT or the requirements laid down by the Ministry of Finance in terms of the INCOME TAX ACT.

9.3. LIMITATION

This Rule shall apply notwithstanding anything to the contrary contained in Rules 4, 5 and 6.

- (1) The TRUSTEES may, after consultation with the ACTUARY, reinsure the benefits described in Rules 4.1(1), 5 and 6.1 with an INSURER. The said benefits shall be subject to the conditions imposed by the INSURER concerned and each MEMBER shall be entitled to the said benefits only to the extent that he/she is accepted by the said INSURER for such benefits provided that the TRUSTEES may, in their absolute discretion, and after consultation with the ACTUARY, make provision for payment of part of any benefit which has been reduced or for payment of the whole benefit, where the said INSURER has refused to admit a claim in respect of any benefit.
- (2) Any MEMBER in respect of whom the benefits in terms of Rules 4.1(1), 5 and 6.1 are restricted in terms hereof shall be informed

of the extent of such restriction by the TRUSTEES within a reasonable time period of the TRUSTEES becoming aware of the restriction. It is a proviso that the restricted benefit may not be less than a refund of the MEMBER'S own contributions, together with interest thereon at the rate provided for in Rule 7.1 (1).

9.4. BENEFITS INALIENABLE

- (1) Save to the extent permitted by the ACT, the INCOME TAX ACT and the Maintenance Act, 1963 (Act No. 80 of 1963), no benefit or right thereto provided for in the RULES, or right in respect of contributions made by or on behalf of a MEMBER, DEFERRED PENSIONER or PENSIONER shall be capable of being reduced, transferred, ceded, pledged or hypothecated or be liable to attachment or subject to any form of execution under a judgement or order of court, or to the extent or not more than N\$3 000 per annum, be capable of being taken into account in the determination of a judgement debtor's financial position in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)
- (2) If a BENEFICIARY attempts to transfer, cede, pledge or hypothecate a benefit or right, the benefit shall, as the TRUSTEES may direct, be withheld or suspended; provided that the TRUSTEES may direct that the benefit or part thereof be paid in accordance with Rule 9.2 (1) or 9.2 (2), as the case may be, for such period as they may determine.
- (3) If the estate of a BENEFICIARY is sequestrated or surrendered, the benefit shall, subject to the provisions of the ACT, not be deemed to form part of the assets of the insolvent estate of such

BENEFICIARY, and may not in any way be attached or appropriated by the curator of such BENEFICIARY'S insolvent estate or by his/her creditors, notwithstanding anything contrary in any law relating to insolvency.

- (4) Subject to section 37C of the ACT, a benefit payable in respect of a deceased MEMBER shall not be regarded as an asset in such MEMBER'S deceased estate.

9.5. LIEN OVER BENEFITS

- (1) Any benefit payable in respect of a BENEFICIARY in terms of the RULES on a MEMBER'S retirement or termination of membership for whatever reason may be subject to a deduction by the TRUSTEES in respect of the following:
 - (a) any housing loan granted to the MEMBER by the EMPLOYER for any purpose referred to in section 19(5)(a) of the ACT, quoted in Annexure "B" to the RULES;
 - (b) any amount for which the FUND or the EMPLOYER is liable under a guarantee furnished in respect of any loan granted by some other person or body to the MEMBER for any purpose referred to in section 19(5)(a) of the ACT, quoted in Annexure "B" to the RULES;
 - (c) compensation (including any legal costs recoverable from the MEMBER) in respect of any damage caused to the EMPLOYER as a result of any theft, dishonesty, fraud or misconduct by the MEMBER and in respect of

which the MEMBER has in writing admitted liability to the EMPLOYER,
or judgement has been obtained against thin MEMBER in any court;

- (d) any amount for which the MEMBER is liable to his/her EMPLOYER in respect of the backdating of the MEMBER'S PENSIONABLE SERVICE in terms of section 5 of the Statutory Institutions Pensions Act, 1980 (Act No. 3 of 1980). It is a proviso that such deduction shall be made only at the request of the MEMBER'S EMPLOYER and only upon submission to the FUND of satisfactory proof of the MEMBER'S liability towards such EMPLOYER.
- (2) The TRUSTEES shall pay any amount so deducted to the EMPLOYER or such other person or body; provided that the total amount deducted in terms of (1)(a) and (b) above shall not exceed the amount which may be taken as a lump sum by a BENEFICIARY in terms of the INCOME TAX ACT.
 - (3) In order to give effect to the provisions of this Rule and of sections 37D(a) and (b) of the ACT, the TRUSTEES may exercise the right to payment of a lump sum benefit as provided for in Rule 3.5 on behalf of the MEMBER concerned; provided that in giving effect to the provisions of section 37D(b)(ii) of the ACT, any amount due to the EMPLOYER in terms of this Rule, shall, on the date of the MEMBER'S retirement or on which he/she ceases to be a MEMBER of the FUND, be deducted from the benefit payable to such BENEFICIARY.

9.6 UNCLAIMED MONIES

- (1) If a benefit (other than a benefit arising on the death of a MEMBER, PENSIONER or DEFERRED PENSIONER) remains unclaimed for three years after the date it becomes payable, it

shall revert to the FUND, and such BENEFICIARY shall have no further claim against the FUND.

- (2) The TRUSTEES shall have the discretion to pay out any such benefit after the expiration of the three year period referred to in (1) above.

9.7 GREATER BENEFITS AND ESCALATION OF BENEFITS

- (1) The TRUSTEES shall, at the request of the EMPLOYER, increase any benefit payable to or in respect of any MEMBER on such basis as shall be determined after consultation with the ACTUARY, subject to the approval of the Ministry of Finance.
- (2) PENSIONS may be increased from time to time at a rate decided by the TRUSTEES after consultation with the ACTUARY.
- (3) It is a proviso that any additional liability incurred by the FUND as the result of an increase granted in terms of Rule 9.7(1), as determined by the ACTUARY, shall be paid to the FUND by the EMPLOYER of the MEMBER, unless the TRUSTEES, acting on the advice of the ACTUARY determine otherwise.

9.8. TRANSFER FROM OR TO OTHER FUNDS

The TRUSTEES may, after consultation with the ACTUARY, approve special arrangements for the preservation of transferred pension rights, which may make provision, inter alia, for the following :

- (1) In respect of a person who was a member of another pension or provident fund and who becomes a MEMBER of the FUND :
 - (a) for the amendment of the conditions of the FUND in respect of such MEMBER, having regard to the conditions that applied to such MEMBER under such other fund;
 - (b) for the recognition of certain periods of former service for the purposes of determining the MEMBER'S benefits in terms of these RULES;
 - (c) for the payment by such MEMBER or such other fund of contributions in respect of such MEMBER'S benefits.

- (2) In respect of a group of individuals who were MEMBERS of the FUND and within six months of their transfer from the FUND become members of an APPROVED PENSION FUND or an APPROVED RETIREMENT ANNUITY FUND :
 - (a) that no withdrawal benefits shall be paid by the FUND under Rule 7 in respect of such MEMBERS;
 - (b) for the payment to such other fund of an amount as contemplated in Rule 11.10 in respect of such MEMBERS and subject to section 14 of the ACT.

Such special arrangements and the conditions determined in respect thereof shall have the effect of amending any provision of the RULES not compatible therewith in respect of such person.

9.9 CURRENCY

Contributions and benefits are payable in the currency of the Republic of Namibia.

9.10 MONIES NOT TO REVERT TO EMPLOYER

The EMPLOYER shall not derive any monetary advantage from monies paid into or out of the FUND and no monies of the FUND shall become the property of the EMPLOYER other than specifically provided for in the RULES.

9.11 DISPUTES

- (1) If any dispute concerning interpretation of the RULES arises - between the TRUSTEES and an EMPLOYER, or between either of them and the successors in title to the other of them, or between the TRUSTEES and a MEMBER or his/her BENEFICIARIES or the legal representative of either of them which, may affect the liability of the FUND, the dispute shall be referred for arbitration.

- (2) The arbitrator shall be appointed by mutual agreement between the parties and shall be a person having the necessary experience and expertise in the field of pension funds and related matters, and in particular, expertise in matters of a similar nature to that in dispute. Should the parties be unable to agree on an arbitrator, the REGISTRAR shall be requested to designate an arbitrator.

10. MANAGEMENT OF THE FUND

10.1 TRUSTEES

- (1) The management, control and administration of the FUND vest in a Board of TRUSTEES consisting of 9 persons, appointed as follows:
 - (a) Three by Government;
 - (b) three by ORGANISED LABOUR; and
 - (c) three by the COMMISSION. Such appointees shall represent the EMPLOYEES and one such appointee shall be a PENSIONER. In making the two other such appointments, the COMMISSION shall take into consideration those EMPLOYEES who, because they are members of the Namibian Defence Force or the Namibian Police Force or because the provisions of section 58 of the Labour Act, 1992, (Act No. 6 of 1992) do not apply to them, are not represented in the appointments made by Government in terms of (a) above and ORGANISED LABOUR in terms of (b) above.
- (2) The TRUSTEES who were in office as at 30 September 1995 remain in office until their term of office has expired.
- (3) Government, ORGANISED LABOUR and the COMMISSION shall have the right to remove any TRUSTEE appointed by them respectively from office at any time and to appoint a new TRUSTEE, and to each appoint an alternate to any of the TRUSTEES appointed by them.

- (4) The TRUSTEES who do not retire from office in terms of Rule 10.1 (2) shall hold office for a period of three years, after which they may be re-appointed.
- (5) Casual vacancies among the TRUSTEES shall be filled as prescribed in Rule 10.1(1).
- (6) Any TRUSTEE ceases to be such if:
 - (a) he/she ceases to be a TRUSTEE in terms of (2) or (3) above, or if he/she resigns as a TRUSTEE; or
 - (b) he/she becomes mentally or physically incapable of acting as a TRUSTEE; or
 - (c) he/she becomes contractually incapacitated; or
 - (d) his/her estate is sequestrated or surrendered or assigned in favour of his/her creditors; or
 - (e) he/she is convicted by a competent court of theft, fraud, forgery or any similar offence; or he/she is discharged by a competent court from any office of trust on account of misconduct; or
 - (f) he/she is discharged by a competent court from any office of trust on account of misconduct; or
 - (g) he/she is convicted by a competent court on any charge and sentenced to a prison term Without the option of a fine.

10.2 MEETINGS OF THE TRUSTEES

- (1) The TRUSTEES shall annually elect one of the TRUSTEES to act as chairperson at all meetings of the TRUSTEES. In the event of the chairperson being absent from a meeting, the TRUSTEES present shall elect one of their number to act as chairperson of such meeting.
- (2) The TRUSTEES shall meet from time to time as is necessary to conduct the business of the FUND; a quorum shall be five TRUSTEES. Such quorum is competent to discharge any duty of the TRUSTEES, notwithstanding any vacancy among the TRUSTEES.
- (3) Whenever he/she deems it necessary, the chairperson of the TRUSTEES shall convene a TRUSTEE meeting to discuss matters relating to the FUND. Any TRUSTEE may request the chairperson, in writing, to convene a meeting of the TRUSTEES to discuss such matters as are set out in the request.
- (4) Resolutions shall be taken by a consensus vote including written proxy votes. The chairperson of the meeting shall have a deliberative vote only. A resolution in writing signed by all the TRUSTEES shall be as effective as if it had been passed at a meeting of the TRUSTEES duly convened and held. Any resolution passed in terms of this Rule shall be confirmed at the first meeting of the TRUSTEES held after the passing of such resolution and shall be recorded in the form of written minutes.
- (5) Any TRUSTEE shall be obliged to divulge to the COMMISSION, in writing, all personal interests, of any nature whatsoever, in transactions of the FUND.

10.3. POWERS OF THE TRUSTEES

Subject to the provisions of the ACT, the TRUSTEES 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:

- (a) to receive, administer and apply the monies of the FUND;
- (b) to contract on behalf of the FUND and to sign such contract or other document on behalf of the FUND, to institute any legal action or process for the FUND and to conduct, settle or abandon such action or process, to defend or settle any legal action or process instituted against the FUND;
- (c) to raise, borrow or lend monies, at interest or otherwise, 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-provided further that the total amount of such temporary loan shall not exceed 50% of the gross income of the FUND from all sources in the immediately preceding FUND YEAR;
- (d) 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;
- (e) 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; and, in particular, to invest the whole or part of the monies of the FUND, for such period and on such terms as they may determine, in an investment policy

issued by an INSURER; provided that the TRUSTEES may delegate their powers to make investments of any nature to any one or more of their members, or to a financial institution as defined in the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), or to a

PORTFOLIO MANAGER, and may defray expenses incurred as a result of such delegation out of the monies of the FUND;

- (f) to grant a loan to any MEMBER as envisaged in section 19(5)(a) of the ACT; provided that any loan granted in terms of this Rule shall be repaid immediately on termination of the MEMBER'S SERVICE, and may, in accordance with the provisions of Rule 9.5 of the RULES and section 37D of the ACT, be deducted from any benefit payable in respect of such MEMBER to which a BENEFICIARY becomes entitled;
- (g) to reinsure with an INSURER any benefits provided by the FUND to its MEMBERS and to act on behalf of the FUND and the MEMBERS in all negotiations with such INSURER;
- (h) to delegate the exercise of any of their powers and the performance of any of their functions to a sub-committee or any other person or persons, subject to conditions they may determine;
- (l) to make, amend and rescind regulations in respect of any matter concerning the FUND, provided that such regulations do not conflict with the RULES;
- (j) to prescribe and rescind regulations as to how a claim should be submitted to and dealt with by the FUND; and

- (k) to take, generally, such steps as are, in their discretion, conducive to the attainment of the objects of the FUND.

10.4 PRINCIPAL OFFICER AND ADMINISTRATOR

- (1) Subject to the approval of the REGISTRAR, the TRUSTEES shall appoint a natural person as principal officer and, if deemed necessary, any other staff subject to such terms and conditions as they may determine. Any such appointment may be changed by the TRUSTEES in their sole discretion. The TRUSTEES shall inform the REGISTRAR of the name and address of the principal officer.
- (2) If the principal officer is absent from the Republic of Namibia for a period exceeding 30 days or is otherwise unable to perform his/her duties, the TRUSTEES shall appoint an acting or new principal officer, as the case may be, and shall advise the REGISTRAR accordingly.
- (3) The principal officer shall, inter alia, ensure that prior to expiry of the TRUSTEES' term of office or upon a casual vacancy arising among the TRUSTEES, such vacancies are filled as soon as reasonably possible.
- (4) The TRUSTEES may from time to time appoint a suitable person or body as ADMINISTRATOR of the FUND. Such ADMINISTRATOR shall attend to the day-to-day operation of the FUND. Any such appointment may be changed by the TRUSTEES in their sole discretion.

10.5 AUDITOR

- (1) Subject to the approval of the REGISTRAR, the TRUSTEES shall appoint an AUDITOR. Each such appointment shall remain in force for twelve months unless the AUDITOR is discharged by the TRUSTEES or personally relinquishes the appointment prior to the expiry of such period.
- (2) The AUDITOR shall have access to all books, vouchers, accounts and other documents pertaining to the FUND and shall certify in writing the result of each audit.

10.6 BOOKS OF ACCOUNT

- (1) The TRUSTEES 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 at the end of each FUND YEAR and be audited by the AUDITOR of the FUND.
- (2) The accounts shall be approved by the TRUSTEES and a copy thereof shall be available for inspection by BENEFICIARIES of the FUND and any other person having an interest in the FUND.

10.7 ACTUARY

Subject to the approval of the REGISTRAR, the TRUSTEES shall appoint an ACTUARY who shall be the valuator of the FUND in terms of the ACT. Such appointment shall remain in force until rescinded by the TRUSTEES or relinquished by the ACTUARY.

10.8 ACTUARIAL VALUATIONS

- (1) The TRUSTEES shall keep such registers and records as will enable the ACTUARY to undertake an actuarial valuation of the FUND at any time.
- (2) The FUND shall be valued by the ACTUARY at intervals not exceeding three years, the first such valuation to be done not later than the third FUND ANNIVERSARY following the date of registration of the FUND. The ACTUARY shall submit a valuation report to the TRUSTEES within twelve months of the date of valuation. The TRUSTEES shall send a copy of such report to the COMMISSION and to the REGISTRAR and shall indicate to the REGISTRAR the action they and/or the COMMISSION propose taking with regard to any recommendation made by the ACTUARY in his/her report. A copy of the valuation report or a summary thereof as prescribed by the REGISTRAR shall be submitted to each of the other EMPLOYERS.
- (3) If any valuation reveals a deficit, the method whereby such deficit is to be extinguished is subject to approval by the REGISTRAR.

10.9 PORTFOLIO MANAGER

- (1) The TRUSTEES may appoint a PORTFOLIO MANAGER to perform whatever acts may be necessary with regard to investments on behalf of the FUND.

- (2) Each such appointment shall remain in force until rescinded by the TRUSTEES or relinquished by the PORTFOLIO MANAGER. However, a PORTFOLIO MANAGER'S appointment shall terminate immediately upon such

PORTFOLIO MANAGER ceasing to be approved as such in terms of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).

10.10 BANK ACCOUNT

The TRUSTEES shall cause accounts to be opened in the name of the FUND at any registered banking institution and may from time to time authorise cheques, bills or other documents relating to such accounts and pertaining to the FUND to be signed or endorsed by any authorised person as they deem fit.

All monies received by or on behalf of the FUND shall be paid into one of these accounts.

10.11 RECORDS AND SAFE CUSTODY OF SECURITIES

- (1) The TRUSTEES shall ensure that complete records are kept of all the necessary particulars of the MEMBERS and any other persons entitled to benefits and of all other matters essential to the efficient administration of the FUND.
- (2) All mortgage bonds, title deeds and other securities belonging to or held by the FUND shall, unless temporarily held in custody by others for the purposes of the FUND, be stored in safe custody in the safe or strongroom at the registered office of the FUND or with any registered financial institution approved by the REGISTRAR.

- (3) All assets and securities belonging to or held by the FUND shall be registered in the name of the FUND or in the name of a nominee company approved by the REGISTRAR.

10.12 SIGNING OF DOCUMENTS

The principal officer, the chairperson and one other TRUSTEE so authorised by the TRUSTEES, shall sign any agreement or document which is binding on the FUND or which authorises action on behalf of the FUND; provided that any documents to be deposited with the REGISTRAR shall be signed as prescribed in the ACT.

10.13 INDEMNIFICATION

The TRUSTEES and all officers of the FUND shall be indemnified by the FUND against all proceedings, costs and expenses incurred by reason of any claims in connection with the FUND, not arising from their negligence, dishonesty or fraud.

10.14 FIDELITY INSURANCE

The TRUSTEES shall –

- (1) insure the FUND at the FUND'S expense against loss resulting from negligence, dishonesty or fraud of any of its officers (including the TRUSTEES and any person to whom they have delegated their functions) having the receipt or charge of monies belonging to the FUND,

- (2) ensure that the ADMINISTRATOR, PORTFOLIO MANAGER, EMPLOYERS and any other party having the receipt or charge of monies belonging to the FUND effect and maintain insurance to indemnify the FUND adequately against loss resulting from the negligence, dishonesty or fraud of any person employed by any such party.

10.15 EXPENSES

The expenses related to the management and administration of the FUND, including the cost of audits, actuarial investigations, investment expenses and TRUSTEES' allowances, shall be borne by the FUND.

10.16 TRUSTEES' ALLOWANCES

A TRUSTEE shall be entitled to the allowances as determined by the TRUSTEES from time to time, after consultation with the COMMISSION , subject to the provisions set out in chapter E.1/11 of the Public Service Staff Rules.

11. GENERAL

11.1 PROOF OF IDENTITY, AGE AND EXISTENCE

Every BENEFICIARY shall submit proof of identity, age and the right of such BENEFICIARY to any benefit such as to satisfy to the TRUSTEES, and furnish such other information as is required by the TRUSTEES. No benefits shall be paid to or in respect of any MEMBER until such proof of identity and age has been submitted and such other information furnished.

Furthermore, the TRUSTEES may request each PENSIONER to provide an annual certificate of existence. Failure to do so will result in payment of the PENSIONER'S PENSION being suspended until the TRUSTEES are satisfied that the PENSIONER is alive.

11.2 BENEFICIARIES ARE DEFERRED CREDITORS

The BENEFICIARIES of the FUND are deferred creditors of the FUND and their claims in their capacity as BENEFICIARIES shall not be met until the claims of ordinary creditors have been paid.

11.3 CONDITIONS OF SERVICE UNCHANGED

- (1) Nothing in the RULES shall restrict the right of an EMPLOYER to dismiss any ELIGIBLE EMPLOYEE, or the right of any ELIGIBLE EMPLOYEE to leave the SERVICE of an EMPLOYER provided he/she fulfils the conditions of his/her SERVICE.

- (2) No benefit, right or interest to which a MEMBER is or may have been entitled to in terms of the RULES shall be grounds for a claim for damages in any action brought by such MEMBER against the EMPLOYER or the FUND.
- (3) Nothing in the RULES shall in any way prejudice the right of a MEMBER or his/her DEPENDANT to claim compensation or damages in terms of Common Law or any law governing workman's compensation, and the benefits payable in terms of the RULES shall not be reduced by any payment made under any such law.

11.4 REGISTRATION AND APPROVAL

The TRUSTEES shall apply for registration of the FUND in accordance with the provisions of the ACT and shall apply to the Ministry of Finance for the approval of the FUND as a pension fund in terms of the INCOME TAX ACT.

11.5 AMENDMENTS TO THE RULES

- (1) Subject to Rule 11.5(2) the TRUSTEES may at any time amend the RULES, provided that:
 - (a) the quorum of the TRUSTEES agrees thereto,
 - (b) the rights and benefits vested in MEMBERS relative to their SERVICE prior to such amendments shall not be prejudiced,
 - (c) the amendment is approved by the PRIME MINISTER on the recommendation of the COMMISSION,

- (d) the amendment is not inconsistent with the provisions of the ACT or of the INCOME TAX ACT.
- (2) The limitations in Rule 11.5(1)(a) and (b) above shall not apply to amendments required to ensure that the FUND will be able to meet its obligations in terms of a certificate issued by the ACTUARY; and provided further that any amendment to the RULES affecting the financial basis of the FUND shall be referred to the ACTUARY before being adopted.
- (3) The TRUSTEES shall submit any amendment to the RULES to the REGISTRAR and the Ministry of Finance in writing, for their approval.

11.6 MEMBERS MAY OBTAIN COPIES OF DOCUMENTS

Every MEMBER shall on admission to membership be entitled to a copy of the RULES or to a summary thereof supplied at his/her request. Every MEMBER shall also be entitled on demand to inspect and make copies of the current RULES of the FUND, the latest accounts of the FUND and the latest valuation report by the ACTUARY.

11.7 BINDING POWER OF RULES

The provisions of the RULES and any regulation made thereunder by the TRUSTEES shall be binding on the MEMBERS, the FUND and its officials, and any person who institutes a claim against the FUND.

11.8 DISSOLUTION OF FUND

- (1) The FUND may be dissolved if Government so decides, subject to two months' notice to the TRUSTEES, who shall in turn give notice to the MEMBERS.

- (2) If the FUND is dissolved in terms of (1) above, the TRUSTEES shall appoint a liquidator, subject to the approval of the REGISTRAR; or if no liquidator is so appointed by the TRUSTEES, the REGISTRAR shall appoint a liquidator. Once the liquidators appointment has been approved by the REGISTRAR, the TRUSTEES shall cease to hold office and the powers, duties and functions conferred upon them by virtue of their appointment shall devolve upon the liquidator.

- (3) The liquidator shall consult the ACTUARY as to the value of each BENEFICIARY'S entitlement in the FUND and shall apply the assets of the FUND in an equitable manner to ensure that:
 - (a) the expenses connected with the dissolution of the FUND will be met,

 - (b) the FUND'S liability (including any contingent liability) towards the following BENEFICIARIES is met:
 - (i) PENSIONERS receiving PENSIONS at the dissolution date,

 - (ii) DEPENDANTS who by virtue of the membership of PENSIONERS or former PENSIONERS, will become entitled to PENSIONS,

 - (iii) DEFERRED PENSIONERS and other BENEFICIARIES in respect of whom benefits became payable prior to the dissolution date but who have not yet received payment thereof, and

- (iv) MEMBERS who have already attained the NORMAL RETIREMENT AGE on the dissolution date but who have not yet retired,
 - (c) the balance of the assets of the FUND (if any) after the obligations envisaged in (a) and (b) above have been met, is utilised to meet the FUND'S liability (including any contingent liability) towards the MEMBERS.
- (4) Any residual assets of the FUND left after the liabilities in paragraph (3) above have been met, shall be divided fairly among the BENEFICIARIES. However, all MEMBERS who have voluntarily left the employment of an EMPLOYER within the preceding twelve months shall, for the purposes hereof, be deemed to have been MEMBERS of the FUND on the date of its dissolution, but a benefit paid prior to such division of the residual assets, shall be taken into account when calculating the amount of the residue due to such person.
- (5) All moneys not claimed within six months of the date on which the payment of benefits commenced, shall be paid to the Master of the High Court, and thereafter no further claims against the FUND shall exist. In the final liquidation account, the liquidator shall indicate which amounts have been so paid and provide the REGISTRAR with a certificate stating that all reasonable steps have been taken to trace the persons concerned. An auditor approved by the REGISTRAR shall certify the account as being correct.

11.9 WITHDRAWAL OF AN EMPLOYER

- (1) Subject to the giving of three months' notice (or such shorter period as is accepted by the TRUSTEES) by the EMPLOYER concerned to the TRUSTEES, an EMPLOYER may Withdraw from the FUND and the Government may approve such withdrawal, in which case one of the following provisions shall apply :
 - (a) Subject to the provisions of (b) below, the provisions of Rule 11.8 shall apply mutatis mutandis in respect of MEMBERS in the SERVICE of the EMPLOYER concerned.
 - (b) If such EMPLOYER decides to establish a new fund or scheme or to participate in another fund or scheme for the purpose of providing retirement benefits for employees who are members thereof, the provisions of Rule 11.10 shall apply in respect of such EMPLOYER.
 - (c) Otherwise, MEMBERS employed by such EMPLOYER will receive a withdrawal benefit in terms of Rule 7.
- (2) With the approval of, or if requested by the Government, the TRUSTEES may request an EMPLOYER to withdraw from the FUND as from a date specified by them in which case the provisions of (1) above shall apply.
- (3) If an EMPLOYER ceases to operate for any reason, such cessation will be deemed a withdrawal from the FUND by such EMPLOYER for the purpose of this Rule, in which event (1)(a) above will apply.

11.10 NEW FUND OR SCHEME

- (1) If the Prime Minister approves the establishment of another fund for the purpose of providing for retirement benefits for MEMBERS employed by an EMPLOYER or for a specific class of MEMBERS employed by an EMPLOYER, the TRUSTEES may at the request of the EMPLOYER, notwithstanding anything to the contrary in the RULES, apply the assets of the FUND or the appropriate portion thereof (to secure benefits for the MEMBERS concerned in the other fund), in such manner as the TRUSTEES resolve, on the ACTUARY'S advice and with the REGISTRAR'S approval, subject to the provisions of section 14 of the ACT.
- (2) In determining a MEMBER'S benefit amount in the FUND for the purpose of (1) above, the TRUSTEES after consultation with the ACTUARY, shall consider the equity between the groups of MEMBERS participating in the FUND and recommend what portion, if any, of the surplus in the FUND shall be transferred on behalf of such MEMBERS to the new fund or scheme.
- (3) The EMPLOYER shall have the right to request that the PENSIONERS who were employed by it prior to their retirement, be transferred to the new fund or scheme, in which case the TRUSTEES shall transfer the appropriate amount in respect of such PENSIONERS, as determined by the TRUSTEES after consultation with the ACTUARY, to such new fund or scheme.

ANNEXURE A**PENSION FUNDS ACT, NO. 24 OF 1956****SECTION 37C****"37C. Disposition of pension benefits upon death of member**

- (1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit payable by such a fund in respect of a deceased member, shall, subject to a pledge in accordance with section 19(5) (b) (i) and subject to the provisions of sections 37A (3) and 37D, not form part of the assets in the estate of such member, but shall be dealt with in the following manner :
 - (a) If the fund within twelve months of the death of the member becomes aware of or traces a dependent or dependents of the member, the benefit shall be paid to such dependent or, in such proportions as may be deemed equitable by the person managing the business of the fund, to such dependents.
 - (b) If the fund does not become aware of or cannot trace any dependent of the member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependent of the member, to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the benefit or such portion of the benefit shall be paid to such nominee Provided that where the aggregate amount of the debts in the estate of the member exceeds the aggregate amount of assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of assets shall be paid into the estate and the balance of

such benefit or the balance of such portion of the benefit as specified by the member in writing to the fund shall be paid to the nominee.

- (bA) If a member has a dependent and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependent or nominee in such proportions as the person managing the business of the fund may deem equitable: Provided that this paragraph shall only apply to the designation of a nominee on or after 30 June 1989.

 - (c) If the fund does not become aware of or cannot trace any dependent of the member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the High Court in terms of section 9 of the Estates Act, 1965 (Act No. 66 of 1965), into the Guardian's Fund.
- (2) For the purpose of this section, a payment by a registered fund to a dependent shall be deemed to include a payment made by the fund to a trustee contemplated in the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934), for the benefit of a dependent contemplated in this section."

ANNEXURE B**PENSION FUNDS ACT, NO. 24 OF 1956****SECTION 19 (5)****“19.5 Granting of loans by a registered fund to members by way of investment of its funds.**

(a) A registered fund may, if its rules so permit, grant a loan to a member by way of investment of its funds to enable the member -

(i) to redeem a loan granted to the member by a person other than the fund, against security of immovable property which belongs to the member or his or her spouse and on which a dwelling has been or will be erected which is occupied or, as the case may be, will be occupied by the member or a dependent of the member;

(ii) to purchase a dwelling, or to purchase land and erect a dwelling on it, for occupation by the member or a dependent of the member; or

(iii) to make additions or alterations to or to maintain or repair a dwelling which belongs to the member or his or her spouse and which is occupied or will be occupied by the member or a dependent of the member.

(b) A loan contemplated in paragraph (a) shall not be granted after the commencement of the Financial Institutions Amendment Act, 1986-

(i) unless secured by -

- (aa) a first mortgage on the immovable property in respect of which it is granted; or
 - (bb) a pledge of the benefits to which the member is entitled in terms of the rules of the fund; or
 - (cc) both such mortgage and such pledge;
 - (ii) in respect of immovable property if the member concerned is liable to the fund in respect of a loan granted to him in respect of other immovable property;
 - (iii) at a lower rate of interest than that which may from time to time be prescribed by regulation;
 - (iv) unless the capital sum is redeemable over a period not exceeding 30 years in equal weekly or monthly instalments, which shall include the interest on the capital sum outstanding.
- (c) A loan contemplated in paragraph (a) shall not exceed where it is secured in accordance with -
- (i) paragraph (b)(i)(aa), ninety percent of the market value of the hypothecated property concerned,
 - (ii) paragraph (b)(i)(bb), the amount of the benefit which the member would receive if he were to terminate his membership of the fund voluntarily or the market value of the

immovable property concerned, whichever is the lesser amount; or

- (iii) paragraph (b)(i)(cc), the amount equal to the aggregate of ninety percent of the market value of the hypothecated property concerned and the amount of the benefit which the member would receive if he were to terminate his membership of the fund voluntarily or the market value of the property, whichever is the lesser amount."

ANNEXURE C

SPECIAL PROVISIONS APPLICABLE TO CERTAIN MEMBERS WHO WERE MEMBERS AS AT 1 APRIL 1996

RETIREMENT, DEATH AND DISABILITY BENEFITS PAYABLE TO

MEMBERS DESCRIBED IN RULES 3.6,4.3 AND 6.3 OF THE RULES

Notwithstanding anything to the contrary contained elsewhere in the RULES, the provisions of the RULES shall apply mutatis mutandis to a MEMBER described in Rules 3.6, 4.3 and 6.3 of the RULES except in so far as such provisions are amended or replaced by the following provisions;

1. Rule 1.6 - DEFINITIONS - be amended as follows:

"1.1 The following definition of "ANNUITY" is to be inserted after the definition of "ADMINISTRATOR"-

"ANNUITY: an amount payable at an annual rate from the FUND in equal monthly payments in terms of these RULES;"

1.2 the definition of "FINAL SALARY" is to be replaced with the following-.

"FINAL SALARY: the basic annual salary of a MEMBER, as at his last working day;"

- 1.3 the following definition of "GRATUITY" is to be inserted after the definition of "FUND YEAR":

"GRATUITY: a lump sum payable from the FUND in terms of these RULES upon a MEMBER'S retirement or upon a MEMBER'S or PENSIONER'S death;"

- 1.4 the definition of "PENSION" is to be replaced with the following:

"PENSION: a GRATUITY, an ANNUITY or a supplementary allowance;"

- 1.5 the definitions of "QUALIFYING CHILD" and "QUALIFYING SPOUSE" are to be deleted;

- 1.6 the definition of "PECOGNISED MARITAL UNION" is to be replaced with the following definition of "RECOGNISED UNION":

"RECOGNISED UNION: a lawful marriage or a union between husband and wife which the TRUSTEES, in their absolute discretion, accept as a RECOGNISED UNION for purposes of the FUND;"

- 1.7 the following definition of "SURVIVOR" is to be inserted after the definition of "SERVICE":

"SURVIVOR: the surviving partner of a RECOGNISED UNION on the death of a MEMBER or PENSIONER;"

2. Rule 3 - RETIREMENT - be amended by replacing Rules 3.1 to 3.6 with the following:

"3.1 GROUNDS FOR RETIREMENT

3.1.1 A MEMBER of the FUND who retires from the SERVICE of an EMPLOYER,-

- (a) upon or after the NORMAL RETIREMENT AGE, or, with the permission of the EMPLOYER, upon or after reaching the age of fifty-five;
- (b) owing to his/her dismissal as a result of protracted ill-health caused through no fault of his/her own;
- (c) owing to his/her dismissal as a result of the re-organisation of his/her EMPLOYER;
- (d) owing to his/her dismissal in terms of section 14(5) (g) of the Public Service Act, 1980 (Act No. 2 of 1980);
- (e) owing to his/her unsuitability for duty or inability to carry out duties in an efficient manner, provided such a MEMBER has at least ten years' PENSIONABLE SERVICE to his/her credit; or
- (f) owing to his/her dismissal for reasons other than his/her unsuitability or inability, in order to promote efficiency or economy of his/her EMPLOYER;

shall be entitled to the PENSION described in Rule 3.2 from the first day of the month immediately following the date on which his/her SERVICE with such EMPLOYER is terminated.

3.1.2 Notwithstanding the provisions of Rule 3. 1.1 (b), (e) or (f), a MEMBER referred to therein shall be entitled to a PENSION

only if the COMMISSION gives its approval, after consultation with the TRUSTEES.

3.2. RETIREMENT BENEFITS

3.2.1 A MEMBER who retires upon or after attaining NORMAL RETIREMENT AGE, shall be paid -

- (a) an ANNUITY calculated at 1,82 per cent of his/her FINAL SALARY, multiplied by the period of his/her PENSIONABLE SERVICE; and
- (b) a GRATUITY calculated at 3,69 times the ANNUITY referred to in Rule 3.2.1 (a).

3.2.2. A MEMBER who is permitted by his/her EMPLOYER to retire prior to his/her NORMAL RETIREMENT AGE upon or after obtaining the age of fifty-five, shall be paid -

- (a) an ANNUITY calculated according to the formula referred to in Rule 3.2.1 (a): Provided that such ANNUITY shall be reduced by 0,25 per cent for every month of the period between the date on which such MEMBER retires and the date on which he/she will attain the NORMAL RETIREMENT AGE, and
- (b) a GRATUITY calculated at 3,69 times the ANNUITY referred to in Rule 3.2.2.(a).

3.2.3 A MEMBER retiring as a result of an injury or protracted ill-health caused through no fault of his/her own, shall be paid -

(a) an ANNUITY calculated according to the formula referred to in Rule 3.2.1 (a): Provided that the PENSIONABLE SERVICE of a MEMBER who has not yet attained NORMAL RETIREMENT AGE shall be increased by -

(i) one-third of the period of his/her PENSIONABLE SERVICE; or

(ii) the period between the date on which he/she so retires and the date on which he/she will attain NORMAL RETIREMENT AGE; or

(iii) a period of five years,

whichever is the shortest; and

(b) a GRATUITY calculated at 3,69 times the ANNUITY referred to in Rule 3.2.3(a).

3.2.4 A MEMBER who retires as a result of a re-organisation, or whose retirement will promote efficiency or economy of his/her EMPLOYER, shall be paid an ANNUITY and a GRATUITY calculated according to the provisions of Rule 3.2.3.

3.2.5 A MEMBER who, through no fault of his/her own, is obliged to retire as a result of an injury or protracted ill-health arising out of or in the course of his/her employment or military service, shall be paid an ANNUITY and a GRATUITY calculated according to the formula referred to in Rule 3.2. 1.

If such a MEMBER has not yet reached NORMAL RETIREMENT AGE, his/her PENSIONABLE SERVICE shall be increased by -

- (a) a period equal to -
 - (i) one-third of the period of his/her PENSIONABLE SERVICE; or
 - (ii) the period between the date on which he/she so retires and the date on which he/she will reach NORMAL RETIREMENT AGE; or
 - (iii) five years,whichever period is the shortest; and
- (b) a period equal to –
 - (i) five years; or

(ii) a period calculated according to the formula $A \times B$, where

- A is the period between the date of the MEMBER'S retirement up to and including the date on which he/she will attain NORMAL RETIREMENT AGE; and
- B is the MEMBER'S percentage of disability,

whichever period is the longer.

3.2.6 A MEMBER who is either a member of the COMMISSION or who occupies the office of chief executive officer, shall be paid the following:

3.2.6.1 A MEMBER who is a member of the COMMISSION for a period referred to in section 2(3) of the Public Service Commission Act, 1990 (Act No. 2 of 1990) shall, upon retirement be paid an ANNUITY and a GRATUITY calculated according to the formula set out in Rule 3.2.1: Provided that the PENSIONABLE SERVICE of a MEMBER who retires in terms of section 4(1)(a) (i) or (iv) of the said Act or who is permitted to retire in terms of section 4(2) (a) during a term or an extended term, shall be increased by -

(a) a period equal to

- (i) one-third of the period of his/her PENSIONABLE SERVICE; or

(ii) the period between the date of his/her retirement and the date on which he/she will attain his/her NORMAL RETIREMENT AGE; or

(iii) five years,

whichever period is the shortest; or

(b) one half of the period during which he/she occupied the office referred to in section 2(3).

The total of a MEMBER'S PENSIONABLE SERVICE, as determined above, may not exceed 55 years.

If on request in terms of section 4(2)(a)(ii) of the Public Service Commission Act, 1990 (Act No. 2 of 1990) the President of Namibia determines that a member of the COMMISSION may retire in terms of section 14(4)(a) of the Public Service Act, 1980 (Act No. 2 of 1980) his/her PENSIONABLE SERVICE shall not be increased by the periods referred to in Rules 3.2.6.1 (a) and (b).

For purposes of this paragraph -

(i) the term "PENSIONABLE SERVICE" where it occurs in Rule 3.2.6.1 (a) shall exclude the period during which a MEMBER occupied the office referred to in section 2(3),

- (ii) "one half of the period" refers to half of a completed term and also half of a completed extended term referred to in section 2 (3)

3.2.6.2 A MEMBER who occupies the office of chief executive officer for the period referred to in section 10 A(1) of the Public Service Act, 1980 (Act No. 2 of 1980) shall, upon retirement, be paid an ANNUITY and a GRATUITY, calculated in accordance with Rule 3.2.6.1; Provided that the PENSIONABLE SERVICE shall be increased by the periods referred to in Rules 3.2.6.1 (a) and (b) if a MEMBER retires in terms of section 14(5)(a), (b) or (c) of the Public Service Act, 1980 (Act No. 2 of 1980) or is permitted to retire in terms of section 14(1)(c)(i) of the said Act during a term or an extended term.

3.2.7 A MEMBER who retires from the SERVICE of an EMPLOYER as envisaged in Rule 3.1.1.(d) or (e) shall be paid an ANNUITY and a GRATUITY, calculated in accordance with Rule 3.2. I.

3.2.8 Notwithstanding any other provisions in the RULES, the TRUSTEES may with the consent of the MEMBER or PENSIONER commute an ANNUITY if such MEMBER has less than five years PENSIONABLE SERVICE on retirement. The ACTUARY shall determine the commuted value."

3. Rule 4 - DEATH - be amended by replacing Rules 4.1 and 4.2 with the following:

"4. BENEFITS PAYABLE ON DEATH OF MEMBER OR PENSIONER

4.1 Death benefits prior to retirement

4.1.1 If a MEMBER dies, his/her DEPENDANTS designated by the TRUSTEES shall be paid a GRATUITY equal to such MEMBER'S FINAL SALARY or 8,69 times the ANNUITY which would have been due to him/her had he/she, on the day of his/her death, retired in terms of Rule 3.1.1.(b), whichever amount is the greater.

4.1.2 If the TRUSTEES are not notified of a DEPENDANT'S existence within twelve months of a MEMBER'S death, the TRUSTEES may, in their discretion, pay benefits into the estate of the deceased, whereafter no further claim in regard to the MEMBER shall exist against the FUND: Provided that the TRUSTEES may pay to a NOMINEE who is not a DEPENDANT, an amount by which, in terms of the RULES, the benefit exceeds any residue of liabilities over assets in the deceased's estate.

4.1.3 If a deceased MEMBER leaves a SURVIVOR, such SURVIVOR shall be paid an ANNUITY calculated at half the ANNUITY the MEMBER would, in terms of Rule 3.2.1.(a), have received as if on the day of his/her death he/she had, in terms of Rule 3.1.1(a), retired upon attaining NORMAL RETIREMENT AGE.

4.1.4 If a deceased MEMBER leaves more than one SURVIVOR, the TRUSTEES shall decide which SURVIVOR or SURVIVORS will

receive the death benefits and in what proportion, due regard being had to a NOMINEE: Provided that the total PENSIONS payable shall not exceed the PENSION that would have been payable if there had been only one SURVIVOR.

- 4.1.5 If a MEMBER dies as a result of an injury or ill-health arising, through no fault of his/her own, out of and in the course of his/her service, or out of and in the course of military service, he/she shall be deemed to have retired in terms of Rule 3.2.5.

4.2. Death benefits following retirement

- 4.2.1 If a PENSIONER dies within five years of retirement, his/her DEPENDANTS who are designated as such by the TRUSTEES shall be paid a GRATUITY, equal to the full amount of the ANNUITY which, had he/she not died, would have been paid to the PENSIONER during the period from the first day of the month immediately following the date of his/her death up to and including the last day of the month in which the said five-year period expires.
- 4.2.2 If the TRUSTEES are not notified of a DEPENDANT'S existence within twelve months of a MEMBER'S death they may, in their discretion, pay benefits into the estate of the deceased, whereafter no further claim with regard to the MEMBER shall exist against the FUND: Provided that the TRUSTEES may pay to a NOMINEE who is not a DEPENDANT, an amount by which, in terms of the RULES, the benefit exceeds any residue of liabilities over assets in the deceased's estate.

4.2.3 If a deceased PENSIONER, other than a female

PENSIONER who retired prior to 1 April 1992, leaves a SURVIVOR or more than one SURVIVOR, the TRUSTEES shall decide which SURVIVOR or SURVIVORS will receive an ANNUITY equal to half the total ANNUITY (including the supplementary allowance) which the deceased PENSIONER received immediately prior to his/her death-. Provided that the total ANNUITY payable shall not exceed the ANNUITY that would have been payable if there had been only one SURVIVOR."

4. Rule 6 - DISABILITY - be amended by replacing Rules 6.1 and 6.2 with the following:

"6.1 GROUNDS FOR RETIREMENT DUE TO DISABILITY

6.1.1. A MEMBER of the FUND who retires from the SERVICE of an EMPLOYER owing to his/her dismissal as a result of an injury or protracted ill-health caused through no fault of his/her own shall be entitled to the PENSION described in Rule 6.2 as from the first day of the month immediately following the date on which his/her service with such EMPLOYER is terminated.

6.1.2 Notwithstanding the provisions of Rule 6.1.1, a MEMBER shall be entitled to a PENSION only if the COMMISSION gives its approval, after consultation with the TRUSTEES.

6.2 DISABILITY BENEFITS

6.2.1 A MEMBER retiring as a result of an injury or protracted ill-health caused through no fault of his/her own, shall be paid -

(a) an ANNUITY calculated at 1,82% of his/her FINAL SALARY multiplied by the period of his/her PENSIONABLE SERVICE: Provided that the PENSIONABLE SERVICE of a MEMBER who has not yet attained NORMAL RETIREMENT AGE shall be increased by -

- (i) one third of his/her PENSIONABLE SERVICE; or
- (ii) the period between the date on which he/she so retires and the date on which he/she will attain NORMAL RETIREMENT AGE; or
- (iii) a period of five years,

whichever is the shortest, and

(b) a GRATUITY calculated at 3,69 times the ANNUITY referred to in Rule 6.2.1 (a).

6.2.2 A MEMBER who, through no fault of his/her own, is obliged to retire as a result of an injury or protracted ill-health arising out of or in the course of his/her employment or military service, shall be paid an ANNUITY and a GRATUITY calculated according to the formula referred to in Rule 6.2.1.

If such MEMBER has not yet attained NORMAL RETIREMENT AGE, his/her PENSIONABLE SERVICE shall be increased by -

(a) a period equal to -

- (i) one-third of his/her PENSIONABLE SERVICE period; or
- (ii) the period between the date on which he/she so retires and the date on which he/she will attain NORMAL RETIREMENT AGE; or
- (iii) five years,

whichever period is the shortest; and

(b) a period equal to –

- (i) five years; or
- (ii) a period calculated according to the formula $A \times B$, where

- A is the period between the date of the MEMBER'S retirement, up to and including the date on which he/she will attain the NORMAL RETIREMENT AGE; and

- B is the MEMBER'S percentage of disability,

whichever period is the longer.

6.2.3 Notwithstanding any other provisions in the RULES, the TRUSTEES may, with the consent of the MEMBER, commute an ANNUITY payable to the MEMBER if such MEMBER has less than five years' PENSIONABLE SERVICE on retirement. The ACTUARY shall determine the commuted value."

5. Annexure A - SECTION 37C OF THE ACT - be deleted.