

**National Pensions Act, 2008      Act 766**

*National Pensions Act, 2008*

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THE SEVEN HUNDRED AND SIXTY-SIXTH

# ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

## **NATIONAL PENSIONS ACT, 2008**

AN ACT to provide for pension reform in the country by the introduction of a contributory three-tier pension scheme; the establishment of a National Pensions Regulatory Authority to oversee the administration and management of registered pension schemes and trustees of registered schemes, the establishment of a Social Security and National Insurance Trust to manage the basic national social security scheme to cater for the first tier of the contributory three-tier scheme, and to provide for related matters.

DATE OF ASSENT: *4th December, 2008.*

ENACTED by the President and Parliament:

PART ONE—ESTABLISHMENT OF CONTRIBUTORY THREE-TIER  
PENSION SCHEME AND NATIONAL PENSIONS REGULATORY  
AUTHORITY

*Contributory three-tier pension scheme*

**Establishment of contributory three-tier pension scheme**

1. There is established by this Act, a contributory three-tier pension scheme consisting of

(a) a mandatory basic national social security scheme;

(b) a mandatory fully funded and **privately managed** occupational pension scheme, and

(c) a voluntary fully funded and privately managed provident fund and personal pension scheme.

**Object of the scheme**

2. The object of the scheme is to

(a) provide pension benefits to ensure retirement income security for workers,

- (c) a voluntary fully funded and privately managed provident fund and personal pension scheme.

### **Object of the scheme**

2. The object of the scheme is to

- (a) provide pension benefits to ensure retirement income security for workers,
- (b) ensure that every worker receives retirement and related benefits as and when due, and
- (c) establish a uniform set of rules, regulations and standards for the administration and payment of retirement and related benefits for workers in the public and the private sector.

### **Contributions to the Scheme**

3. (1) An employer of an establishment shall deduct from the salary of every worker in the establishment immediately at the end of the month, a worker's contribution of an amount equal to five and half per centum of the worker's salary for the period, irrespective of whether or not the salary is actually paid to the worker.

(2) An employer of an establishment shall pay for each month in respect of each worker, an employer's contribution of an amount equal to thirteen per centum of the worker's salary during the month.

(3) Out of the total contribution of eighteen and a half per centum an employer shall within fourteen days from the end of each month transfer the following remittances to the mandatory schemes on behalf of each worker

- (a) thirteen and half per centum to the first tier mandatory basic national social security scheme; and
- (b) five per centum to the second tier mandatory occupational pension scheme.

(4) The minimum contribution is eighteen and half per centum of the approved monthly equivalent of the national daily minimum wage.

(5) Despite any agreement or understanding to the contrary, an employer is not entitled to deduct

- (a) or otherwise recover the employer's own contribution from the worker's salary; or
- (b) the worker's contribution for an earlier contribution period from the salary in respect of a later period.

(6) An employer is entitled to make deductions under subsection (5) (b) if

- (a) the failure to make the deduction was due to a false declaration made in writing by the worker at the time of employment; or
- (b) the failure to deduct the contribution was the result of an accidental mistake or a clerical error in which case the deductions shall be made according to the written instructions of a designated officer of the National Pensions Regulatory Authority set up under section 5 of this Act.

(7) Where an employer deducts a contribution from the salary of a worker, the contribution shall be held by the employer in trust for the purpose of this Act until it is remitted to the relevant schemes.

(8) Subject to guidelines that may be issued by the Board, any person who is not covered under the first or second tier may make voluntary contributions under the third tier.

(9) A person to whom the first and second tiers apply may in addition to the total contributions being made by the employee and the employer, make voluntary contributions to a scheme under the third tier of the Scheme.

(10) An employer who fails to remit total contributions within the time stipulated in subsection (3) commits an offence and is liable on summary conviction to a fine of two thousand penalty units or to a term of imprisonment for two years or to both.

### **Management of the schemes**

4. (1) The basic national social security scheme shall operate under the Trust established under section 32 of this Act.

(2) The occupational pension scheme, provident fund scheme, personal pension scheme and other privately managed pension schemes shall be managed by trustees approved by the Board.

## **NATIONAL PENSIONS REGULATORY AUTHORITY**

### **Establishment of the Authority**

5. (1) There is established by this Act a body to be known as the National Pensions Regulatory Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Authority may for the performance of its functions acquire and hold movable or immovable property and may enter into a contract or any other transaction.

(4) Where there is hindrance to the acquisition of property, the property may be acquired for the Authority under the State Property and Contracts Act 1960 (C.A. 6) or the State Lands Act 1962 (Act 125) and the costs shall be borne by the Authority.

### **Object of the Authority**

6. The object of the Authority is to regulate and monitor the operation of the Scheme and ensure the effective administration of pensions in the country.

### **Functions of the Authority**

7. To achieve its object the Authority shall:

- (a) be responsible for ensuring compliance with this Act;
- (b) register occupational pension schemes, provident funds and personal pension schemes;
- (c) issue guidelines for the investment of pension funds;
- (d) approve, regulate and monitor trustees, pension fund managers, custodians and other institutions that deal with pensions as the Authority may determine;
- (e) establish standards, rules and guidelines for the management of pension funds under this Act;
- (f) regulate the affairs and activities of approved trustees and ensure that the trustees administer the registered schemes;
- (g) regulate and monitor the implementation of the Basic National Social Security Scheme;

- (h) carry-out research and ensure the maintenance of a national data bank on pension matters;
- (i) sensitise the public on matters related to the various pension schemes;
- (j) receive and investigate complaints of impropriety in respect of the management of pension schemes;
- (k) promote and encourage the development of the pension scheme industry in the country;
- (l) receive, and investigate grievances from pensioners and provide for redress;
- (m) advise government on the general welfare of pensioners;
- (n) advise government on the overall policy on pensions in the country;
- (o) request information from any employer, trustee, pension fund manager or custodian, any other person or institution on matters related to retirement benefit;
- (p) charge and collect fees as the Authority may determine;
- (q) impose administrative sanctions or fines; and
- (r) perform any other functions that are ancillary to the object of the Authority.

### **Governing body of the Authority**

8. (1) The governing body of the Authority is a Board consisting of

- (a) a chairperson,
- (b) the Chief Executive of the Authority,
- (c) one person nominated by the President,
- (d) a representative of the Ministry responsible for pensions, not below the rank of a director,
- (e) a representative of the Bank of Ghana,
- (f) a representative of the Securities and Exchange Commission,
- (g) two representatives of Organised Labour,
- (h) one representative of the Ghana Employers' Association,
- (i) one representative of the National Pensioners Association, and
- (j) a representative of the Attorney-General and Minister for Justice not below the rank of a Principal State Attorney.

(2) The chairperson and the other members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The President may, in appointing the members of the Board take into account persons with experience in the following:

- (i) finance and investment,
- (ii) law,
- (iii) accounting,
- (iv) pension management or actuarial science,
- (v) business administration, or
- (vi) other related areas of expertise.

(4) The Board shall ensure the proper and effective performance of the functions of the Authority.

### **Tenure of office of members**

**9. (1)** A member of the Board shall hold office for a period not exceeding three years and is eligible for re-appointment but a member shall not be appointed for more than two terms.

(2) Subsection (1) does not apply to the Chief Executive.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board, who is absent from three consecutive meetings of the Board without reasonable excuse ceases to be a member of the Board.

(5) The President may by letter addressed to a member revoke the appointment of that member.

(6) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (2), (3) or (4) or section 11 (2), or

(b) as a result of a declaration under subsection (6) or

(c) by reason of the death of a member

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

### **Meetings of the Board**

**10.** (1) The Board shall meet at least once every three months for the dispatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extraordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is seven members of the Board or a greater number determined by the Board in respect of an important matter.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not have a voting right.

(7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or defect in the appointment or qualification of a member.

(8) Subject to this section, the Board may determine the procedure for its meetings.

### **Disclosure of interest**

**11.** (1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter.

(2) A member who contravenes subsection (1) ceases to be a member.

### **Establishment of committees**

**12.** (1) The Board may establish committees consisting of members of the Board or non-members or both to perform a function.

(2) A committee of the Board may be chaired by a member of the Board.

(3) Section 11 applies to members of committees of the Board.

#### **Allowances**

13. Members of the Board and members of a committee of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

#### **Regional and district offices of the Authority**

14. (1) The Board may establish regional and district offices of the Authority in each regional capital and in the district determined by the Board.

(2) A regional or district office of the Authority shall perform the functions of the Authority in the region or district that the Board may direct.

#### **Ministerial directives**

15. The Minister may give directives to the Board on matters of policy.

#### *Administrative and financial provisions*

#### **Chief Executive Officer**

16. (1) The President shall, in accordance with article 195 of the Constitution, appoint a person with expertise in pensions, actuarial science, insurance or related field as the Chief Executive Officer of the Authority.



(2) The Chief Executive Officer shall hold office on the terms and conditions specified in the letter of appointment.

#### **Functions of the Chief Executive Officer**

17. (1) The Chief Executive Officer is responsible for the day-to-day administration of the affairs of the Authority and is answerable to the Board in the performance of functions under this Act.

(2) The Chief Executive Officer shall perform any other functions determined by the Board.

(3) The Chief Executive Officer may delegate a function to an officer of the Authority but shall not be relieved from the ultimate responsibility for the performance of the delegated function.

#### **Deputy Chief Executive Officer**

18. (1) The President shall in accordance with article 195 of the Constitution appoint a person with the relevant academic and professional qualifications and experience in pension matters, insurance, actuarial science or other related fields as the Deputy Chief Executive Officer of the Authority.

(2) The Deputy Chief Executive Officer shall hold office on the terms and conditions specified in the letter of appointment.

#### **Functions of Deputy Chief Executive Officer**

19. The Deputy Chief Executive Officer shall

- (a) perform functions that the Chief Executive Officer may assign, and
- (b) act in the absence of the Chief Executive Officer.

#### **Appointment of Solicitor Secretary**

20. (1) The President shall in accordance with article 195 of the Constitution appoint a Solicitor Secretary for the Authority.

(2) The Solicitor Secretary shall be

- (a) responsible to the Chief Executive,
- (b) the secretary to the Board,
- (c) in-charge of the Legal department, and
- (d) perform other functions that may be assigned to the Solicitor Secretary by the Board or the Chief Executive.

#### **Appointment of other staff**

21. (1) The President shall in accordance with article 195 of the Constitution appoint other staff of the Authority that are necessary for the proper and effective performance of its functions.

(2) Other public officers may be transferred or seconded to the Authority or may otherwise give assistance to it.

(3) The Authority may engage the services of advisers on the recommendations of the Chief Executive Officer.

#### **Funds of the Authority**

22. The funds of the Authority include

- (a) moneys provided by Parliament,

- (b) fines, fees, commissions and income accruing to the Board in the performance of its functions,
- (c) donations, grants and gifts, and
- (d) any other moneys that are approved by the Minister responsible for Finance.

#### **Accounts and audit**

**23.** (1) The Board shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Authority to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The Internal Audit Agency Act, 2003 (Act 658) applies to this Act.

(5) The financial year of the Authority is the same as the financial year of the Government.

#### **Annual report and other reports**

**24.** (1) The Board shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and the operations of the Authority for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

#### *Miscellaneous provisions*

#### **Engagement of consultants and experts**

**25.** The Board may engage the services of consultants or other experts on terms and conditions determined by the Board.

#### **Prohibition of unauthorised disclosure of confidential information**

**26.** (1) A person in the discharge of duties under this Act shall not disclose confidential information obtained by that person unless authorised by the Board to do so.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of two hundred and fifty penalty units or to a term of imprisonment of not more than one year or to both.

#### **Power to inspect business premises**

**27.** (1) A person authorised by the Board may, for the purpose of ensuring compliance with the provisions of this Act

- (a) between the hours of 8.00 a.m. and 5.00 p.m. enter any premises in which an employer or self-employed person operates business for the purpose of inspection and examination;

- (b) require a person to produce a record required to be kept under this Act in that person's possession and inspect and make copies where necessary;
- (c) make inquiries to ascertain whether the requirements of this Act are being complied with by employees and self-employed persons;
- (d) seize anything which appears to be evidence of an offence against this Act; and
- (e) exercise other powers that may be conferred by Regulations.

(2) Where premises are private dwellings, an authorised person may enter those premises under a warrant issued by a Court of competent jurisdiction.

### **Budget and work programme**

**28.** The Chief Executive Officer shall not later than six months before the commencement of each financial year prepare and submit to the Board for approval

- (a) a work programme containing a general description of the work and activities that the Board plans to undertake, and
- (b) estimates of the Authority's expected expenditure and income.

### **Regulations**

**29.** The Minister in consultation with the Board, may make Regulations for the effective implementation of this Part.

## **PART TWO—BASIC NATIONAL SOCIAL SECURITY SCHEME**

### *Establishment of the Trust*

#### **Basic national social security scheme**

**30.** (1) The basic national social security scheme shall operate under the Trust established under section 32 of this Act.

(2) Each worker of an establishment or an institution shall pay a monthly contribution to the social security scheme.

(3) Self-employed persons who opt to join the scheme shall pay a monthly contribution to the social security scheme.

#### **Exemption from the basic national social security scheme**

**31.** Section 30 does not apply to officers and men of the Ghana Armed Forces and any other person who is expressly exempted by law.

#### **Establishment of the Trust**

**32.** (1) There is established by this Act a body known as the Social Security and National Insurance Trust.

(2) The Trust is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Trust may for the performance of its functions acquire and hold movable or immovable property, and may enter into a contract or any other transaction.

(4) Where there is hindrance to the acquisition of property, the property may be acquired for the Trust under the State Property and Contracts Act, 1960 (C.A. 6) or under the State Land Act 1962, (Act 125) the cost shall be borne by the Trust.

#### **Object of the Trust**

**33.** The object of the Trust is to operate the basic national social security scheme referred to as the social security scheme and other schemes as determined by law on the recommendations of the National Pensions Regulatory Authority.

**Functions of the Trust**

**34.** To achieve its object the Trust shall

- (a)* operate the basic national social security pension scheme and other schemes as may be prescribed by law;
- (b)* have a Fund into which shall be paid the contributions and any other moneys as may be required under this Act;
- (c)* be responsible for the general administration of the social security scheme and regulations made under it;

- (d) ensure the provision of social protection for the working population for various contingencies including old age, invalidity and death;
- (e) be responsible for the administration and investment of funds within the framework of general directives issued by the Board of Trustees and approved by the Authority;
- (f) collaborate with other complementary social protection schemes in respect of specified operational and administrative functions to achieve efficiency, cost savings and avoidance of duplication of functions;
- (g) have general control of the funds and investments of the social security scheme and the management of the Trust; and
- (h) perform any other functions that are ancillary to the objects of the Trust.

### **Governing body of the Trust**

**35.** (1) The governing body of the Trust is a Board of Trustees consisting of

- (a) a chairperson,
- (b) two persons nominated by the President, at least one of whom is a woman,
- (c) two representatives of Employers' Associations,
- (d) four representatives of Organised Labour,
- (e) one representative of National Pensioners' Association,
- (f) one representative of the Ministry responsible for Finance not below the rank of a Director,
- (g) one representative of the Security Services who is not a member of the Ghana Armed Forces, and
- (h) the Director-General of the Trust.

(2) The members of the Board of Trustees shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The Board of Trustees shall ensure the proper performance of the functions of the Trust.

### **Knowledge and Understanding of Board of Trustees**

**36.** (1) A member of the Board of Trustees must, in relation to the social security scheme, have knowledge and understanding of

- (a) the social security law and any regulations made under it;
- (b) any statement of investment policy for the time being maintained under section 67 of this Act;
- (c) any other policy document for the time being adopted by the Board of Trustees relating to the administration of the scheme generally.

(2) The degree of knowledge and understanding required of the Board of Trustees is that necessary to enable the individual to perform the functions as a member of the Board of Trustees of the social security scheme.

(3) The Trust shall ensure that a member of the Board of Trustees acquires the relevant knowledge through appropriate programmes relating to pensions and trusts.

### **Tenure of office of members**

**37.** (1) A member of the Board of Trustees shall hold office for a period not exceeding three years and is eligible for re-appointment but a member shall not be appointed for more than two terms in succession.

(2) Subsection (1) does not apply to the Director-General of the Trust.

(3) A member of the Board of Trustees may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board of Trustees who is absent from three consecutive meetings of the Board without sufficient reason ceases to be a member of the Board of Trustees.

(5) The President may by letter addressed to a member revoke the appointment of that member.

(6) Where a member of the Board of Trustees is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (2), (3) or (4) or section 39 (2), or

(b) as a result of a declaration under subsection (6), or

(c) by reason of the death of a member,

the Minister on the advice of the Board of Trustees shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

### **Meetings of the Board of Trustees**

**38.** (1) The Board of Trustees shall meet at least once every three months for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board of Trustees convene an extraordinary meeting of the board of trustees at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board of Trustees is seven members including the Director-General or any other person acting as Director-General.

(4) The chairperson shall preside at meetings of the Board of Trustees and in the absence of the chairperson, a member of the Board of Trustees elected by the members present from among their number shall preside.

(5) Matters before the Board of Trustees shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Board of Trustees may co-opt a person to attend a Board of Trustees meeting but that co-opted person shall not vote on a matter for decision at the meeting.

(7) The proceedings of the Board of Trustees shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8) Subject to this section, the Board of Trustees may determine the procedure for the Board of Trustees's meetings.

### **Disclosure of interest**

**39.** (1) A member of the Board of Trustees who has an interest in a matter for consideration by the Board of Trustees shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board of Trustees in respect of that matter.

(2) A member who contravenes subsection (1) ceases to be a member.

### **Establishment of committees**

40. (1) The Board of Trustees may establish committees consisting of members of the Board of Trustees or non-members or both to perform a function.

(2) A committee of the Board of Trustees may be chaired by a member of the Board of Trustees.

(3) Section 39 applies to members of committees of the Board of Trustees.

### **Allowances**

41. Members of the Board of Trustees and members of a committee of the Board of Trustees shall be paid allowances approved by the Minister in consultation with the Minister responsible for Finance.

### **Regional and district offices of the Trust**

42. (1) The Board of Trustees may establish regional and district offices of the Trust in each regional capital and in the districts as the Board of Trustees may determine.

(2) A regional or district office of the Trust shall perform the functions of the Trust in the region or district that the Board of Trustees may direct.

#### *Administrative and financial provisions*

### **Director-General of the Trust**

43. (1) The President shall, in accordance with article 195 of the Constitution appoint a Director-General of the Trust.

(2) The Director-General shall hold office on the terms and conditions specified in the letter of appointment.

### **Functions of the Director-General**

44. (1) The Director-General is responsible for the day-to-day administration of the affairs of the Trust and is answerable to the Board of Trustees in the performance of the functions under this Act.

(2) The Director-General shall perform any other functions determined by the Board of Trustees.

(3) The Director-General may delegate a function to an officer of the Trust but shall not be relieved from the ultimate responsibility for the performance of the delegated function.

### **Deputy Directors-General**

45. (1) The President may appoint for the Trust such Deputy Director-Generals as may be necessary.

(2) A Deputy Director-General shall hold office on the terms and conditions specified in the letter of appointment.

### **Appointment of other staff**

46. (1) The President shall in accordance with article 195 of the Constitution, appoint for the Trust other staff necessary for the proper and effective performance of the functions of the Trust.

(2) The Trust may engage the services of advisers on the recommendations of the Board of Trustees.

**Secretary to the Board of Trustees**

47. (1) The Board of Trustees shall have a Secretary.

(2) The Secretary shall, subject to the directions of the Board of Trustees, arrange the business for the Board of Trustees and be responsible for the recording and keeping of minutes of proceedings of the meetings of the Board of Trustees.



(3) The Secretary shall perform any other functions that the Board of Trustees may direct or as the Director-General may delegate.

#### **Internal auditor**

**48.** (1) The Trust shall have an internal auditor who shall be responsible to the Director-General.

(2) The Internal Auditor shall

- (a) prepare a report on the internal audit work carried-out at intervals of three months or such shorter period determined by the Board and submit the report to the Board of Trustees.
- (b) make any observations in each report as appear necessary on the compliance, operational and conduct of the financial affairs of the Trust during the period to which the report relates;
- (c) send a copy of each report prepared under this section to the Director-General; and
- (d) perform other functions that the Director-General may prescribe.

#### **Actuary of the Trust**

**49.** (1) The Trust shall have an Actuary to manage the actuarial functions of the social security scheme.

(2) The Actuary shall be responsible to the Director-General.

(3) The Actuary shall

- (a) assess the social security scheme in respect of the
  - (i) suitability of the financial system,
  - (ii) adequacy of contribution rate,
  - (iii) long-term financial solvency of the scheme, and
- (b) perform other functions that the Director-General may assign.

#### **Accounts and audit**

**50.** (1) The Board of Trustees shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board of Trustees shall submit the accounts of the Trust to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister and the Board.

(4) The Internal Audit Agency Act, 2003 (Act 658) applies to this Act.

(5) The financial year of the Trust is the same as the financial year of the Government.

#### **Annual report and other reports**

**51.** (1) The Board of Trustees shall within one month after the receipt of the audit report, submit an annual report to the Minister and the Authority covering the activities and the operations of the Trust for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board of Trustees shall also submit to the Minister and the Authority any other reports which the Minister or the Authority may require in writing.

### **Regulation of the Trust**

**52.** The Authority shall regulate the activities of the Trust to ensure compliance with the provisions of this Act.

### **Actuarial valuation reports**

**53.** (1) The Trust shall obtain actuarial valuations from an external actuary

(a) at intervals of not more than one year or, if obtained for the intervening years, at intervals of not more than three years, and

(b) in other circumstances and on other occasions that may be prescribed by the Authority.

(2) An actuarial valuation is a written report prepared and signed by the actuary

(a) valuing the scheme's assets and calculating its liabilities,

(b) on developments affecting the scheme's liabilities since the last actuarial valuation was prepared.

(3) The effective date of an actuarial valuation is the date by reference to which the assets are valued and the liabilities calculated.

(4) The effective date of an actuarial report is the date by reference to which the information in the report is stated.

(5) The intervals referred to in subsection (1) (a) are between effective dates of the valuation and shall not be more than one year

(a) after the establishment of the social security scheme, and

(b) after the effective date of the last actuarial valuation, or, if more recent, the last actuarial report.

(7) The Board of Trustees shall ensure that a valuation report is received by them within the prescribed period after its effective date.

(8) A provision in this section shall not affect any power or duty of the Board of Trustees or managers to obtain actuarial valuations or reports at more frequent intervals in other circumstances or on other occasions.

(9) An actuarial valuation or report shall be prepared in a manner to give information, contain statements and satisfy other requirements that may be prescribed by the Board of the Authority.

(10) The Board of Trustees shall ensure that any actuarial valuation or report obtained by them is made available to the Board of the Authority within thirty days after receipt.

### **Exemption from taxes**

**54.** The Trust is exempted from payment of corporate income tax and subject to article 174 of the Constitution, the Minister for Finance may, with the prior approval of Parliament, waive other taxes in relation to the Trust.

### **Administrative expenses**

**55.** (1) The expenses related to the administration of the social security scheme except those expenses mentioned in subsections (2) and (3), shall be charged on the Fund in accordance with generally accepted accounting practice in relation to pensions, subject to a maximum limit set by the Board of Trustees in line with the general guidelines that may be issued by the Authority and consistent with best practices of similar social security schemes.

(2) The other expenses related to the provision of support services for other complementary schemes shall be charged to the complementary schemes based on an agreed formula.

(3) The administrative expenses involved in the transfer of the two and half per centum of the National Health Insurance Scheme shall be charged to the National Health Insurance Scheme on a formula to be agreed upon by the National Health Insurance Scheme and the Trust.

#### **Permitted expenditure from scheme funds**

**56.** The Board of Trustees shall not charge any expenditure or make any deductions from the social security scheme funds other than those prescribed by the Authority or authorised under this Act.

#### **Account of members**

**57.** (1) The Board of Trustees shall cause to be maintained for each member, an account to which shall be credited contributions of that member.

(2) The Trust shall send an annual statement of account to members of the social security scheme which shall be sent to their current address or the last known address of the member, except that where the member fails to provide an address, the Trust shall not be under any obligation to send a statement of account to that member.

#### *Employers and workers*

#### **Application of social security scheme**

**58.** (1) The social security scheme applies to

- (a) every employer and to each worker employed by its establishment;
- (b) any other employer, worker and self-employed to whom the Social Security Act, 1991 (P.N.D.C.L. 247) applied immediately before the commencement of this Act, and
- (c) self-employed persons, who opt to join the social security scheme.

(2) Where a member has ceased to be employed, that member may continue to pay a monthly contribution at the rate of thirteen and half per centum of that member's declared income or salary.

#### **Entry age**

**59.** The minimum age at which a person may join the social security scheme is fifteen years and the maximum age is forty-five years.

#### **Age exemption**

**60.** (1) A worker who is entitled to retirement benefits under a pension scheme in existence before the commencement of this Act and is aged fifty-five years or above is exempt from the scheme.

(2) Despite the provisions of subsection (1) a person who is fifty-five years and above exempted under this Act may opt to join the new scheme.

(3) For members exempted under subsection (1), the employer and worker shall continue to contribute to the employee's retirement benefit at the same level of contribution before the commencement of this Act until the worker retires.

### **Social security number**

61. (1) A worker to whom the social security scheme applies shall be given a Social Security Number on registration with the Trust.

(2) The social security number is not transferable and shall be used by the worker throughout the working life of that worker and for the purposes of this Act.

(3) An employer shall not transfer or use the Social Security number of one worker for another.

### **Existing schemes**

62. (1) The existence of a private or company pension provident fund, superannuation scheme or gratuity scheme in respect of workers to whom this Act applies does not exempt the employer or the workers from the application of this Act and an employer is responsible for deducting contributions from the remuneration of workers and paying them along with the employer's own contributions to the Fund at the rates specified in this Act.

(2) Despite any other provision, an employer may

(a) amend written provisions of an existing scheme with the prior approval of the governing body of the existing scheme or with the consent of the Board of the Authority, or

(b) adjust the benefits that may be derived from the scheme to enable the payment of contributions to be effected under this Act.

### *Contributions*

### **Mandatory contributions**

63. (1) An employer shall remit thirteen and half per centum out of the total contributions of eighteen and a half per centum on behalf of the worker to the first tier mandatory social security scheme within fourteen days after the end of each month to the Trust.

(2) The minimum contribution is thirteen and half per centum of the approved monthly equivalent of the national daily minimum wage.

(3) Despite subsection (1) the maximum contribution shall not exceed thirteen and half per centum of a maximum amount that may be determined periodically by the Trust in consultation with the Board of the Authority.

(4) Out of the total contributions of thirteen and half per centum received on behalf of each member, two and half per centum shall be deducted and transferred to the National Health Insurance Fund.

(5) Where an employer deducts contribution from the salary of a worker, the contribution shall be held by the employer in trust until remitted to the Trust.

(6) Payment of contributions by an employer of an establishment to the Trust shall be accompanied with a contribution report in a form that may be prescribed by the Trust including electronic means.

(7) An employer shall submit the contribution report for that month at the end of that month, whether the contribution is remitted to the Trust or not.

(8) An employer shall remit the total contribution of eighteen and one half per cent on behalf of a worker who does not qualify to join the social security scheme to the second tier mandatory occupational pension scheme within fourteen days after the beginning of each month.

(9) Subject to subsection (8) a percentage of the eighteen and one half per cent to be determined by the Board of the Authority under the mandatory second tier occupational scheme shall be utilised to purchase an annuity for life from a life insurance company licensed by the National Insurance Commission with monthly or quarterly payments.

(10) Despite an agreement or understanding to the contrary, an employer is not entitled to

- (a) deduct or recover the employee's contribution from the worker's salary, or
- (b) the member's contribution for an earlier contribution period from the salary in respect of a later period.

(11) For the purpose of subsection (10), the employer is entitled to make those deductions if the

- (a) failure to make the deduction was due to a false declaration made in writing by the worker at the time of employment, or
- (b) failure to deduct the contribution was the result of a mistake or a clerical error in which case the deductions shall be made according to the written instructions of a designated officer of the Trust.

#### **Penalty for non-payment of contributions**

**64.** (1) Subject to subsection (2) if a contribution is not paid within the specified period

- (a) a sum equal to three per centum per month of the contribution payable shall be added to the contribution as a penalty;

- (b) the Director-General shall serve a demand notice on the defaulting contributor and if payment of the contribution and penalty is not made within thirty days after the date of the service of the notice, the Director-General may proceed to collect and recover the contribution and the penalty; and

- (c) if a person without reasonable excuse fails to pay the contribution and a penalty imposed under paragraph (a), the Director-General may direct the person to pay an additional penalty of a sum equal to three per centum of the total of the outstanding contribution and penalty imposed under that paragraph for each month during which the default continues.

(2) The Director-General may remit wholly or partly, the penalty imposed under subsection (1) with the approval of the Board of Trustees.

#### **Multiple-employer**

**65.** Where a worker is concurrently employed by more than one employer, each employer is responsible for only that employer's obligation under this Act.

#### **Employer not to reduce remuneration**

**66.** An employer shall not by reason of a liability for a contribution to the scheme or for any other charges under this Act or Regulations, reduce whether directly or indirectly, the salary or other emoluments of a member of the scheme.

#### *Investments*

#### **Investment policy**

**67.** (1) The Board of Trustees shall ensure that

- (a) a statement of investment policy is prepared and maintained for the social security scheme, and
- (b) the statement is reviewed and revised as necessary.

(2) In preparing or revising a statement of investment policy, the Board of Trustees shall comply with guidelines issued by the Authority in consultation with the Board of Trustees.

(3) A statement of investment policy shall include the

- (a) investment objectives;
- (b) types of securities and other assets that may be acquired;
- (c) the balance between the different types of securities and other assets;
- (d) risk in implementing the investment policy; and
- (e) return expected in implementing the investment policy.

### **Permitted investments**

**68.** The Trust may invest the pension fund assets in units of an investment approved by the Board of Trustees.

### **External investments**

**69.** Subject to the existing Bank of Ghana foreign exchange rules, the Board of Trustees in consultation with the Minister for Finance may invest pension fund assets outside the country except that the amount to be invested externally shall not exceed a percentage of the total funds available for investment determined by the Authority.

#### *Benefits and qualifying conditions*

### **Superannuation pension**

**70.** (1) A member of the social security scheme who

- (a) retires on attaining the compulsory retirement age of sixty years; or
- (b) retires voluntarily on attaining the age of fifty-five years

and has contributed to the social security fund for a period of not less than fifteen years in the aggregate or one hundred and eighty months in the aggregate is entitled to a superannuation pension.

### **Invalidity pension**

**71.** (1) A member of the social security scheme who becomes an invalid is entitled to invalidity pension if

- (a) the member has contributed to the Fund for not less than twelve months within the last thirty-six months before the occurrence of the invalidity; and
- (b) a medical board certifies that the member is incapable of normal gainful employment because of the permanent physical or mental disability.

(2) Where a person to whom subsection (1) applies is subsequently certified by a medical board to have fully recovered and that person has not attained the compulsory retirement age, that person may rejoin the scheme.

### **Lump sum payment**

**72.** (1) Where a member of the social security scheme has made less than fifteen years contribution to the Fund before the member retires

either compulsorily or voluntarily, the member is entitled to

- (a) a lump sum of money equal to the member's contribution as benefit; and
- (b) an interest of seventy-five percent at the prevailing government treasury bill rate on the lump sum.

#### **Survivor's lump sum benefit**

73. (1) Where a member of the scheme dies, a lump sum benefit is payable to the deceased's family who

- (a) are dependants of the deceased; and
- (b) have been validly nominated as beneficiaries of the deceased.

(2) Where no nomination was made or the nomination made is found to be invalid by the Trust, the lump sum shall be distributed to the dependants in accordance with the Intestate Succession Act, 1985 (P. N. D. C. L. 111).

(3) Where a deceased member failed to nominate a surviving spouse and children as beneficiaries, the spouse and children may apply to the court for a variation of the nomination to include them.

#### **Other benefits**

74. The Minister on the advice of the Authority and in consultation with the Board of Trustees of the scheme may by legislative instrument prescribe other classes of benefits.

#### **Hazardous employment benefit**

75. A member of the social security scheme who has attained the age of fifty-five years and has been a worker

- (a) at an underground mine;
- (b) at a steel works; or
- (c) in any other employment determined as hazardous employment by the Authority

for an aggregate period of not less than one hundred and eighty months is entitled on retirement to full retirement benefit.

#### **Qualifying conditions for pension**

76. (1) A person who has

- (a) satisfied the minimum contribution period of not less than one hundred and eighty months,
- (b) attained the age of sixty years or fifty-five years in the case of an underground mine worker or a worker specified in subsection (2) or has opted for voluntary retirement with reduced pension, and
- (c) filed an application for superannuation benefit,

is entitled to a pension payment for each month beginning with the first month in which the person becomes entitled to the payment.

(2) A person who has satisfied the minimum contribution period and has worked as an underground mine worker or in a quarry or in steel works or in any other employment and is likely to contract industrial diseases as defined in section 12 (2) of the Factories Offices and Shops Act, 1971 (Act 328) by virtue of that employment is entitled to full pension benefit upon attaining the age of fifty-five years.

#### **Formula for computation of pensions**



**77.** (1) A member may be paid full or reduced pension.

(2) The minimum pension payment shall be based on fifty per centum of the average annual salary for the three best years of a member's working life.

(3) Where a member works beyond the minimum contribution period, the amount of pension payable shall be increased by one and half per cent for every additional twelve months worked up to a maximum of eighty per centum.

(4) Where there are grounds to suspect that the salary has been inflated with intent to defraud, the Trust shall investigate and the right pension based on a formula determined by the Trust shall be paid to the member.

#### **Formula for survivors benefit computation**

**78.** (1) Where a member dies having made at least twelve months contribution within the last thirty-six months prior to the death of the member, a lump sum payment computed on the present value of the members pension for a period of fifteen years, using the prevailing treasury bill rate or ten percent, whichever is the lower, shall be paid to the members' nominated dependants.

(2) Where a member dies before making at least twelve months contribution within the last thirty-six months, a lump sum equal to total contributions and interest on the lump sum at the rate of seventy-five percentum of the Government treasury bill rate shall be paid to the nominated dependants of the member.

(3) Where a member retires but dies before the age of seventy-five years, a lump sum payment, based on the present value of the unexpired pension of the member not exceeding fifteen years shall be made to the nominated dependants of the member.

#### **Formula for invalidity computation**

**79.** Where a member is certified by a medical board as being invalid, the member is entitled to a pension based on the minimum pension or the earned pension whichever is higher.

#### **Periodic review of pensions**

**80.** The Trust shall annually review the pension payment which shall be indexed to wage inflation rates of active members or another rate determined by the Trust in consultation with the Board of the Authority.

#### **Nomination of beneficiaries to receive benefits**

**81.** (1) A person who is required or entitled to become a member of the social security scheme shall furnish to the employer particulars concerning the member's beneficiaries for the receipt of benefits on the death of that member.

(2) The employer shall enter the particulars in the prescribed form and obtain the signature or thumbprint impression of the person concerned and forward it to the Trust.

(3) An employer shall ask a potential employee to state in writing

(a) whether or not that person is a member of the scheme;

(b) the member's account number;

(c) the name and particulars of the last establishment if any, where that person was employed; and

(d) whether anyone has been nominated to receive the benefits as survivor.

(4) Where that person was a member of the scheme, the old account number and the nominated beneficiaries shall continue to be operative, and the Trust's attention shall be drawn to this by the new employer.

(5) Subject to subsection (3), a member of the scheme is free to update the nomination and shall review the nominations at least once every five years and forward the nomination to the Trust.

(6) Where payment of benefit has been made to a person validly nominated or varied by a Court order under this section, no other person shall have any other claim against the Trust.

(7) Despite subsection (6), where a member of the scheme has a child sixty percent of the survivors benefit shall be distributed to the child and forty percent to the persons nominated by the member.

### **Reciprocal agreement**

82. The Government of Ghana may enter into a reciprocal agreement with the government of another country in which a scheme similar to the social security scheme has been established and there may be included in the agreement the following provisions

- (a) that any period of membership of a scheme in the jurisdiction of that government may be treated as a period of membership of the social security scheme and the reverse; and
- (b) that subject to agreed conditions, an amount standing to the credit of a member of the social security scheme in Ghana who works for an employer in the jurisdiction of this country may be transferred to the credit of the member in the scheme in another country and the reverse.

### *Legal proceedings*

### **Offences**

83. (1) A person who

- (a) fails or refuses to register any establishment owned or set up by that person or to register any worker under this Act, or
- (b) with intent to evade payment of a contribution or any other amount due knowingly makes a false statement or representation, or produces or furnishes or causes to be produced or furnished a document or information which that person knows to be false in a material particular;
- (c) for personal benefit or for any other person, knowingly makes a false statement or representation or produces or furnishes, or causes to be produced or furnished, a document or information which that person knows to be false in a material particular;
- (d) fails without reasonable excuse or refuses to submit its contribution payment with a contribution report or accompany contributions to the Trust within the prescribed period in the form and manner prescribed;
- (e) wilfully obstructs or assaults an inspector, officer or servant of the Trust in the discharge of duties; or
- (f) without reasonable excuse, proof of which shall be on that person, fails to comply with a provision of this Act or Regulations made under this Act,

is liable on summary conviction

(g) in respect of a an offence under paragraph (a) (b) or (c ) to a fine not exceeding the amount of contribution and penalty owed to the Trust or to imprisonment for a term not exceeding five years or both, or

(h) under paragraph (d), (e) or (f) to a fine not exceeding two thousand five hundred penalty units or to imprisonment for a term not exceeding five years or to both.

(2) Where an employee of the Trust conspires or aids and abets another person in the commission of an offence specified in subsection (1), the employee is on summary conviction liable to the same punishment as provided under subsection (1).

### **Institution of criminal proceedings**

**84.** (1) Criminal proceedings under this Act and Regulations made under it may be instituted and conducted by the Attorney-General or an officer of the Trust appointed by the Attorney-General by executive instrument.

(2) A Court when convicting a person of an offence under this Act or Regulations made under it may, in addition to the fine or imprisonment, order the person to pay to the Trust the amount of any contribution, together with any interest or penalty on the amount due from that person to the Trust at the date of conviction.

(3) The amount may be recovered together with the requisite contribution report in the same manner as a fine and shall be paid and credited to the Trust accounts of the members of the social security scheme concerned where applicable.

(4) The order of payment to the Trust shall be without prejudice to civil remedy.

### **Offences by body of persons**

**85.** (1) Where an offence under this Act is committed by a body of persons, in the case of a

(a) body corporate, other than a partnership, each director or officer of the body corporate is deemed to have committed the offence, and

(b) partnership each partner of the firm is deemed to have committed the offence;

(2) A person shall not be convicted of an offence under subsection (1) if that person proves that the offence was committed without the knowledge of the person or that due diligence was exercised by the person to prevent the commission of the offence.

### **Civil proceedings**

**86.** (1) Despite any other law, a contribution to the social security scheme along with interest or a monetary penalty payable or imposed for failure to pay in time may be recovered by action as a debt owed to the Trust at any time within twelve years after the date when the contribution or the penalty became due.

(2) An action for the recovery of contribution and other penalties under this section may be instituted and conducted by an authorised officer of the Trust.

(3) Despite any other law, the Circuit and District Courts have power to exercise jurisdiction in civil and criminal matters concerning social security contributions and offences created under this Act irrespective of the amount of claim.

(4) The Trust may attach the contribution of a borrower or guarantor under the Students Loans Act, 1992 (P.N.D.C.L. 276) for the purpose of the student loans repayment.

### **Priority for payment of contributions**

**87.** Where on an application—

(a) by the Trust, an attachment is issued against the property of an employer in execution of a decree against that employer and the property is seized, sold or otherwise realised in pursuance of the execution, or

(b) of a secured creditor, the property of an employer is sold,

the proceeds of the sale or any other realisation of the property shall not be distributed to a person entitled to the distribution until the Court ordering the sale or other realisation has made provision for the payment of the amount due by the employer under this Act before the date of the order.

### **Protection against attachment**

**88.** Except as provided in this Act,

(a) the accumulations to the credit of a member of the social security scheme, contribution in transit to the social security scheme or contributions with an employer, are incapable of being assigned or charged and are not liable to attachment

under any law or order of a Court in respect of a debt or liability by the member, even in the event of the bankruptcy or insolvency of the member;

(b) an amount actually or potentially standing to a member's credit on the social security scheme at the time of the member's death and payable to the members dependants shall be free from attachment before it is paid to the dependants;

(c) accrued contributions to the social security scheme shall be paid despite the bankruptcy or insolvency of an employer; and

(d) the protection against attachment of contributions shall not apply to a borrower or guarantor under the Students' Loans Scheme Law.

### **Exemption from tax**

**89.** (1) Tax is not payable by an employer or employee in respect of contribution towards retirement or pension schemes under this Act.

(2) Tax is not payable on the benefits received under this Act.

(3) The social security scheme and any existing scheme under this Act is an approved scheme for ascertaining the chargeable income of a person for making the appropriate deductions under the income tax law, and income tax shall not be paid by an employer in respect of a worker on contributions which do not exceed thirteen and one half per centum of that person's total salary.

### **Protection for acts done in good faith**

**90.** A suit or other legal proceedings shall not lie against a member of the Board of Trustees, an officer or employee of the Trust in respect of anything done in good faith in pursuit of the objectives of this Act, except that personal liability suffered by a trustee officer or employee acting in good faith shall be indemnified by the Trust.

### *Miscellaneous provisions*

### **Functions of Trust Inspectors**

**91.** (1) An inspector of the Trust who has reasonable cause to believe that there are workers on premises may enter the premises at a reasonable time to make an examination and enquiry necessary to obtain information for the purposes of this Act.

(2) The inspector shall produce identification as an employee of the Trust when making an inspection to obtain information.

(3) In the discharge of duties under this section, an inspector may require the production of documents related to appointment, attendance, wages of workers and contributions or liability of employers to contribute to the scheme and take copies of or extracts from the documents.

(4) Where an establishment has discontinued its work or has been closed down and does not have premises, the inspector may require the production of the documents related to past transactions at a reasonable place and time, including the office of the inspector or the office of any other establishment and the previous employer, or any other person who has custody of the documents shall produce them as required by the inspector.

(5) Where it becomes necessary for an inspector to visit the premises declared by a competent authority to be a security area or the admission to which is restricted, the inspector shall not enter the premises or area without obtaining prior permission from the officer in charge of the premises.

(6) Where an establishment is liquidated or wound up or ceases to operate,

(a) records in relation to the names of the workers,

(b) the workers' Social Security Numbers and salaries as defined in this Act, and

(c) deductions for Social Security contributions

shall be deposited at the Registrar-General's Department by the employer and the Trust shall be notified by the employer within seven days.

(7) In this section, an inspector includes a compliance officer or other officers appointed by the Trust to perform the function.

### **Electronic recording and filing and transfer of documents**

**92.** (1) The Trust has the option to record, file, maintain or transfer in electronic form, records of members required under this Act or Regulations made under this Act and may receive electronic transmitted information in respect of the scheme.

(2) A system of electronic recording, maintenance, filing or transfer of documents shall provide

(a) the criterion for authorising persons to file the documents in an electronic form, and

(b) ensure the security and authentication of the documents filed or transferred.

## **Regulations**

**93.** (1) The Minister, on the advice of the Authority and on the recommendation of the Board of Trustees may, by legislative instrument, make Regulations for the purpose of carrying out the provisions and principles of this Part.

(2) Despite the Statutory Instruments Act, 1959 (No 52) the penalty for the contravention of Regulations shall be a fine of not more than two thousand, five hundred penalty units.

## **Transitional provisions**

**94.** (1) On the commencement of this Act, the following provisions shall apply

- (a) each person to whom the Social Security Act 1991 (P.N.D.C.L. 247) applied immediately before the commencement of this Act shall be credited for the number of months that person has already contributed to the social security scheme;
- (b) where a member retires on reaching the age of fifty-five years on the coming into operation of this Act without satisfying the minimum contribution period, that person is entitled to a reduced pension, except where that person contributed for a period of not less than twenty years; or
- (c) where a member fails to contribute for the minimum period of twenty years, that member shall be paid the amount standing to the members credit with interest calculated at the prevailing treasury bill rate.
- (d) accrued or past service or past credits earned by every contributor to whom the new scheme applies in respect of the 25% lump sum benefit shall have the lump sum determined by a formula agreed between the Pension Reform Implementation Committee and the Trust based on actuarial assessment.

(2) The rights, assets and liabilities accrued in respect of the properties vested in the Trust established under the Social Security Act 1991 (P.N.D.C.L. 247) immediately before the commencement of this Act and the persons employed by the Trust are transferred to the Social Security and National Insurance Trust established under this Act and accordingly proceedings taken by or against the former Trust may be continued by or against the Trust.

(3) A contract subsisting between the former Trust established under the Social Security Act, 1991 (P.N.D.C.L. 247) and another person and in effect immediately before the commencement of this Act shall subsist between the Trust established under this Act and that other person

(4) The Board of Directors of the Trust existing immediately before the commencement of this Act shall continue in office until a new Board of Trustees is appointed.

## **PART THREE—OCCUPATIONAL PENSION SCHEMES, PROVIDENT FUND AND PERSONAL PENSION SCHEMES AND MANAGEMENT OF THE SCHEMES**

### *Occupational pension schemes*

#### **Occupational pension scheme**

**95.** For the purposes of this Part “occupational pension scheme” means a pension scheme that is work-based, established under a trust which provides benefits based on a defined contribution formula in the form of a lump sum

- (a) payable on termination of service, death or retirement, or in respect of persons covered under section 58 of this Act; and
- (b) payable to or in respect of other persons specified under the second tier of the Scheme as provided for under section 1 of this Act.

**Mandatory contributions**

**96.** (1) Subject to section 3 (1) and (2) an employer of an establishment shall, remit a mandatory contribution of five per centum to approved trustees of occupational pension schemes, out of the total contribution of eighteen and a half per centum made on behalf of the worker.

(2) The contribution shall be remitted by the employer within fourteen days from the end of each month.

(3) The minimum contribution shall be five per centum of the approved monthly equivalent of the national daily minimum wage.

(4) Where an employer deducts contributions from the salary of a worker, the contributions shall be held by the employer in trust until remitted to the trustees of the occupational pension scheme.

### **Existing schemes**

**97.** (1) The existence of a private or company pension provident fund, superannuation scheme or gratuity scheme in respect of workers to whom this Act applies shall not exempt the employer or the worker from the application of this Act and an employer is responsible for deducting contributions from the remuneration of workers and paying them along with the employer's own contributions to the Fund at the rates laid down in this Act.

(2) Despite any other provision, an employer may

- (a) amend written provisions of an existing scheme with the prior approval of the governing body of the existing scheme or with the consent of the Board of the Authority; or
- (b) adjust the benefits that may be derived from the scheme to enable the payment of contributions to be effected under this Act.

### **Vesting**

**98.** (1) A contribution in respect of a member of a scheme vests in the member as accrued benefits as soon as it is paid to the approved trustees of the scheme.

(2) Income or profits derived from the investment of the accrued benefits of a member of a scheme by or on behalf of the approved trustee of the scheme shall, vest in the member as accrued benefits when received by that trustee after taking into account any loss arising from the investment.

### **Preservation of accrued benefits derived from contributions**

**99.** For the purpose of preserving accrued benefits in a scheme

- (a) a trustee of a scheme shall not pay or dispose of any part of accrued benefits to a scheme member or another person except in accordance with the provisions of this Act; and
- (b) an employee or self-employed person shall not have a right or entitlement to accrued benefits except in accordance with this Act.

### **Portability of accrued benefits**

**100.** (1) A member of an employer sponsored scheme who ceases to be an employee shall, elect to have the member's accrued benefits transferred to another scheme in accordance with the regulations of the scheme.

(2) Subsection (1) does not apply if a member exercises an entitlement to have the member's accrued benefit paid to the member on retirement.

(3) The accrued benefits of a member of the scheme may be transferred

- (a) to another registered scheme to which the member is eligible to belong, or
- (b) to another account within the same scheme, if permitted or required by regulations of that scheme.

(4) Where the accrued benefits of a member of a scheme are to be transferred, the approved trustees of the respective schemes shall comply with requirements with respect to the transfer of the benefits.

(5) An employer shall comply with requirements or regulations with respect to the transfer of benefits if a member of a scheme whose accrued benefits are to be transferred under this section ceases to be an employee.

(6) The regulations required for the management of a scheme may include



- (a) notices to be given, and
- (b) procedure to be followed, in connection with the transfer of accrued benefits.

### **Qualifying conditions for withdrawal of accrued benefits**

101. (1) Under the second tier, a member of the scheme who has attained retirement age is entitled to the entire accrued benefits in the scheme in a lump sum.

(2) A member who has not attained retirement age but has attained the age of fifty years and is not employed or self-employed is entitled to the entire accrued benefits in the scheme in a lump sum.

(3) A person who is not a citizen of Ghana who does not satisfy the qualifying conditions for a benefit of a scheme but desires to emigrate permanently from this country may be entitled to the entire accrued benefits in the scheme in a lump sum.

(4) A member of the scheme who

- (a) is retired on the decision of a properly constituted medical board, based on the advice of a suitably qualified physician certifying that the employee is no longer mentally or physically capable of performing the functions of the office; or
- (b) is retired due to total or permanent disability either of mind or body; or

(c) retires before the age of fifty years in accordance with the terms and conditions of employment;

is entitled to the entire accrued benefits in the scheme in a lump sum.

(5) On the death of a member of the scheme, the approved trustee of the scheme shall pay the whole of the member's accrued benefits as a lump sum

- (a) to the member's nominated beneficiaries, or
- (b) if there are no nominated beneficiaries, to a person specified in the rules of the scheme.

### **Protection of accrued benefits**

102. (1) The accrued benefits of a member in an occupational pension scheme shall not be attached in execution of a judgment debt or be used as a charge, pledge, lien, or be transferred, assigned or alienated by or on behalf of the member.

(2) A disposition that is contrary to subsection (1) is void.

### **Assignment of benefits**

103. (1) A scheme shall have rules to prevent the assignment of benefit.

(2) Despite subsection (1) a scheme may allow a member to use that member's benefit to secure a mortgage for the acquisition of a primary residence.

### **Exemptions from tax**

104. (1) An employer or employee shall not pay income tax in respect of contributions on a mandatory occupational pension scheme.

(2) Benefits received under the scheme are not taxable.

(3) Investment income including capital gains from the investment of scheme funds shall for the purposes of income tax be treated as deductible income.

(4) The occupational scheme is a scheme to ascertain the chargeable income of a person to make the appropriate deductions in respect of income tax.

### **Records in respect of contributions**

**105.** (1) An employer shall maintain up-to-date records of direct payment arrangement.

(2) The record shall

(a) show the rates and due dates of contributions payable under the direct payment arrangement, and

(b) satisfy prescribed requirements.

(3) The employer shall, send a copy of that record to the trustees of the scheme within the prescribed period after the preparation of an up-to-date record.

(4) Where an employer indicates in the records that a contribution under the direct payment arrangement has not been paid on or before the due date, the trustees of the scheme shall give notice to the Board and the worker of that fact within fourteen days.

(5) The trustees of the scheme shall send a member a statement setting out the amounts and dates of the payment made under the direct payment arrangement before the end of the prescribed period.

(6) An employer who fails to comply with subsections (1), (2) or (3) commits an offence and is liable on summary conviction to a fine of two hundred and fifty penalty units.

### *Provident fund and personal pension schemes*

### **Provident fund and personal pension scheme**

**106.** For the purpose of this Act

(a) “provident fund scheme” means a scheme governed by a trust to which a contributor or the contributor’s employer or both contribute to a pension scheme which provides benefits based on a defined contribution formula

(i) to provide for the payment of lump sum benefits to the members of the scheme when they reach the retirement age, or any other prescribed event occurs in relation to them; or

(ii) in the case of members who die before reaching that age or before the occurrence of such an event, provides for the payment of those benefits to the personal representatives or beneficiaries of the estates of those members.

(b) “personal pension scheme” means any pension scheme to which the contributor contributes personally to provide benefits based on a defined contribution formula in the form of pensions or otherwise, payable on death or retirement to or in respect of persons covered under section 107 of this Act or their beneficiaries.

## **Application**

**107.** (1) A personal pension scheme applies to individuals

- (a) who want to make voluntary contributions to enhance their pension benefits outside the mandatory schemes and any provident fund scheme, and
- (b) in the informal sector who are not covered by any retirement or pension scheme under the mandatory part of the three-tier pension scheme.

(2) For persons under subsection (1) (b) a portion of their contributions may be accessed before retirement in accordance with the governing rules of the scheme.

## **Voluntary contributions**

**108.** (1) An employer may arrange for a worker to join and pay contributions to a provident fund or personal pension scheme where the worker

- (a) is more than fifteen years of age,
- (b) is more than the statutory retirement age, or
- (c) is exempted under sections 31 and 60 of this Act.

(2) The employer is not obliged to pay contributions of a worker under subsection (1) to the scheme.

(3) Contributions made and returns earned from investment of the contribution shall, be credited to the account of the contributor subject to any deduction of fees.

(4) Where an employer contributes on behalf of a worker the contribution does not vest in the worker until at the end of the vesting period.

(5) Subject to subsection (4), an employer's contributions to a provident fund on behalf of a worker is for that worker.

(6) Despite subsection (4) in the event of severance by the employer of the employment relationship with the worker, or in the event of liquidation of the employer, an employer's contributions for its worker shall vest in the worker even if the vesting period has not expired.

(7) A worker may forfeit part or the total amount of the employer's contributions if the worker leaves the employment of the employer before the end of the vesting period.

(8) On the death of a worker before or after the expiry of the vesting period, any accrued benefit of the worker shall devolve on the worker's nominated beneficiary and in the absence of a nominated beneficiary in accordance with any applicable law.

## **Self-employed persons**

**109.** (1) A self-employed person may join and pay contributions to a personal pension scheme if the person is more than the statutory retirement age or is exempted under this Act or is not more than fifteen years of age.

(2) Contributions by self-employed persons in the informal sector who are not covered under the mandatory scheme shall be credited to two separate individual sub-accounts

- (a) the personal savings account, and
- (b) the retirement account.

(3) The proportions to be credited to each account shall be prescribed in the governing rules of the scheme.

(4) A contributor may withdraw part of the contributor's personal savings account in accordance with this Act and the governing rules of the scheme.

(5) The proceeds of the retirement account shall only be paid on the retirement of the contributor as monthly or quarterly pensions.

(6) The provisions of this Act on accrued benefits and the governing rules of the scheme which do not conflict with this Act shall apply to accrued benefits derived from voluntary contributions paid to a scheme under the provident fund and personal pension scheme.

### **Qualifying conditions for withdrawal of accrued benefits**

**110.** (1) A member who has attained the retirement age is entitled to the entire accrued benefits in the scheme in a lump sum.

(2) A member who has not attained the retirement age may withdraw all or part of the member's accrued benefits from a scheme

- (a) after ten years from the date of first contribution in the case of the provident fund or personal pension scheme for contributors in the formal sector,
- (b) after five years from the date of first contribution in the case of personal pension scheme for contributors in the informal sector, or
- (c) following a certification by a medical board that the contributor is incapable of any normal gainful employment by virtue of a permanent physical or mental disability.

(3) The beneficiaries of the estate of a deceased contributor may withdraw the accrued benefits of the deceased from the scheme.

### **Retirement benefits**

**111.** A contributor who is not covered under a mandatory pension scheme or any other pension scheme is entitled to

- (a) use a percentage of accrued benefits, prescribed by the Board of the Authority to purchase an annuity for life payable monthly or quarterly from a life insurance company licensed by the National Insurance Commission, and
- (b) a lump sum payment from the balance standing to the credit of the contributor's accrued benefits or personal savings account.

### **Tax reliefs**

**112.** (1) Subject to this Act, contributions made by an employer to a provident fund scheme on behalf of a contributor shall be treated as part of the deductible income for that employer for a tax year for the purpose of income tax.

(2) Contributions not exceeding sixteen and one half per centum of a contributor's monthly income, made by either a contributor or the contributor's employer or both shall, be treated as deductible income, for the purpose of income tax for the contributor and the contributor's employer to the extent of their respective contributions.

(3) Persons in the informal sector who are not covered by the mandatory first tier basic national social security scheme and second tier occupational pension scheme, shall have thirty-five per centum of their declared income treated as deductible income for the contributor for the purposes of income tax.

(4) Investment income including capital gains from the investment of scheme Funds shall for the purposes of income tax, be treated as deductible income.

(5) A withdrawal of all or part of a contributor's accrued benefits under a provident fund or personal pension scheme

(a) on or after retirement shall be tax exempt;

(b) shall be subject to the appropriate income tax for contributors in the formal sector before ten years of contributions and before retirement;

(c) shall be subject to the appropriate income tax for contributors in the informal sector before five years of contributions and before retirement.

(6) A withdrawal from a scheme at any time after certification by a medical board that the contributor is incapable of normal gainful employment due to a permanent physical or mental disability is tax exempt.

(7) A withdrawal from a provident fund or personal pension scheme at any time by the beneficiaries of the estate of a deceased contributor is tax exempt.

### **Creation of encumbrance in respect of contribution**

113. (1) A contributor may pledge or create a charge in respect of a part or all of the contributor's accrued benefits.

(2) A beneficiary who enforces a pledge or charge created by a contributor is liable for any tax applicable to withdrawals under a scheme.

### **Assignment of benefits**

114. (1) A scheme shall have rules that prevent the assignment of benefit.

(2) Despite subsection (1) a scheme may allow a member to use that member's benefit to secure a mortgage for the acquisition of a primary residence but a member is not liable to pay tax on any withdrawal under this section.

### **Duty of employer in respect of personal pension scheme**

115. Despite the provisions of any governing rules or an agreement, an employer shall

(a) provide the administrative and accounting services required to enable a worker join and contribute to a personal pension scheme of the employee's choice;

(b) make appropriate payroll deductions from the monthly salary of a worker who desires to contribute to a personal pension scheme and remit the contributions to the approved trustee of the scheme within fourteen days after the end of the month of deduction; and

(c) not mingle payroll deductions with the employer's own funds and where an employer deducts contributions from the salary of a worker the contributions shall be held by the employer in trust until it is remitted to the appropriate approved trustee.

### **Monitoring of provident fund contributions**

116. (1) An employer shall ensure that there is an up-to-date record of direct payment arrangement.

(2) The record shall

- (a) show the rates and due dates of contributions payable under the direct payment arrangement, and
- (b) satisfy prescribed requirements.

(3) The employer shall send a copy of that record to the trustees of a scheme, within the prescribed period after the preparation of an up-to-date record.

(4) The trustees of the scheme shall, give notice where any contribution shown by the record to be payable under the direct payment arrangement has not been paid on or before its due date except as provided.

(5) The notice shall be given by the trustees to the Board of the Authority and the employees within the prescribed period.

(6) The trustees of the scheme shall before the end of the prescribed intervals send the member a statement setting out the amounts and dates of the payments made under the direct payment arrangement during a prescribed period.

#### **Life insurers carrying on pension and provident fund business**

117. A life insurer who carries on personal pension and provident fund business shall

- (a) maintain a separate and distinct Fund known as the Pension Fund representing the liabilities of that insurer in respect of pension and provident fund business;
- (b) maintain a separate and distinct account related to the income and expenditure of that insurer in respect of its pension and provident fund business; and
- (c) designate which of the assets of the insurer are to be regarded as assets of the Pensions Fund to be clearly shown in the balance sheet or other accounts of the insurer as assets of the Pensions Fund.

#### **Winding-up**

118. (1) In the event of a winding up of an employer sponsored provident fund scheme,

- (a) contributions made by the employer on behalf of a contributor before the vesting period shall not be available to a liquidator of the employer; and
- (b) unpaid contributions of the employer and payroll deductions made from the contributor's salary which have not been remitted to a trustee at the time of liquidation shall have priority over any other debt.

(2) Where a scheme is being liquidated

- (a) the trustee shall not receive any contributions from the date of the commencement of the winding-up under a scheme managed by the trustee;
- (b) any schemes operated by the trustee may be merged with a scheme operated by another trustee with the approval of the contributor and on the directions of the Board; and
- (c) the merger shall be conducted to the other trustee by the transfer of the assets and liabilities of the scheme by the trustee to that trustee.

(3) Where the registration of a custodian is being withdrawn, the trustee of the scheme to which the trust relates shall appoint another custodian approved by the Board with the approval of the contributor.

*Trustees*

#### **Independent director and independent trustee**

119. (1) A director is not an independent director if the director
- (a) is a worker, partner or associate of a person who has applied to become a trustee of the applicant, or of an associate of the applicant; or
  - (b) is a director of an associate of the applicant; or
  - (c) holds shares of the applicant or of any associate of the applicant; or
  - (d) fails to satisfy the Board that the director has no past or present association financial or otherwise with
    - (i) the applicant other than as a director or professional adviser; or
    - (ii) a controller of the applicant; or
    - (iii) an associate of the applicant or of any other controller;that could affect the impartiality of the director's independent judgement; or
  - (e) is a controller otherwise than by virtue of being a director, close relative, partner or employee of the applicant or of an associate of the applicant; or
  - (f) is an auditor or actuary of any occupational pension or provident fund scheme administered by the applicant.
- (2) A trustee is not an independent trustee if the trustee
- (a) is a controller, close relative, partner or employee of the participating employer or of an associate of that employer; or
  - (b) where the participating employer is a company, holds shares of the company or of an associate of that company; or
  - (c) fails to satisfy the Board that the person has the skill, knowledge, experience and qualifications that are, in the opinion of the Board, necessary for that person to administer occupational fund schemes; or
  - (d) fails to satisfy the Board that the applicant has no past or present association financial or otherwise with
    - (i) the participating employer; or
    - (ii) a controller of that employer; or
    - (iii) an associate of that employer or of any a controller; that can affect the impartiality of the trustee's independent judgement; and
  - (e) is an auditor or actuary of the scheme.

### **Trustees**

120. At the commencement of this Act, occupational pension schemes, provident fund schemes, personal pension schemes and other privately-managed pension schemes shall only be managed by trustees licensed approved by the Board.

### **Functions of a trustee**

121. A trustee licensed under this Act shall, in addition to other duties imposed by a trust deed, perform the following functions:

- (a) secure scheme registration;
- (b) appoint pension fund managers, custodians and other service providers and ensure their compliance with regulatory requirements or guidelines;
- (c) maintain investment policy statements and internal control procedures that may be prescribed by the Board;

- (d) ensure that the investment of funds of the scheme is diversified to minimise investment risk;
- (e) act as a provident trustee in financing relationship with its members;
- (f) discharge the duties of a trustee;
- (g) process transfer and payment requests as contained in the trust;
- (h) keep proper accounting records and a members' register;
- (i) prepare and lodge annual audited financial statements, scheme and investment reports and other relevant records that the Board may require; and
- (j) perform other functions as may be directed by the Board.

### **Application for a licence**

**122.** (1) A person shall not be appointed as a trustee unless that person is licensed in accordance with this Act.

(2) A person seeking to be appointed as a trustee shall apply to the Board.

(3) The application shall

- (a) be in a form prescribed by the Board,
- (b) contain information and documents prepared in a manner prescribed by the Board, and
- (c) be accompanied with the prescribed fee.

(4) A person who fails to obtain a licence and yet acts as a trustee commits an offence and is liable on summary conviction to a fine of two thousand penalty units or to a term of imprisonment not exceeding two years or to both.

### **Conditions for licence as a trustee**

**123.** (1) A person does not qualify to be appointed a trustee unless that person

- (a) satisfies the minimum capital and net asset value requirement or a sum that may be prescribed by the Board;
- (b) has the requisite qualified management staff in the appropriate profession; and
- (c) has obtained a licence from the Board to manage pension schemes.

(2) A company is not eligible to apply for a licence unless

- (a) it is a trust company with a registered company name including the word "trust" or "trustee";



- (b) its business is restricted to trust business; and
- (c) at least one of the Company's directors is an independent director.

(3) The Board shall prescribe the qualifications of independent directors for the purposes of subsection 2 (c).

(4) An individual person is not eligible to make an application under this section if that individual is

- (a) found by a court to be of unsound mind and incapable to manage the person's personal affairs; or
- (b) an undischarged bankrupt or has entered into a composition with creditors without paying the creditors in full.

### **Consideration of application**

124. (1) The Board shall consider an application for appointment as a trustee and take final decision within ninety days after the date of the submission of the application.

(2) The Board may, require an applicant by notice, to provide additional information and relevant documents that may be reasonably necessary to enable it determine the application.

(3) Where a requirement is not complied with within the time specified in the notice, the Board may reject the application.

### **Approval of application**

125. (1) The Board may approve an application for appointment as trustee if the Board is satisfied that the applicant

- (a) is capable of performing the functions that are required of an approved trustee; and
- (b) has entered into an undertaking with the Board that the applicant shall not, in relation to a registered scheme of which the applicant is the approved trustee, refuse an application for membership of the scheme made by or on behalf of a person who is
  - (i) not precluded by a provision of this Act from being a member of the scheme, and
  - (ii) required under this Act to be a member of a registered scheme; and
- (c) shall comply with the Regulations prescribed by the Board.

(2) Regulations referred to in subsection (1) (c) may include the following:

- (a) qualifications that an applicant must have;
- (b) financial resources that an applicant must have including capital adequacy;
- (c) in the case of an application by a company,
  - (i) the membership of the company,
  - (ii) the objects of the company as set out in its constitution, and
  - (iii) the suitability of the company's regulation and experience in administering pension fund schemes;
- (d) in the case of an application by an individual, the applicant must
  - (i) have professional knowledge and experience to administer a pension fund; and
  - (ii) execute a performance guarantee.

### **Power to impose conditions**

**126.** The Board may

- (a) impose appropriate conditions with respect to the conduct of the applicant's business; and
- (b) specify conditions in a certificate issued to the trustee when making the appointment of a trustee.

**Representation to the Board**

**127.** (1) The Board shall offer an applicant the opportunity to make representation orally or in writing before an application for appointment as trustee is rejected.

(2) Where the Board refuses an application, the Board shall give in a written notice reasons for the refusal to the applicant.

(3) An applicant dissatisfied with the decision of the Board may refer the matter for settlement through an appropriate dispute resolution mechanism.

**Waiver of conditions**

**128.** The Board may waive a condition where compliance with the condition in a particular case is not reasonably practicable.

**Application for registration of occupational pension scheme or provident fund scheme as employer sponsored scheme or master trust scheme**

**129.** (1) An application for the registration of an occupational pension or provident fund scheme as an employer sponsored scheme may be made to the Board only by

- (a) a company which has been approved as a trustee or has applied for approval as a trustee;

- (b) two or more individuals who are approved trustees, or have applied for approval and at least one is an independent trustee; or
- (c) a company and one or more individuals .

(2) An application for the registration of an occupational pension or provident fund scheme as a master trust scheme shall be made to the Board by an approved trustee that is a company or by a company that has applied for and been granted a licence under this Act.

(3) If an application is made by two or more approved trustees who are individuals, at least one of them must be an independent trustee.

(4) The Board may by regulations prescribe the qualifications of independent trustees for the purpose of this subsection.

### **Contents of application**

**130.** (1) An application under section 129 shall

- (a) specify particulars of the scheme to be registered,
- (b) contain other information prescribed in guidelines issued under this Act, and
- (c) be accompanied with
  - (i) a copy of the proposed rules that govern the scheme and other documents that may be prescribed in guidelines issued under this Act, and
  - (ii) an application fee of an amount to be determined.

(2) The Board may, require an applicant by notice to provide additional information and documents reasonably necessary to enable it evaluate the application.

(3) The Board may reject an application if an applicant does not provide information required by the Board within a specified time.

### **Consideration of application**

**131.** (1) The Board shall consider an application for registration of a scheme and take a final decision within ninety days after receipt of the application.

(2) The Board may register a scheme if it is satisfied that the scheme complies or will comply with the requirements and standards prescribed by the regulations in accordance with this Act.

(3) The Board shall require the applicant to enter into an undertaking with respect to the administration of the scheme as a condition for registering an occupational pension or provident fund scheme including in the case of an application to register a scheme

- (a) as an employer sponsored scheme, an undertaking to approve an application for membership of the scheme made by or on behalf of a relevant employee of the participating employer; and
- (b) as a master trust scheme, an undertaking to approve an application for membership of the scheme made by or on behalf of any
  - (i) relevant employee in the formal sector, or
  - (ii) self-employed person who is fifteen years of age or above and below retirement age and engaged in the informal sector.

(4) Without limiting subsection (3), the Board may impose other conditions for the administration of an occupational pension scheme or provident fund scheme.

### **Refusal of application**

**132.** (1) The Board shall not refuse an application without giving the applicant an opportunity to make representations either orally, in writing, or both.

(2) Where the Board refuses an application, the Board shall give reasons in a written notice to the applicant.

#### **Certificate of registration**

**133.** (1) On registration of an occupational pension or provident fund scheme, the Board shall issue a certificate of registration to the approved trustee of the scheme and, if there are any conditions with respect to the administration of the scheme, the Board shall specify the conditions in the certificate or in a document accompanying the certificate.

(2) The certificate shall specify whether the scheme is an employer sponsored scheme or a master trust scheme.

#### **Waiver of condition**

**134.** The Board may waive an applicant's compliance with a condition imposed

(a) in a particular case, and

(b) where the person satisfies the Board that compliance is not, or has not been reasonably practicable in the circumstances.

#### **Application for registration as personal pension scheme**

**135.** (1) An application for the registration of a scheme as a personal pension scheme shall be made to the Board by

(a) a company that is a licensed trustee or has applied for approval to the Board;

(b) two or more individuals who are licensed trustees, or have applied for licence and at least one is an independent trustee; or

(c) such a company and one or more individuals.

(2) Regulations made under this section may prescribe the qualifications of independent trustees.

#### **Contents of application**

**136.** (1) An application for registration of a scheme as a personal pension scheme shall

(a) specify particulars of the scheme to be registered and contain other information, if any, as prescribed in guidelines issued under this Act; and

(b) be accompanied with

(i) a copy of the proposed rules that are to govern the scheme and other documents, as prescribed in guidelines issued under this Act; and

(ii) an application fee of an amount prescribed by Regulations.

(2) The Board may, require an applicant by notice to provide additional information and documents reasonably necessary to enable it determine the application.

(3) If a requirement is not complied with within a reasonable time specified in the notice, the Board may reject the application.

#### **Consideration of application**

**137.** (1) The Board shall consider the application for registration of a personal pension scheme within thirty days and take a final decision within ninety days after receipt of the application.

(2) The Board may register a scheme as a personal pension scheme if the Board is satisfied that the scheme

- (a) complies with, or will if registered comply with, the requirements and standards that are prescribed by the regulations, and
- (b) will be governed by the laws of this country.

(3) The Board shall require the applicant

- (a) to enter into an undertaking with respect to the administration of the scheme,
- (b) not to refuse an application for membership of the scheme made by or on behalf of a
  - (i) relevant employee who is employed in the formal sector, or
  - (ii) self-employed person who is above fifteen years and below retirement age and engaged in the informal sector

as a condition for the registration of a personal pension scheme under this section.

(4) Without limiting subsection (3), on the registration of a personal pension scheme, the Board may impose conditions as regards the administration or marketing of the scheme as it considers appropriate.

### **Refusal of application**

**138.** (1) The Board shall not refuse an application for registration of a personal pension scheme without giving the applicant an opportunity to make oral or written representations.

(2) Where the Board refuses an application, the Board shall give reasons in a written notice for the refusal to the applicant.

### **Certificate of registration**

**139.** (1) On registering a scheme as a personal pension scheme, the Board shall

- (a) publish a notice of the registration in the *Gazette*, and
- (b) issue to the approved trustee of the scheme a certificate of registration and the conditions for the administration or marketing of the scheme in the certificate or in a document accompanying the certificate.

(2) The certificate shall specify that the scheme is a personal pension scheme.

### **Power to impose, amend or waive conditions**

**140.** (1) Where the Board decides that it is appropriate to impose or amend any conditions imposed as regards the administration or marketing of a personal pension scheme, the Board shall give to the licensed trustee

- (a) notice of not less than thirty days of its decision and the reasons; and

- (b)* an opportunity to make written representations to the Board,
- (2) The Board may waive an applicant's compliance with a condition imposed
  - (a)* in a particular case, and
  - (b)* where the person satisfies the Board that compliance is not, or has not been, reasonably practicable in all the circumstances of that case.
- (3) The Board shall not impose or amend any conditions with respect to the marketing of a registered scheme under this section unless the imposition or amendment, is within the ambit of the guidelines.

### **Requirement for member-nominated trustees**

**141.** (1) The trustees of an occupational pension scheme shall ensure that within a reasonable period of the commencement date, arrangements are in place to provide for at least one-third of the total number of trustees to be member-nominated trustees, and implement those arrangement.

(2) Member-nominated trustees are trustees of an occupational pension scheme who are

- (a)* nominated as the result of a process in which the active members of the scheme are eligible to participate, and
- (b)* selected by some or all of the members of the scheme.

(3) The commencement date, in relation to a scheme, is the date upon which this section first applies in relation to the scheme.

(4) The arrangements for the scheme may provide for a greater number of member-nominated trustees than that required to satisfy the one-third minimum specified in subsection (1) only if the employer has approved the greater number and shall provide

- (a)* for the nomination and selection process to take place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated trustee;
- (b)* that where there is a vacancy because insufficient nominations are received, the nomination and selection process shall be repeated at reasonable intervals until the vacancy is filled;
- (c)* that where the employer requires, a person who is not a member of the scheme must have the employer's approval to qualify for selection as a member-nominated trustee; and
- (d)* that subject to paragraph *(c)* where the number of nominations received is equal to or less than the number of appointments required, the nominees are considered to be selected.
- (e)* that the removal of a member-nominated trustee requires the agreement of all the other trustees.

(5) The provisions in the arrangements of the scheme shall not exclude member-nominated trustees from exercising functions exercisable by other trustees because they are member-nominated trustees.

(6) This section does not apply in relation to an occupational pension scheme if

- (a)* each member of the scheme is a trustee,
- (b)* every trustee of the scheme is a company, or
- (c)* the scheme is of a prescribed description.

(7) In the case of an occupational pension scheme where the arrangements required under subsection (1) are not in place, or being implemented, a trustee shall be liable on summary conviction to a fine of two thousand penalty units or to a term of imprisonment of not more than two years.

### **Requirement for member-nominated directors of corporate trustees**

**142.** (1) Where a company is a trustee of an occupational pension scheme and each trustee of the scheme is a company, the company shall ensure that within a reasonable period after the commencement date, arrangements are in place which provide for at least one-third of the total number of directors of the company to be member-nominated directors and implement those arrangements.

(2) Member-nominated directors are directors who are

- (a) nominated as the result of a process which the active members of the occupational pension scheme are eligible to participate in the activities of the company, and
- (b) selected by some or all of the members of that scheme.

(3) The commencement date, in relation to a company, is the date on which this section first applies in relation to the company.

(4) The arrangements may provide for a greater number of member-nominated directors than that required to satisfy the one-third minimum specified in subsection (1) only if the employer has approved the greater number.

(5) The arrangements shall provide

- (a) for the nomination and selection place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated director;
- (b) that where a vacancy is not filled because insufficient nominations are received, the nomination and selection process shall be repeated at reasonable intervals until the vacancy is filled;
- (c) that where the employer requires, a person who is not a member of the scheme shall obtain the employer's approval to qualify for selection as a member nominated director; and
- (d) that subject to paragraph (c), where the number of nominations received is equal to or less than the number of appointments required, the nominees shall be deemed to be selected.

(6) The arrangements shall provide that the removal of a member nominated director requires the agreement of all the other directors.

(7) The provisions in the arrangements shall not exclude member-nominated directors from exercising the functions exercisable by other directors only because they are member-nominated directors.

(8) Where the same company is a trustee of two or more occupational pension schemes, subject to subsection (9), the

- (a) schemes shall be treated as if they were a single scheme,
- (b) members of each of the schemes shall be considered as members of that single scheme, and

(c) references to the employer shall be references to all the employers in relation to the schemes.

(9) This section does not apply in relation to an occupational pension scheme if the scheme is of a prescribed description.

(10) In the case of a company which is a trustee of an occupational pension scheme, where the arrangements required by subsection (1) are not in place or being implemented, the trustee of the company is liable on summary conviction to a fine of not more than fifty penalty units for each day that the offence continues or to a fine determined by the Board.

### **Knowledge and understanding of individual trustees**

**143.** (1) A person who is an individual trustee of an occupational pension scheme shall be conversant with

- (a) the trust deed and scheme rules,
- (b) any statement of investment policy for the time being maintained under section 153 of this Act, and
- (c) any other document recording policy adopted by the trustees relating to the administration of the scheme generally.

in relation to each relevant scheme.

(2) An individual to whom this section applies shall be knowledgeable in the law relating to pensions and trusts, and principles related to

- (i) the funding of occupational pension schemes,
- (ii) investment of the assets of the schemes, and
- (iii) any other matters as may be prescribed.

(3) The degree of knowledge and understanding required under subsection (1) is what is appropriate for the purpose of enabling the individual to exercise the functions of a trustee of any relevant scheme.

### **Knowledge and understanding of corporate trustees**

**144.** (1) This section applies to a company that is a trustee of an occupational pension scheme.

(2) A company to which this section applies shall, ensure that each individual who performs a function of the company as trustee of the scheme is conversant with the following documents relevant to the performance of that function:

- (a) the trust deed and scheme rules;
- (b) any statement of investment policy for the time being maintained under section 153 of this Act; and
- (c) any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally.

in relation to each relevant scheme.

(4) A company to which this section applies shall ensure that an individual who performs a function of the company as trustee of a relevant scheme has the requisite knowledge in the

- (a) law relating to pensions and trusts,
- (b) principles relating to
  - (i) the funding of occupational pension schemes,
  - (ii) investment of the assets of these schemes, and



(iii) any other matters as may be prescribed.

(5) The degree of knowledge and understanding required under subsection (4) is what is appropriate to enable the individual to perform the function.

(6) References in this section to the performance by an individual of a function of a company relates to acts done by the individual on behalf of the company which constitutes the performance of the function by the company.

#### **Fees of trustees**

145. A trustee shall be paid a fee subject to the limits determined by the Board.

#### *Pension fund managers*

#### **Pension fund managers, registration requirements**

146. (1) At the commencement of this Act, pension funds shall be managed by pension fund managers registered by the Board.

(2) A person shall not practise as a pension fund manager unless that person has been registered by the Board.

#### **Functions of pension fund managers**

147. A pension fund manager registered under this Act shall perform the following functions:

- (a) invest pension funds and assets in accordance with the provisions of this Act;
- (b) invest the funds in different investments to minimise investment risks whilst achieving the best return within specific investment activities set by trustees;
- (c) maintain books of account on transactions related to pension funds invested;
- (d) submit its activities to inspections in the discharge of duties of trustees;
- (e) submit records and reports that the Board may require; and
- (f) perform other functions that the Board may prescribe that are incidental to the performance of its functions.

#### **Requirements for registration as a pension fund manager**

148. A person does not qualify to be registered as a pension funds manager for the purpose of this Act unless that person

- (a) is independent from the trustee and custodian,
- (b) is a body corporate,
- (c) is licensed by the Security and Exchange Commission as an investment adviser under the Securities Industry Act 1993 (P.N.D.C.L. 333),
- (d) satisfies the minimum capital requirement and net asset value or any sum that may be determined by the Board, and
- (e) has qualified management staff.

#### **Application for registration**

149. (1) A person who desires to operate as a pension fund manager of a scheme shall apply in writing to the Board.

(2) The application shall be in a form prescribed by the Board and be accompanied with the prescribed fee.

#### **Grant of application**

**150.** (1) The Board shall register an applicant to operate as a pension funds manager within sixty days after receipt of an application to operate as a pension fund manager upon satisfying itself that the applicant has fulfilled the conditions including the payment of fees.

(2) The Board may write to the applicant within thirty days after the receipt of the application if not satisfied with the application and may request the applicant to rectify any errors in the application or to satisfy any pre-condition for the registration within twenty-one days.

(3) The Board may register the applicant subject to conditions or restrictions as it considers appropriate and the Board may vary any condition or restriction in relation to the registration by notice to the pension funds manager.

(4) The Board shall register the applicant to operate as a pensions fund manager where the applicant rectifies the error or satisfies the pre-conditions within the specified time.

### **Refusal to register**

**151.** Where an application for registration is refused, the Board shall state the reasons for the refusal in the notice to the applicant.

### **Dispute settlement**

**152.** An applicant who is dissatisfied with the Board's refusal to register it to operate as a pension fund manager may refer the matter for resolution through an appropriate dispute resolution mechanism.

### **Investment policy**

**153.** (1) A trustee shall have a statement of investment policy which shall be reviewed at intervals and on occasions as may be determined by the Board.

(2) A statement of investment policy, in relation to a trust scheme is a written statement of the investment principles governing decisions about investments for the purpose of the scheme.

(3) The trustee shall comply with prescribed requirements, before preparing or revising a statement of investment policy.

(4) A statement of investment policy shall be in the prescribed form and include the

- (a) investment objectives,
- (b) policy as to the kind of securities and other assets that may be acquired,
- (c) policy as to the balance between different kinds of securities and other assets,
- (d) risk in implementing the investment policy, and
- (e) return expected in implementing the investment policy.

(5) Where in the case of a trust scheme, a statement of investment policy has not been prepared, maintained, reviewed or revised or the trustee has not complied with the obligation imposed on them under subsection (3), the trustee is liable to a penalty determined by the Board.

### **Fees of pension fund manager**

**154.** A pension fund manager shall be paid the fee agreed with the trustee subject to the limits determined by the Board through notices.

## *Pension fund custodians*

### **Pension fund custodians**

**155.** At the commencement of this Act, pension fund assets shall only be held by pension fund custodians referred to as custodians registered by the Board.

### **Functions of custodians**

**156.** A pension fund custodian shall

- (a) receive contributions remitted by the employer under this Act on behalf of the trustees;
- (b) notify the trustee within forty-eight hours of the contributions from an employer;
- (c) hold pension fund and assets in trust for members;
- (d) settle transactions and undertake activities related to the administration of pension fund investments including the collection of dividends and related activities;
- (e) report to the Board on matters related to the assets being held on behalf of a trustee at periodic intervals that the Board may determine;
- (f) undertake statistical analysis on the investments and returns on investments with respect to pension funds in their custody and provide data and information to the trustee and the Board;
- (g) execute in favour of the trustee, relevant proxy for the purpose of voting in relation to the investments; and
- (h) perform other functions as may be directed by the Board.

### **Requirement for registration as custodian**

**157.** A person does not qualify as a custodian for the purposes of this Act unless that person

- (a) is a body corporate;
- (b) is a bank, an insurance company or a non-bank financial institution;
- (c) is a wholly owned subsidiary of a bank, an insurance company or a non-bank financial institution;
- (d) is licensed by the Securities and Exchange Commission as a custodian under the Securities Industry Act, 1993 (P.N.D.C.L. 333);
- (e) satisfies minimum capital requirement and net asset value or a sum determined by the Board;
- (f) is independent of the trustee and pension fund manager and all delegates of the trustee and pension fund manager; and
- (g) has qualified management staff.

### **Conditions for registration**

**158.** An application for registration to act as a custodian shall not be approved by the Board unless the custodian company

- (a) issues a guarantee to the full sum and value of pension funds and assets held by it or to be held by it;
- (b) is a subsidiary of a qualified parent company who shall issue the guarantee;
- (c) undertakes to hold the pension fund assets to the exclusive order of the trustee on trust for the members as instructed by the trustee;

(d) has never been a custodian of a fund which was mismanaged or has been in distress due to a default, either fully or partially, of the applicant.

### **Application for registration**

**159.** (1) A person who desires to act as a custodian of pension fund shall apply to the Board for registration in a form determined by the Board.

(2) The applicant shall pay the prescribed fee.

(3) The Board shall register the applicant within sixty days after the receipt of an application upon satisfying itself that the applicant has fulfilled the preconditions including the payment of fee required.

(4) Where the Board is not satisfied with the application, the Board may, request the applicant to rectify errors in the application in writing within thirty days after the receipt of the application or satisfy a pre-condition for the registration within twenty-one days.

(5) The Board shall register or refuse the registration upon the rectification of the error or satisfaction of the pre-conditions within the specified time.

(6) The Board may register an applicant subject to conditions or restrictions as it considers appropriate.

(7) The Board may vary a condition or restriction in relation to the registration at any time by written notice to the custodian.

(8) Where an application for a registration is refused, the Board shall state the reasons for the refusal in a notice to the applicant.

### **Dispute settlement**

**160.** An applicant who is dissatisfied with the Board's refusal to register it, may refer the matter for settlement through an appropriate dispute resolution mechanism.

### **Fees of custodian**

**161.** A custodian shall be paid a fee as agreed with the trustee and subject to the limits determined by the Board.

### **Permitted expenditure from scheme funds**

**162.** A trustee shall not charge any expenditure or make any deductions from the scheme fund other than those prescribed by the Board or authorised under this Act.

### **Maximum administrative charges**

**163.** The total fees, charges and expenses on the scheme fund shall not exceed a maximum limit prescribed by the Board.

### **Revocation of licence or cancellation of registration**

**164.** (1) The Board may revoke the licence or cancel the registration of a trustee, a pension fund manager or custodian, if

- (a) the Board discovers that a statement was made in connection with the application which the applicant knew to be false or untrue,
- (b) the trustee, pension fund manager or custodian is subject to insolvency proceedings or is likely to be wound up or dissolved;
- (c) the conduct of affairs of the trustee, pension fund manager or custodian does not conform with the provisions of this Act or Regulations made under this Act;
- (d) an event occurs which renders the trustee, pension fund manager or custodian ineligible to manage the pension funds or take custody of the pension fund, or

(e) the trustee, pension fund manager or custodian is in breach of a condition attached to the licence or registration.

(2) The Board shall give the trustee, pension fund manager or custodian at least twenty-eight days notice of its intention to revoke the licence or cancel the registration and shall consider representations made to it in writing by the trustee, pension fund manager or custodian within that period before revoking the licence or cancelling the registration.

(3) The notice under subsection (2) shall be in a prescribed form and specify the reasons for the revocation of the licence or cancellation of the registration.

(4) The revocation of the licence of a trustee, or cancellation of the registration of a pension fund manager or custodian does not limit the entitlements of beneficiaries under the scheme.

(5) The Board shall, suspend the power of the respective board of the trustee, pension fund manager or custodian over

(a) the pension fund and assets held or administered by the company; and

(b) appoint administrators with relevant qualifications to superintend the transfer of the assets and funds held or administered by the company and exercise the powers of the board of trustees where necessary in accordance with this Act,

in the revocation order.

(6) The Board shall notify the public within seven days, through the publication in the *Gazette*, the electronic and print media in circulation of the list of trustees, pension fund managers and custodians whose licences or registration have been revoked or cancelled.

#### **Publication of list of trustees, pension fund managers and custodians**

**165.** (1) The Board shall, publish a list of trustees, pension fund managers and custodians licensed or registered by it at the end of each calendar year.

(2) The publication shall be in a manner that the Board considers appropriate.

#### **Proper books of accounts and audit**

**166.** (1) A trustee, pension fund manager or custodian licensed or registered under this Act shall cause proper books of accounts and records to be kept in relation to the scheme in a form that the Board may determine.

(2) A trustee, pension fund manager or custodian shall, not later than four months after the end of the year cause its accounts to be audited by qualified external auditors and prepare an audit report, which shall include a statement on the extent of compliance with the

(a) provisions of this Act and Regulations made under it,

(b) trustee's duties under the trust deed and under this Act, and

(c) the scheme's investment objective and other requirements under this Act.

(3) Without limiting the scope of subsection (2), the Board may order technical audits of the facilities, equipment, resources and accounts of a trustee, pension fund manager or custodian to be conducted as the Board considers appropriate.

#### **Annual reports**

**167.** (1) A trustee, pension fund manager or custodian shall submit an annual report to the Board within four months after the end of each financial year to give details of its activities in relation to the scheme in the preceding year.

(2) A report under subsection (1) shall include the audit reports referred to in section 166 (2) and any other reports that the Board may prescribe.

#### **Reporting obligations of auditors, trustees, pension fund managers and custodians**

**168.** (1) An external auditor appointed by a trustee, pension fund manager or custodian shall, in the discharge of duties report to the Board any

- (a) extreme situation such as evidence of imminent financial collapse of the trustee, pension fund manager or custodian;
- (b) evidence of an event or occurrence which has led or is likely to lead to material diminishing of the net assets of the trustee, pension fund manager or custodian;
- (c) evidence of a significant weakness in the accounting and other records or the internal control systems of the trustee, pension fund manager or the custodian;
- (d) report or statement on financial matters made by the management of the trustee, pension fund manager or custodian which is misleading;
- (e) fraud or other misappropriation which the auditor believes has been committed by the directors or the management of the trustee or pension fund manager or custodian or has evidence of an attempt by the directors or senior management to commit fraud or misappropriation; or
- (f) event or occurrence which affects or is likely to affect the auditor's confidence in the competence of the directors or the senior management to conduct the business of a trustee, pension fund manager or custodian in a prudent manner.

(2) An auditor who acts in good faith in response to a request made by the Board, by giving information or opinion on a matter or situation to the Board is not liable for breach of duty.

(3) An auditor of a trustee, pension fund manager or custodian who contravenes or negligently fails to comply with the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of two hundred and fifty penalty units or to a term of imprisonment of not more than six months or to both.

(4) A trustee, pension fund manager or custodian shall

- (a) ensure that the pension fund managed is held in accordance with the provisions of this Act or regulations made under the direction of the Board;
- (b) take reasonable care to ensure that the management or safe keeping of the pension fund is carried out in the best interests of the members;



- (c) report to the Board, acts as regards the pension funds which are likely to adversely affect the rights of the members under the scheme; and
- (d) report to the Board the failure of an employer to remit contributions due or unpaid for more than fourteen days.

#### **Specific obligation of the custodian**

**169.** (1) A custodian shall maintain pension fund and assets in custody subject to the directions of the trustee.

(2) A custodian shall not utilise pension fund or assets in its custody to meet its own financial obligation.

#### **Report on frauds, forgeries, theft or other acts of dishonesty**

**170.** A trustee, pension fund manager or custodian shall submit to the Board reports of any fraud, forgery, theft or other acts of dishonesty that occurs in its establishment.

#### **Notification of dismissed staff**

**171.** (1) A trustee, pension fund manager or custodian shall notify the Board of a staff who is dismissed or whose appointment is terminated on grounds of fraud, forgery, theft or other acts of dishonesty.

(2) The Board shall maintain a list of persons who have been dismissed, whose appointment have been terminated or advised to retire on grounds of fraud and shall circulate the list to trustees, pension fund managers and custodians.

#### **Prohibited employment**

**172.** A trustee, pension fund manager or custodian shall not employ a person whose name is on the list maintained by the Board under section 171 unless with the prior approval of the Board.

#### **Penalty for non-compliance**

**173.** (1) A trustee, pension fund manager or custodian who fails to comply with sections 170, 171 or 172 of this Act shall pay a penalty of an amount of not less than two hundred and fifty penalty units to the Board for each violation.

(2) In addition to the penalty the Board may revoke the licence of the trustee, pension fund manager or custodian in the case of persistent contravention.

#### **Prohibited transactions**

**174.** (1) A trustee or pension fund manager shall not

- (a) hold pension fund assets, or
- (b) keep pension fund assets with a custodian where the trustee or pension fund manager has a business interest, shares or any other interest in that custodian.

(2) An employee of the trustee or pension fund manager shall not engage in a business transaction or trade in any manner with the trustee or pension fund manager as a counterpart or with a subsidiary in relation to pension fund or assets.

#### *Investment of Pension Fund*

#### **Investment of pension fund**

**175.** A trustee or pension fund manager shall invest pension contributions received under this Act in order to obtain safe and fair returns on the amount invested.

### **Permitted investments**

176. Subject to guidelines that the Board may issue, pension fund and assets shall be invested in any of the following:

- (a) bonds, bills and other securities issued or guaranteed by the Bank of Ghana or the Government of Ghana;
- (b) bonds, debenture, redeemable preference shares and other debt instruments issued by corporate entities and listed on a stock exchange registered under the Securities Industry Act, 1993, (P.N.D.C.L. 333)
- (c) ordinary shares of limited companies listed on a Stock Exchange and registered under the Securities Investment Act 1993 (P.N.D.C.L. 333) with good records, declared and paid dividends in the preceding five years;
- (d) bank deposits and bank securities;
- (e) investment certificates of closed-end investment fund or hybrid investment funds listed on a Stock Exchange registered under the Investments and Securities Industry Act, 1993 (P.N.D.C.L. 333) with a good record of earning;
- (f) units sold by open-end investment funds or specialist open-end investment funds listed on the stock exchange recognised by the Board;
- (g) bonds and other debt securities issued by listed companies;
- (h) real estate investment; and
- (i) other forms of investment, that the Board may determine.

### **External investments**

177. (1) A trustee or pension fund manager may invest pension fund assets in units of investment funds except that investment fund may only be invested in the categories of investments specified in section 176 of this Act.

(2) The Board may recommend to the President through the Minister responsible for Finance for approval, the investment of pension fund assets outside the country except that any amount to be invested outside, shall not exceed a percentage of total funds available for investment as determined by the Board.

(3) External investments shall be subject to the Bank of Ghana foreign exchange rules.

### **Restriction on investments**

178. (1) A trustee or pension fund manager shall not invest pension fund assets in the shares or any other securities issued by

- (a) the trustee or pension fund manager or custodian, or
  - (b) a shareholder of the trustee or pension fund manager or custodian.
- (2) A privately-managed pension fund shall not
- (a) hold more than ten percent of any class of security issued by a single issuer;
  - (b) have more than ten percent of its total assets in the securities issued by a single issuer other than that permitted for government and other public securities;
  - (c) make short sales; or
  - (d) borrow for investment purposes.

### **Restriction on sale, purchase or disposal of pension fund assets**

179. A trustee or a pension fund manager shall not

- (a) sell pension fund assets to
  - (i) itself or any shareholder, director or affiliate of the trustee or pension fund manager,
  - (ii) an employee of the trustee or pension fund manager;
  - (iii) the spouse of the persons referred to in paragraphs (i) and (ii); or
  - (iv) affiliates of any shareholder pension fund assets to the order of the trustee or pension fund manager;
- (b) purchase any pension fund assets; or
- (c) apply pension fund assets under its management through loans and credits or as collateral for loan taken by a person.

#### **Additional restrictions on investment**

**180.** The Board may, impose additional restrictions by regulation on investments by trustees and pension fund managers in order to protect the interest of beneficiaries of a scheme.

#### **Penalty for non-compliance**

**181.** (1) A trustee or pension fund manager who fails to comply with a provision of this Part unless otherwise provided in this Act is liable to such penalty as may be prescribed.

(2) In addition to the penalty specified under subsection (1) the trustee or the pension fund manager shall forfeit the profit from the investment to the beneficiaries of the scheme and if there is a loss as a result of the investment the trustee and the pension fund manager shall be surcharged with the loss.

### **PART FOUR—GENERAL PROVISIONS**

#### *Supervision and examination*

#### **Supervision and examination**

**182.** (1) The Board shall conduct an inspection, examination or investigation of trustees, pension fund managers or custodians at least once in a year to determine whether or not the provisions of this Act or Regulations made under it, are being complied with.

(2) Without limiting the scope of subsection (1), the Board may authorise one or more of its officers or agents to inspect, examine or investigate activities of

- (a) the basic national social security scheme,
- (b) a trustee, pension fund manager, custodian, an employer or a corporate body.

#### **Appointment of examiners**

**183.** The Board may appoint its officers, agents or other qualified persons as examiners to discharge duties under this Act.

#### **Power of examiners**

**184.** (1) An examiner shall in the performance of functions under this Act

- (a) inspect, examine or investigate the books, activities and affairs of a person or body dealing with pension fund;
- (b) have access at any time during working hours to the books, accounts, documents and vouchers of a trustee, pension fund manager, custodian or any other person or corporate body that deals with pension fund;

(c) request from a director, manager, an officer of a trustee, a pension fund manager, custodian or firm, any information or explanation that the Board considers necessary to enable it determine whether or not the provisions of this Act or Regulations made under it are being complied with.

(2) In exercising its powers under subsection (1), the examiners shall exercise reasonable care to avoid undue hindrance in the day-to-day activities of a trustee, pension fund manager, custodian or any other person or corporate body.

### **Reports of the Board**

**185.** (1) The Board shall forward a copy of its report to the trustee, pension fund manager or custodian or any other person or body corporate, on completion of an examination or investigation, and instruct that the report be placed before the governing board of the trustee, pension fund manager, custodian or any other person or corporate body.

(2) The governing body of the trustee, pension fund manager, custodian or any other body corporate shall, within thirty days after receipt of the report convene an extraordinary meeting to consider the report and submit its reactions and proposals for implementing any recommendations to the Board.

(3) A trustee, pension fund manager, custodian or a person or corporate body who fails to comply with the provisions of subsection (2) commits an offence and is liable on summary conviction to a fine of not more than fifty penalty units for each day that the offence continues.

(4) Where the offence continues for more than thirty days, the Board may, suspend the licence or certificate of registration of the trustee, pension fund manager or custodian in addition to the fine.

### **Power of the Board to order a special examination**

**186.** The Board may order a special examination or investigation of the books and affairs of a trustee, pension fund manager or custodian where it suspects or is satisfied that

(a) it is in the public interest to do so;

(b) the trustee, pension fund manager or custodian

(i) has been conducting its business in a manner detrimental to the interest of beneficiaries of the scheme;

(ii) does not have sufficient assets to cover its liabilities; or

(iii) has contravened a provision of this Act,

(c) an application has been made to the Board by

(i) a director, manager or shareholder of the trustee or the pension fund manager or custodian to examine its company;

(ii) a beneficiary of an occupational pension scheme or provident fund or personal pension scheme;

(iii) a trustee or a pension fund manager to examine the custodian of the pension fund assets that the trustee or pension fund manager is managing; or

(iv) a custodian to examine the trustee for whom it is holding pension fund assets.

### **Power of the Board to gather information**

**187.** (1) The Board shall in the performance of its functions under this Act or any other enactment, request by notice that

- (a) an employer,
- (b) trustee, pension fund manager or custodian; or
- (c) any other service provider or institution connected with pension matters;

submit specified documentation information in relation to its activities after giving reasonable notice to that person.

(2) The Board shall specify the place and period within which the information or documents are to be submitted.

### **Search warrant**

**188.** (1) A magistrate may issue a search warrant where the magistrate is satisfied on reasonable grounds and on information on oath or affirmation given on behalf of the Board that there are grounds to believe that

- (a) a person has failed to comply with a request of the Board within the time period specified in the notice and that required document and information has not been given to the Board;
- (b) there are documents or information required in respect of which a notice has been issued by the Board but that person may not comply with the notice, or may remove, tamper or destroy the documents or information requested for by the Board; or
- (c) an offence has been, or is being, committed by a person, and that there are documents or information, which may be removed, tampered with or destroyed in relation to the offence.

(2) A warrant issued under subsection (1) shall authorise a named representative of the Board, in addition to a police officer and any other person named in the warrant to

- (a) enter the premises specified in the warrant at a reasonable time within seven days from the date of the warrant,
- (b) search the premises and take possession of any document or information that appears to be document or information of a type in respect of which the warrant was issued or take steps necessary for preserving or preventing interference with the document or information;
- (c) take copies of, or extracts from a document or information that appear to be of a type in respect of which the warrant was issued,
- (d) require a person on the premises to provide an explanation in relation to a document or information that appears to be of a type in respect of which the warrant is issued or state where the document or information may be found; and
- (e) use reasonable force that may be necessary to retain possession of a document unless the Court orders otherwise.

(3) Except as provided by a Court, where the Board takes possession of a document, it shall retain it for a period of three months but where proceedings for a criminal offence is commenced against a person, the document shall be retained until the conclusion of the proceedings.

#### *Disclosure of information*

#### **Privileged document and information**

**189.** (1) A person is not required to disclose information or produce a document if the information or document is a privileged matter in accordance with the rules of privilege in legal proceedings.

(2) For the purpose of this section, information is privileged if it is communicated to a lawyer by

- (a) a client or a representative of the client for the purpose of receiving legal advice,
- (b) a person or a representative of that person to seek legal advice from a Lawyer, or
- (c) a person in contemplation of or in connection with legal proceedings;

(3) Information is not privileged if it is communicated or given with a view to furthering a criminal purpose.

(4) Despite subsection (1), a lawyer may be required under this Act to provide the name and address of a client where necessary.

#### **Supply of information and documents to foreign regulatory authorities**

**190.** (1) A foreign regulatory authority may request the Board in writing to provide it with assistance in connection with the exercise of its regulatory functions.

(2) The Board may disclose information or provide documentation in its possession to the foreign regulatory authority in accordance with this section.

(3) The Board shall not issue a notice to disclose information or provide documentation to a foreign regulatory authority unless it is satisfied that the information or

documentation to which the request relates is reasonably required by the foreign regulatory authority for the purposes of its regulatory functions.

- (4) The Board may for the purposes of this section take into account, in particular
- (a) whether reciprocal treatment would be given to the Board in the country or territory of the foreign regulatory authority;
  - (b) whether the request relates to the breach of a law or other requirement which does not have a corollary in this country or involves the assertion of a jurisdiction not recognised by the country;
  - (c) the seriousness of the case and its importance to persons in this country; and
  - (d) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(5) For the purpose of subsection (4) (a), the Board may request the foreign regulatory authority, making the request to give a written undertaking, to give reciprocal treatment to the Board.

(6) Where a foreign regulatory authority fails to comply with a requirement of the Board the Board may refuse to provide the assistance sought by the foreign regulatory authority.

(7) The Board may refuse a request from a foreign regulatory authority if

(a) it is satisfied that information given to the foreign regulatory authority will be used in criminal proceedings against the

- (b) request the Board to give a copy or certified copy of the report, or extract from a document that the person is entitled to inspect on payment of the prescribed fee.

(2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in the manner that the Board considers appropriate.

(3) A copy or reproduction of or extracts from a document or record kept and certified by the Board is admissible in evidence in legal proceedings to the same extent as the original document.

### **Electronic filing of documents**

**194.** (1) The Board may by Regulations provide for a system to enable documents required or permitted to be filed with the Board under this Act to be filed in electronic form.

- (2) A system for the filing of documents in electronic form shall provide for the
- (a) criteria for authorising persons to file documents in electronic form, and
  - (b) security and authentication of the documents filed.

### *Offences, penalties and enforcement*

### **Misappropriation of pension funds**

**195.** (1) A trustee, pension fund manager, custodian or director who misappropriates pension funds commits an offence and is liable on summary conviction to a fine of an amount equal to three times the amount misappropriated or to imprisonment for a term of not less than ten years or to both the fine and imprisonment.

(2) A director or officer of a trustee, pension fund manager or custodian is personally liable for any offence committed under this Act.

**Offences relating to fraud**

**196.** A trustee, pension fund manager or a custodian who fails to comply with section 170 commits an offence and is liable on summary conviction to a fine of two thousand penalty units or a term of imprisonment of not more than two years or to both.



### **Power of the Board to apply additional sanctions**

**197.** (1) Despite any other law and without limiting the penalties stipulated under this Act, the Board shall, remove from office a director or officer of a trustee, pension fund manager or custodian who contravenes sections 170 of this Act in addition to the penalties stipulated under this Act.

(2) The Board may exercise the power conferred on it under subsection (1) in cases of misconduct or dishonesty.

### **Offence by body corporate**

**198.** Where an offence under this Act is committed by a body corporate, the body corporate and each director or officer is deemed to have committed that offence and shall be prosecuted but a person shall not be deemed to be guilty of the offence if the person proves that the offence was committed without that person's knowledge or that that person exercised due diligence to prevent the commission of the offence.

### **Penalty for refusing to give information**

**199.** An employer, trustee, pension fund manager, custodian or a person or body corporate who

(a) refuses to produce any book, accounts, document or voucher,

(b) refuses to give information or explanation, or

(c) with intent to defraud produces a book, accounts, documents or voucher or gives information or explanation which is false or misleading

commits an offence and is liable on summary conviction to a fine of not more than two hundred and fifty penalty units or a term of imprisonment not exceeding six months or to both.

### **General penalty**

**200.** A person who contravenes a provision of this Act for which a penalty is not provided is liable on summary conviction to a fine of not more than one thousand penalty units or to a term of imprisonment of not less than one year or to both.

### **Order to comply**

**201.** Where a person is convicted of an offence under this Act or the Regulations, the Court may order that person to comply with the provision of this Act or the Regulations for which that person has been convicted in addition to any punishment it may impose.

### *Dispute resolution*

### **Resolution of disputes**

**202.** (1) An employee or beneficiary of a scheme who is dissatisfied with a decision of the trustee, pension fund manager or custodian may request the Board in writing to review the decision in accordance with this Act or any Regulations made under this Act.

(2) A copy of each request shall be served on the relevant trustee, pension fund manager or custodian.

(3) The Board in exercising powers under this section shall,

(a) conduct proceedings in a manner that avoids delays in the resolution of disputes, and

- (b) dispose of any matter before it within three months from the date of receipt of the request.

### **Aggrieved persons - dispute settlement**

**203.** A person aggrieved by an action or a decision of the Board may refer the matter for settlement through an appropriate dispute resolution mechanism.

### **Effect of settlement**

**204.** A settlement agreed to by the parties under this Act is binding on them and is enforceable by the courts.

### **Pensions Adjudication Committee**

**205.** (1) There is established by this Act a Pensions Adjudication Committee referred to as the Adjudication Committee.

(2) The Pensions Adjudication Committee consists of seven members, three of whom shall constitute a panel for the determination of a petition or a complaint.

(3) The object of the Adjudication Committee is to hear and determine a petition or complaint made by a member of a scheme regulated by the Board or referred to it by the Board or, by a Scheme.

(4) A petition or complaint includes

- (a) denial or refusal of a benefit,
- (b) quality or quantity of benefit,
- (c) wrong computation of benefit,
- (d) unreasonable delay in the processing and payment of benefits, and
- (e) any other related matters.

(5) The Adjudication Committee shall determine complaints before it in accordance with rules that may be made by the Board with the approval of the Minister.

### **General indemnity**

**206.** The Board, a member of the Board, employee or agent of the Board is not liable for acts done or omitted in the discharge of a duty, the exercise of a power or the performance of a function under this Act or any other enactment that assigns functions to the Board if the act or omission was done in good faith.

### *Miscellaneous provisions*

### **Regulations**

**207.** (1) The Minister, on the recommendations of the Board may, by legislative instrument, make regulations for the effective implementation of this Act.

(2) Without limiting the scope of subsection (1) the Minister shall make regulations to

- (a) provide for approved trustees and applicants for approval to give undertaking to the Board and to enter into arrangements to provide insurance against the risk of loss through malfeasance or other illegal conduct;
- (b) require approved trustees of registered schemes to provide information to scheme members and prescribe the kind of information that is to be provided to them;

- (c) provide for the payment of accrued benefits to or in respect of scheme members and the transfer of accrued benefits from one registered scheme to another or from one account in a registered scheme to another;
- (d) provide for the preservation of the accrued benefits of scheme members until the occurrence of a specified event including, but not limited to, the retirement, death or total incapacity of scheme members;
- (e) provide for the formulation of proper accounting systems including the keeping of proper accounting records as regards registered schemes;
- (f) prescribe requirements for trustees with respect to the keeping of scheme member's accounts;
- (g) permit trustees to deduct fees for administrative expenses from scheme members' accounts;
- (h) provide for the auditing of the accounting records and financial statements of approved trustees and registered schemes;
- (i) prescribe the duties of auditors including the duty to report on specified matters to the Board in specified circumstances;
- (j) provide for the engagement or appointment of service providers by the approved trustee of a registered scheme to provide services for the purpose of the scheme and for the delegation of the trustee's functions in relation to the scheme to the service provider;
- (k) prescribe the duties of service providers and other persons engaged or appointed by the approved trustee of a registered scheme to provide services for the purpose of the scheme including the duty to report on specified matters to the Board;
- (l) provide for requirements to be complied with in respect of funds of registered schemes, including
  - (i) the separation of the funds and other assets of a registered scheme from other funds and assets that are beneficially owned by employers who are participating in the scheme;
  - (ii) the application of funds and other assets of a registered scheme only for the purpose of the scheme; and
  - (iii) rules that the funds and other assets of a registered scheme shall not subject to any charge, pledge, lien, mortgage or other encumbrance, except in circumstances specified in the rules of the scheme or by the Board,
- (m) require approved trustees to delegate investment management of scheme funds to independent pension fund managers registered with the Board;
- (n) provide for arrangements for approved trustees of registered schemes in respect of scheme assets to be held by custodians and the qualifications of custodians;
- (o) provide for approved trustees of registered schemes to maintain specific internal control procedures for the schemes;

- (p) require persons to lodge returns with the Board containing specified kinds of information, relevant to the performance of the functions of the Board;
- (q) provide for
  - (i) the service or notification of documents;
  - (ii) the voluntary winding up of employer sponsored schemes, and
  - (iii) other matters that are incidental to the achievement of the objects of this Act.

(3) A regulation made under this Act may

- (a) apply generally or be limited in application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
- (c) authorise any matter or thing to be determined, applied or regulated by a specified person;
- (d) prescribe fees including fees for the granting of approvals for the purposes of this Act;
- (e) authorise the Board to charge for a service provided by the Board on a cost recovery basis;
- (f) apply, adopt or incorporate by reference, with or without modifications, any publication, either in force at the time of publication or as in force from time to time;
- (g) prescribe offences in respect of contraventions of the regulations;
- (h) provide for the imposition of a fine,

(4) Despite the Statutory Instruments Act, 1959 (No. 52) the penalty for the contravention of Regulations shall be a fine of not more than two thousand, five hundred penalty units.

### **Operating guidelines and codes of practice**

**208.** (1) The Board may issue guidelines for the purpose of giving guidance to

- (a) approved trustees,
- (b) pension fund managers,
- (c) custodians,
- (d) other service providers,
- (e) the basic national social security scheme,
- (f) the Controller and Accountant General Department, and
- (g) participating employers and their workers, self-employed persons, and other persons concerned with this Act.

(2) A guideline may

- (a) consist of a code, standard, rule, specification or provision related to occupational pensions, provident fund or personal pension schemes or a class of these schemes;
- (b) apply, incorporate or refer to a published or amended document in force, and
- (c) require persons including persons belonging to a class to give specified information or documents to the Board.

(3) The Board shall publish the guidelines in the *Gazette* or in another print media determined by the Board.

(4) Where the Board amends or revokes a guideline, it shall publish it in the *Gazette* or in another print media determined by the Board.

(5) A person shall not incur a civil or criminal liability for the contravention of a guideline issued under this section.

(6) Despite subsection (5) the Board may impose the following sanctions for deliberate refusal to apply the guidelines:

- (a) imposition of a fine;
- (b) suspension or revocation of a licence;
- (c) suspension or cancellation of registration; or
- (d) other sanctions determined by the Board.

(7) In any legal proceedings, where the court is satisfied that a guideline is relevant to the determination of a matter

- (a) the guideline shall be admissible in evidence, and
- (b) proof as to whether or not a person contravened a guideline may be relied on by any party to the proceedings to establish or negate the matter.

#### **Exemption of pension funds from attachment and liquidation process**

**209.** (1) Despite the provisions of any other enactment, pension funds or assets kept with a custodian under this Act shall not be used for the payment of claims of a custodian's creditors in the event of liquidation of the custodian.

(2) In the case of winding up, liquidation or cessation of business of the custodian or any or all of its shareholders, the pension funds or assets in the custody of the custodian shall not be seized or be subject to execution of a judgment debt or from transfer to another custodian.

“defined benefit scheme” means a pension scheme providing a defined benefit

**Act 592 amended**

**210.** Section 60 subsection (3), (4) and (5) of the Internal Revenue Act, 2000, Act 592 is hereby amended to reflect the new contribution rates imposed under section 3 of this Act.

**Interpretations**

**211.** In this Act, unless the context otherwise requires

“accounting records” includes books, vouchers, invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and such working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up and other documents as may be prescribed;

“accrued benefits” in relation to a registered scheme, means the amount of each scheme member’s beneficial interest in the registered scheme at any time, including sums derived from the contributions made by or in respect of that scheme member, together with the income or profits arising from any investments thereof, but taking into account any losses in respect thereof;

“active member” means a member of a pension scheme who is currently accruing benefits under that scheme in respect of current service;

“actuary” means a person professionally trained in the technical and mathematical aspects of insurance, pensions and related fields and who estimates how much money must be contributed to a pension fund each year in order to provide the benefits that will become payable in the future;

“annual report” means the method by which the trustees of a pension scheme communicate financial and other information about the scheme to members, employers and other interested parties. It is used in particular to describe the specific information which is required to be made available by trustees in relation to each scheme year under the Disclosure Regulations and must include a copy of the audited accounts and of the latest actuarial statement and other information specified including a financial review by the trustees and an investment report. It may contain additional information not required by the regulations;

“annuity” means a series of payments, which may be subject to increases, made at stated intervals until a particular event occurs. This event is most commonly the end of a specified period or the death of the person receiving the annuity;

“approved trustees” means a company or an individual approved by the Board as a trustee in accordance with this Act and, when used in relation to a registered scheme that is administered by two or more approved trustees, it means the trustees jointly and severally;

“beneficiary” means a person entitled to benefit under a pension scheme or who will become entitled on the happening of a specified event;

“Authority” means the National Pensions Regulatory Authority established under section 5 of this Act.

“Board” means the governing body of the Authority established under section 8 of this Act;

“Board of Trustees” means the governing body of the Trust established under section 35 of this Act;

“CAP 30 Pension Scheme” means a pension scheme operated under the Pensions Ordinance, No. 42, Chapter 30 of 1950, for

(a) pensionable public servants in the civil and other public services, who have been in the service before 1st January, 1972; and

(b) public servants who have been exempted by law from participation in the Social Security Pension Scheme, i.e. the Judiciary, Legal Service, Police Service, Fire Service, Prison Service, Immigration Service, the Bureau of National Investigation and the Research Unit of the Ministry of Foreign Affairs.

“contributory scheme” means a scheme to which both employers and employees contribute. Under certain contributory plans participants may be required to contribute as condition of eligibility;

“Chief Executive” means the Chief Executive Officer of the Authority appointed under section 16 (1);

“corporate trustee” means a company which acts as a trustee;

“custodian” means a person whose business it is to keep custody of cash, securities and documents of title to assets belonging to others;

formula for calculating benefit amounts without regard to contributions;

“defined contribution scheme” means a pension scheme in which the contributions are made to an individual account for each participant. The retirement benefit is dependent upon the investment experience and in the case of profit sharing plans, amounts which may be allocated to the amount owing to forfeitures by terminating employees;

“death benefit” means benefit payable to the spouse or dependants of a deceased scheme member, or to that member’s estate, on death in service or after retirement. It may consist of a lump sum, a return of contributions or a pension;

“dependants” include

- (a) members of the family of a member as specified in the Schedule, and
- (b) other persons who the member is obliged to maintain under the Children’s Act, 1998 (Act 560) or otherwise and who were dependent on the earnings of the member at the time of death of the member;

“early retirement age” means an age defined by the terms of a pension plan which is earlier than normal retirement age, at which a participant may receive an immediate, possibly reduced, pension under the plan;

“eligibility” means the conditions which must be met for a person to be a member of a scheme or to receive a particular benefit and may relate to age, service, status and type of employment;

“employer” means

- (a) the owner of an establishment or the person who, or the Board which, has the ultimate control over the affairs of the establishment, and where such affairs are entrusted to a manager, managing director or managing agent, such manager, director or agent;
- (b) in any other case, the person with whom the worker entered into a contract of service or apprenticeship and who is responsible for the payment of his salary;

“employer sponsored scheme” means a single employer scheme whose membership is limited to the employees of the sponsoring company and only its associated companies;

“establishment” means any office, shop, factory, mine, plantation, or any other place where persons are employed on salary for work or business of any kind;

“existing scheme” means a private or company pension, provident fund, superannuation scheme or gratuity scheme set up in respect of employees;

“fiduciary duties” means duties owed by one person to another to whom the first person the fiduciary, stands in a position of trust. The fiduciary is not permitted to profit from the fiduciary’s position and owes undivided loyalty to the other party and must avoid conflicts of interest unless otherwise authorised by the other party after full disclosure;

“formal sector” means business units which are incorporated or registered, and are normally subjected to regulation;

“funding” means a systematic program under which contributions are made into a pension fund and assets accumulated in order to pay pension benefits;



- “fund manager” means an individual or body to which the investment of the whole or part of the assets is delegated by the trustees in accordance with the provisions of the scheme documentation;
- “group personal pension scheme” means an arrangement made for the employees of a particular employer to participate in a personal pension scheme on a grouped basis not a separate scheme; merely a collecting arrangement;
- “independent trustee” means an individual or corporate body with no direct or indirect involvement with the pension scheme, sponsoring employer, or members, other than performing the duties of the trustee;
- “informal sector” refers to production units which are engaged in legitimate economic transactions and are normally operated at a low level of organisation, with little or no division between labour and capital which operates on a small scale;
- “interim trust deed” means a form of trust deed commonly used to establish a pension scheme on broadly stated terms
- “investment” means the process by which contributions and net income are used to increase the value of pension fund assets by means of cash deposits, the purchase and sale of equities, fixed interest stocks, bonds, property and other authorised investments;
- “investment policy” means the periodic decisions regarding the types and proportions of assets in which a pension fund is invested;
- “liabilities” means amounts which a pension scheme has an obligation to pay now or in the future. The amounts may not be immediately ascertainable and some liabilities may be dependent on the occurrence of future events;
- “master trust scheme” is a multiple-employer scheme whose membership is open to employees of more than one employer, self-employed persons and persons with accrued benefits transferred from other schemes;
- “member” means a person who has been admitted to membership of a pension scheme and is entitled to benefit under the scheme;
- “Minister” means the Minister responsible for pensions;
- “non-contributory pension scheme” means a scheme in which the employer pays the entire cost of the pension, with the employee not contributing.
- “normal retirement age” means the age, as established by a pension scheme, when full benefits can be received.
- “notice” means notice in writing;
- “occupational pension scheme” means a pension scheme offered through an individual’s employment to private or public sector workers. Benefits are generally paid as lump sum, but could also be paid as an annuity or a combination of lump sum and annuity;
- “organised labour” means an association or union formed by workers the principal purpose of which is to promote their economic and social interest and which is registered under the Labour Act, 2003 (Act 651);
- “past service” means service before a given date or service before entry into the pension scheme;



“salary” includes the emoluments which are earned by a worker while on duty in accordance with the express or implied terms of the contract of employment or apprenticeship, and which are paid or payable in cash to the worker at fixed or determinable intervals of time

- (a) in respect of normal periods of work to be performed by the worker;
- (b) where payment is calculated in relation to set tasks, in respect of the number of tasks completed by the worker; and
- (c) where payment is calculated in relation to the volume of work done, in respect of the volume completed by the worker, emoluments earned by the worker or leave, any cost of living for prescribed allowance but does not include any presents made by the employer, value of any food concession, house rent allowances, overtime allowance, travelling allowance, bonus, commission, or any other similar allowance payable to the worker;

“Scheme” means the Contributory Three-tier Pension Scheme established under section 1 of this Act;

“scheme member” in relation to a registered scheme, means a person who has a beneficial interest in the registered scheme;

“Security and Exchange Board” means the Securities and Exchange Agency established under section 1 of the Securities Industry Law, 1993 (P.N.D.C.L. 333);

“self-employed person” means a person who has no other employer but himself or herself and works on his or her own account or with others;

“service provider” in relation to an occupational pension scheme or provident fund scheme, includes an investment manager, custodian of scheme assets or other person appointed or engaged by the trustee of the scheme to provide services for the purpose of the scheme, and a person to whom the provision of those services is delegated by the manager, custodian or other person, but does not include a person appointed or engaged as an auditor, solicitor or actuary;

“Trust” means the Social Security and National Insurance Trust established under section 32 of this Act;

“trust deed” means a legal document, executed in the form of a deed, which establishes, regulates or amends a trust;

“trustee” means an individual or company appointed to carry out the purposes of a trust in accordance with the provisions of the trust instrument and general principles of trust law;

“trustee report” means a report by the trustees describing various aspects of a pension scheme and it may form part of the annual report;

“vesting” means the right of an employee to the benefits that the employee has accrued, or some portion of them, even if employment under the plan terminates. An employee who has met the vesting requirements of a pension plan is said to have a vested right;

“voluntary contribution” means a contribution paid to a registered scheme in accordance with this Act; and

“worker” includes a person who is employed for salary in any kind of work, manual or otherwise, in or in connection with the work of an establishment,

and who gets his salary, directly or indirectly from the employer, and any person employed by or through a contractor in or in connection with the normal work of the establishment, who is

- (a) employed in this country but not as a member of the crew of any ship; or
- (b) employed as a permanent resident of Ghana,
  - (i) as a member of the crew of a ship, the owners of which have an office or agents in Ghana; or
  - (ii) outside Ghana but employed by an employer in Ghana.

### **Repeal and savings**

**212.** (1) The following enactments are hereby repealed:

- (a) Social Security Act, 1991 (P.N.D.C.L. 247);
- (b) Long-Term Savings Act, 2004 (Act 679).

(2) The repeal of the enactments shall not affect any additional fringe benefits, other than pension and gratuity enjoyable upon retirement by a person before the commencement of this Act except as provided by this Act.

leaving the detailed provisions and the rules to be provided later by a definitive trust deed;

(3) Despite the repeal the regulations, bye-laws, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactment and in force immediately before the commencement of this Act shall be considered to have been made or done under this Act and shall continue to have effect until reviewed, cancelled or terminated.

(4) The assets, rights, obligations and liabilities existing under the Social Security Act, 1991 (P.N.D.C.L. 247) are hereby transferred to the Trust.

### *Transitional provisions*

### **Enactments applicable for four years**

**213.** (1) The following enactments and schemes shall on the commencement of this Act apply for a transitional period of four years and cease to be in force after that period

- (a) the Pensions Ordinance No. 42 of 1950 (CAP 30) as amended;
- (b) Teachers Pension Ordinance 1955 as amended;
- (c) Ghana Universities Staff Superannuation Scheme;
- (d) Ghana Police Pensions Act, 1985 (P.N.D.C.L. 126.);
- (e) Public Legal Officers Pensions Amendment Act 1986 (P.N.D.C.L. 165.);
- (f) Immigration Service Pensions Act 1986 (P.N.D.C.L. 226);
- (g) Prisons Services Pensions Act 1987 (P.N.D.C.L. 168);
- (h) section 34 of the Security and Intelligence Agencies Act 1996 (Act 526) and
- (i) section 27 of the National Fire Service Act, 2000 (Act 537).

(2) The Board shall, ensure that the pension schemes in the country are unified in accordance with regulations made under this Act within five years after the commencement of this Act.

### **Payment of Pension Benefits Under the Cap 30 Scheme**

**214.** The Controller and Accountant-General's Department shall continue to

- (a) administer the Cap 30 and other related schemes;
- (b) pay gratuity and pension to the existing pensioners and the category of officers exempted under section 31 of this Act; and
- (c) pay monthly pension to retired public servants at present under Cap 30 scheme, in accordance with the relevant and applicable computations under the existing Cap 30 pension scheme of the Public Service.

### **Death of exempt officers**

**215.** Where an officer exempted under section 31 of this Act or a public servant presently under Cap 30 scheme dies while in service or in the course of duty, the Controller and Accountant-General's Department shall pay to the next-of-kin or designated survivors a gratuity and pension benefit based on the income of the deceased spouse.

### **Option for active public servants under Cap 30 and other related schemes**

**216.** Any person at present under the Cap 30 and other related schemes and in active service shall within four years of coming into force of this Act have the option to join the new scheme.

### **Decentralisation of public sector pension management**

**217.** On the commencement of this Act, the administration and management of the Cap 30 pension scheme shall be decentralized and there shall be regulations to this effect.

### **Temporary pension fund accounts**

**218.** (1) From the commencement of this Act and before the licensing or registration of trustees, pension fund managers and custodians, every employer to whom this Act applies shall open a temporary Occupational Pension Fund Account with the Bank of Ghana.

(2) Subject to sections 3 (1), (2) and (3) of this Act, the five per centum remittance to the second tier mandatory occupational pension scheme on behalf of the employee shall be lodged with the Bank of Ghana pending the licensing of trustees, pension fund managers and custodians.

(3) Every employer shall maintain proper books of accounts and records of contributions made under this Act.

(4) The Board shall within ninety days of licensing or registration of trustees, pension fund managers and custodians compute and transfer all contributions and returns to the credit of the Occupational Pension Fund Account opened with the chosen trustees licensed by the Board.

### **Accrued retirement benefits rights**

**219.** (1) Subject to section 213 of this Act, the retirement benefits in respect of accrued or past service earned by an employee shall be computed in accordance with the terms of conditions of service existing before the commencement of this Act.

(2) Each employee shall be issued with a Ghana Government Retirement Bond equivalent to the total retirement benefit that was due the employee as computed at the commencement of this Act.

(3) The Bank of Ghana shall establish a Retirement Benefit Bond Redemption Fund referred to as the “Redemption Fund” Account into which the Government shall make periodic payments.

(4) The amount in the Redemption Fund shall be used by the Bank of Ghana to redeem any retirement benefit bonds issued.

(5) Payments into the Redemption Fund shall cease after the retirement benefit bonds issued under subsection (2) have been redeemed.

(6) On retirement of an employee

- (i) the retirement benefits bond shall be redeemed by the Bank of Ghana from the redemption fund account
- (ii) the proceeds of the bond redeemed shall be transferred to the credit of the retirement savings account of the employee; and
- (iii) the employee shall utilise a percentage, to be prescribed by the Board, of the balance standing to the credit of the employee’s retirement savings account to purchase an annuity for life from a life insurance company licensed by the National Insurance Commission with monthly or quarterly payments.

#### **Enactments inconsistent with this Act**

**220.** On the commencement of this Act where an enactment relating to pensions is inconsistent with this Act, this Act shall to the extent of the inconsistency prevail.

#### **Directives to Pensions Reform Implementation Committee by Minister**

**221.** Until the appointment of the Board of the Authority, the Minister may in writing direct the Pension Reform Implementation Committee, appointed for the implementation of the pension reforms, to perform functions of the Authority considered necessary for the effective implementation of the provisions of this Act.

### **SCHEDULE**

(Section 213)

#### *Paternal System*

Mother, Father  
Husband  
Wife, Son, Daughter  
Brother, Sister  
Father’s father  
Father’s brother

#### *Maternal System*

Mother, Father  
Husband  
Wife, Son, Daughter  
Brother, Sister  
Mother’s Mother  
Mother’s brother  
Mother’s Sister  
Sister’s Son  
Sister’s Daughter  
Mother’s Sister’s Son  
Mother’s Sister’s Daughter