

ACT NO 8 OF 2008

Public Officers' Defined Contribution Pension Fund Act, 2008

An Act to provide for the establishment of Public Officers' Defined Contribution Pension Fund, for the benefit of permanent and pensionable Public Officers; and for related matters.

ENACTED by the parliament of Lesotho

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Public Officers' Defined Contribution Pension Fund Act 2008, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires:

“**actuary**” means a person having recognised actuarial qualifications or a member of a professional actuarial society or institute whom the Commissioner of Financial Institutions as defined in section 2 of the Financial Institution Act 1999¹;

“**administrator**” means a person appointed under section 17;

“annuity” means a contract or policy sold by an insurance company designed to provide payments to the holder at specified intervals after retirement;

“approved fund” means a fund approved by the Board for purposes of members transferring their benefits for preservation or other retirement purposes;

“auditor” means a person appointed under section 20;

“beneficiary” means a dependant or a nominee of a member or a pensioner, as the case may be;

“board” means the Board of Trustees established under section 6;

“deferred pensioner” means a member who has left the permanent and pensionable establishment of the public service prior to the prescribed retirement age, but is still employed in the service of Government on contract, leaving his benefits in the Fund;

“dependant” means:

- (a) a person in respect of whom a member, pensioner or deferred pensioner is legally liable for maintenance;
- (b) a person in respect of whom the member, pensioner or deferred pensioner is not legally liable for maintenance, if such a person-
 - (i) was, at the time of death of the member, pensioner or deferred pensioner, in fact dependant upon such a member, pensioner

or deferred pensioner for maintenance; or

- (ii) is the spouse of a member, pensioner or deferred pensioner;

“disciplined force” means the Lesotho Defence Force, the Lesotho Mounted Police Service, the National Security Service and the Lesotho Correctional Service;

“employer” means the Government of Lesotho;

“financial year” means a period of 12 months starting from 1 April ending 31 March;

“Fund” means the Public Officers’ Defined Contribution Pension Fund established by section 3;

“fund credit” means the amount of money in a member’s account in the Fund;

“Government” means the Government of Lesotho;

“investment consultant” means a person appointed under section 20;

“investment return” means any -

- (a) income (received and accrued) less an allowance for any tax and if applicable, part or all of any expenses (paid and accrued); and
- (b) capital appreciation or depreciation (realised and unrealised);

“member” means a person who, in terms of section 5, is a member of the Fund;

“Minister” means the Minister responsible for finance and development planning;

“pensioner” means a retired member who is in receipt of a pension in terms of this Act;

“prescribed retirement age” means the mandatory retirement age of a member as set out in the Lesotho Defence Force Act 1996², the Public Service Act 2005³, the Education Act 1995⁴ or any other Act governing the mandatory retirement of public officers;

“principal officer” means the person appointed under section 15;

“public officer” means a person holding or acting in any public office and for the purposes of this Act includes a teacher paid from the Consolidated Fund;

“registered insurer” means an insurer of risk as registered under the Insurance Act 1976⁵;

“rules” means the rules of the Fund made by the Board under section 37.

PART II-THE FUND

Establishment of the Fund

3. (1) There is established a fund to be known as the Public Officers' Defined Contribution Pension Fund, for the purpose of providing pension benefits to the public officers referred to in section 5(1) or (2).

(2) The Fund shall be a legal entity, capable of-

(a) suing and being sued in its own name;

(b) acquiring, owning and disposing movable and immovable property; and

(c) acquiring rights and incurring liabilities.

Contributions

4. The employer and a member of the Fund shall each make a monthly contribution to be paid into bank account of the Fund at a rate to be determined by the Minister on the advice of the Board and the Minister shall publish the rate in the Gazette.

PART III – MEMBERSHIP OF THE FUND

Members of the Fund

5. (1) A public officer or a person, as the case may be, who-
- (a) is employed on permanent and pensionable terms and is aged 40 years or below at the commencement of this Act; or
 - (b) joins the public service, after the commencement of this Act, on permanent and pensionable terms 10 years or more prior to attaining the prescribed compulsory retirement age as set out in the relevant laws governing the retirement of public officers, is a member of the Fund,

and membership is mandatory.

(2) A public officer who, at the commencement of this Act, is employed on permanent and pensionable terms may, subject to subsection (3), become a member if he or she still has at least 10 further years of service prior to attaining the prescribed retirement age as set out in the relevant laws governing the retirement of public officers.

(3) The Minister shall, in a phased manner or in such a manner as he or she may deem fit, by notice published in the Gazette, classify public officers referred to in subsection (2) into categories and appoint a date on which a category referred to in subsection (2) may qualify for membership of the Fund.

(4) A public officer who does not qualify to be a member under subsection (1) or ceases to be a public officer before being categorised under subsection (3), may qualify for the benefits provided under the Pensions Proclamation 1964⁶ or the Teachers Pensions Act 1994⁷ or the Defence Force Regulations 1998⁸, as the case may be.

PART IV - BOARD OF TRUSTEES

Establishment and composition of Board of Trustees

6. (1) There is established a Board of Trustees which shall be responsible for the management of the Fund.

(2) The Board shall consist of-

(a) 5 public officers representing the Government as follows-

- (i) the Principal Secretary responsible for the Ministry of finance and development planning, who shall be chairperson;
- (ii) a representative of the disciplined force;
- (iii) the Accountant-General;
- (iv) the Director of Remuneration and Benefits in the Ministry of the Public Service; and
- (v) the Director of the Teaching Service Department;

(b) 4 public officers representing the Fund membership as follows-

- (i) one person nominated by members from the disciplined force on a rotational basis;
- (ii) one person nominated by members from the

Local Government Service;

(iii) one person nominated by members from the Public Service; and

(vi) one person nominated by members from the Teaching Service;

(c) 4 persons appointed on the basis of their professional knowledge and experience in pensions matters; and

(d) one pensioner.

(3) Members of the Board referred to in subsection (2)(a)(ii), (2)(b), (c) and (d) shall be appointed by the Minister acting in consultation with Minister responsible for the public service by notice published in the Gazette.

Functions of the Board

7. The Board shall be responsible for the formulation of policies governing the Fund and in the discharge of this function and any other functions under this Act, the Board-

(a) may direct the Principal Officer to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;

(b) may give instructions or orders to the Principal Officer in

connection with the management, performance, operational policies and implementation thereof, of the Secretariat;

- (c) may formulate and devise a system for ensuring, through internal audit systems, the correct processing of pension matters;
- (d) may on the recommendation of the Principal Officer, approve such organisational structures as the Principal Officer may consider necessary for the discharge of the functions of the Secretariat;
- (e) may approve any investment of monies of the Fund;
- (f) shall ensure the safe custody of the documents of the Fund;
- (g) shall formulate a code of conduct for the Board; and
- (h) may transact any business related to the purpose of the Fund.

Tenure of office

8. A member of the Board, other than a member of the Board referred to under section 6(2)(a), shall hold office for a period of 5 years.

Vacation of office

9. (1) A member of the Board shall cease to be a member of the Board and

shall vacate his or her office if-

- (a) he or she is declared insolvent;
- (b) he or she is declared by the Board to be incapable of performing his or her duties as a member of the Board;
- (c) he or she is in breach of the code of conduct of the Board;
- (d) he or she ceases to be a public officer;
- (e) he or she is disqualified from being a director of a company under the Companies Act 1967⁹;
- (f) he or she has been removed from an office of trust on account of misconduct;
- (g) he or she has been convicted-
 - (i) of an offence and sentenced to imprisonment without the option of a fine; or
 - (ii) of an offence which involves moral turpitude.

(2) The Minister may, on the advice of the Board and acting in consultation with the Minister responsible for the public service, remove a member of the Board, if it is necessary, in the interest of the effective performance of the Fund.

(3) The appointment of a member of the Board appointed under section 6(2) (b), (c) or (d) shall not be terminated without giving the member of the Board a fair hearing.

Filling of vacancies

10. If a vacancy occurs on the Board then the Minister shall appoint a replacement in accordance with section 6(2)(b), (c) or (d).

Disclosure of interest

11. (1) If a member of the Board has acquired direct or indirect pecuniary interest in any matter under consideration by the Board, and is present at a meeting of the Board at which the matter is the subject for consideration by the Board, he or she shall, as soon as is practicable after the commencement of the meeting, disclose to the Board his or her interest in the matter and shall not take part in the consideration or discussion of, or vote on, any question with respect to the matter.

(2) A member of the Board who contravenes subsection (1) commits an offence, and is liable on conviction to a fine not exceeding M5,000, or to imprisonment for a period not exceeding 5 years, or to both.

Meetings of the Board

12. (1) The Board shall meet as often as its business requires but not less than 4 times in a financial year.

(2) A quorum shall comprise 7 members of the Board with at least 3

members of the Board representing the Government, 2 members representing the Fund membership and one member of the Board from the private sector.

(3) If the Chairperson of the Board is absent from a meeting, the Board shall elect a Chairperson for that meeting from their number.

(4) An issue before the Board shall be decided by a majority of votes of the members of the Board present and in the event of a deadlock, the Chairperson shall have a casting vote.

(5) The Board shall regulate its own procedure at its meetings.

(6) The Principal Officer shall keep a record of all minutes of meetings of the Board.

Remuneration and expenses of the Board

13. (1) A member of the Board shall be paid such sitting allowance as the Board may, subject to the approval of the Minister, acting in consultation with the Minister responsible for the public service, determine.

(2) The Principal Officer may, subject to the approval of the Board, make provision for the re-imbusement of any reasonable expenses incurred by a member of the Board in connection with the business of the Board.

PART V — ADMINISTRATION

Secretariat

14. There shall be a Secretariat which shall be responsible for the management of the Fund in accordance with the decisions of the Board and which shall consist of the Principal Officer and such other officers as the Board may appoint.

Principal Officer

15. (1) The Principal Officer shall be appointed by the Board on such terms and conditions as the Board may determine.

(2) The Principal Officer shall, subject to the general supervision and control of the Board, be responsible for-

- (a) the day to day operations of the Secretariat;
- (b) the management, organisation and control of the officers and staff of the Secretariat;
- (c) the appointment of support staff;
- (d) the implementation of the policies and decisions of the Board and
- (e) such other duties as may, from time to time, be assigned to him or her by the Board.

(3) The Principal Officer may, at the written request of the Board, be seconded from the Public Service by the Minister responsible for the public

service acting in consultation with the Minister.

(4) If the Principal Officer is seconded from the Public Service, then on termination of appointment, he or she shall return to his or her substantive position in the Public Service or any suitable position available in the Public Service, or may be seconded for a second term, as the case may be.

(5) The Principal Officer shall be Secretary to the Board.

Vacation of office

16. The Principal Officer may be removed from office by the Board if-

- (a) he or she is declared insolvent;
- (b) he or she is declared by the Board to be incapable of performing his or her duties;
- (c) he or she is in breach of the code of conduct formulated by the Board;
- (d) he or she is in breach of his or her employment contract;
- (e) he or she is disqualified from being a director of a company under the Companies Act 1967;
- (f) he or she has been removed from an office of trust on account of misconduct;

(g) he or she has been convicted-

(i) of an offence and sentenced to imprisonment without the option of a fine;

(ii) of an offence which involves moral turpitude; or

(h) if he or she does not attend 2 consecutive Board meetings, without a valid apology.

Appointment of the Administrator

17. The Board shall appoint a full time Administrator of the Fund for a period of 3 years.

Duties of the Administrator

18. (1) The Administrator shall -

(a) be responsible for the administration of the Fund, property and business of the Fund;

(b) keep a record of particulars of the members and of all other matters relating to the operation of the Fund;

(c) purchase fidelity cover from an insurer to indemnify the Fund against any loss resulting from fraud, theft, dishonesty, or negligence against the Fund;

(d) keep books of account and such financial and related records as

may be necessary to reflect accurately, all acts and transactions, and to give a true reflection of the state of affairs of the Fund, its financial position and business;

- (e) perform any other related duties as may be assigned to him or her by the Principal Officer.

(2) The Administrator shall perform his or her duties under the supervision of the Principal Officer.

Particulars to be furnished

19. (1) The employer shall, through the Principal Officer, furnish the Administrator with the relevant particulars and data of members on a monthly basis to enable the Administrator to perform his or her duties.

(2) The Administrator shall be entitled to act upon the particulars furnished under subsection (1) and the particulars shall be deemed to be true and correct.

(3) The Fund shall not be liable to its members in respect of any damage or loss occasioned by an error or omission that arises due to particulars given to the Administrator by the employer.

Other service providers to the Secretariat

20. The Board shall appoint-

- (a) an auditor who shall audit the books of accounts of the Fund;

- (b) actuary who shall advise the Board on the rates of contribution and the risk benefits of death and disability of members and he or she shall also submit a valuation report to the Board within one month after the audited annual financial statements have been produced;
- (c) an investment consultant who shall advise the Board on investments;
- (d) a registered insurer who shall provide insurance cover (in return for regular premiums) to the Fund for the risk that may result in-
 - (i) disability to members;
 - (ii) purchase of fidelity insurance cover or protection;
 - (iii) the provision of any other cover for the exposure to risk of the Fund or its members, on terms and conditions to be determined by the Board.

PART VI- INVESTMENTS AND FINANCIAL MATTERS

Investments

21. (1) The Board shall open a banking account in the name of the Fund into which monies received by the Fund shall be deposited or withdrawn, as the case may be.

(2) The Administrator may, subject to the approval by the Board, invest any monies of the Fund after consultation with the Investment Consultant.

(3) All investments referred to under subsection (2) shall be registered in the name of the Fund.

(4) The Board shall have power to effect policies of insurance with a registered insurer for the purpose of investing the Fund's monies.

(5) All investment returns earned on the assets of the Fund shall belong to the Fund.

Power to borrow money

22. The Board may, after consultation with the Minister, obtain an overdraft or loan from a financial institution or borrow money from the Government on such terms as it may think fit, for the purpose of completing any investment or meeting any temporary cash shortage.

Audit of the Fund

23. The Auditor shall audit the Fund annually in accordance with International Auditing Standards.

Annual financial statements

24. The Principal Officer shall submit annual financial statements, audited in terms of section 23, to the Board not later than 6 months after the end of the preceding financial year.

Expenses

25. Except where otherwise provided, the expenses in connection with or incidental to the management or administration of the Fund and its investment shall be borne by the Fund.

Restoration of financial soundness of the Fund

26. (1) If an actuarial valuation of the Fund reveals that the Fund is not in a sound financial position, the Board shall, acting in consultation with the Minister, and after having considered proposals by the Actuary, implement a scheme or an arrangement aimed at restoring the Fund to a sound financial position.

(2) No scheme or arrangement shall be implemented under subsection (1) if it adversely affects the benefits to be received by members or if it increases the rate of contributions to the Fund, unless such scheme or arrangements have been agreed to by the Board and approved by the Minister.

PART VII — BENEFITS

Retirement benefit

27. On retirement a member shall be entitled to a portion of his or her fund credit to the maximum of 25% as cash benefit. The remaining percentage shall be used to purchase an annuity for him or her.

Disability benefit

28. Whenever a member is declared disabled, he or she shall be entitled to benefits to be determined by the rules.

Deferred pension benefit

29. (1) A deferred pensioner shall, on attaining prescribed retirement age, receive a pension based on his or her deferred pension benefit, to be set out in the rules.

(2) Notwithstanding subsection (1), if a deferred pensioner is declared disabled before attaining prescribed retirement age, he or she shall be deemed to have attained the prescribed retirement age and he or she shall be paid his or her benefits in accordance with subsection (1) plus disability benefits.

(3) If a deferred pensioner dies before attaining the prescribed retirement age his or her dependants shall be entitled to his or her benefits.

Death benefit

30. On the death of a member, the member's beneficiaries shall receive a death benefit to be determined by the rules.

Termination of service prior to prescribed retirement age

31. (1) A member whose service is terminated prior to prescribed retirement age through resignation, redundancy or retrenchment shall receive -

(a) a cash benefit of the member's own contributions plus net investment returns thereon; and

(b) the employer's net contributions plus net investment returns thereon.

(2) If a member is dismissed from the public service, he or she shall only receive a cash benefit of his or her own contributions and net investment returns thereon.

Prohibition on cession and attachment of benefits

32. A benefit granted under this Act shall not be assignable, executable, payable or transferable except for the purpose of satisfying-

(a) a debt due to the Government ;

(b) a maintenance order; or

(c) a divorce order.

Benefits not property in insolvent estate

33. No benefit or right to a benefit, due and payable, in terms of this Act, to a member, beneficiary or deferred pensioner on or as a result of death of that member, shall be deemed to be property, for the purposes of the Insolvency Proclamation 1957¹⁰ and Estates Proclamation 1935¹¹.

Payment of benefits into a bank account

34. It shall be a condition of membership of the Fund that a member maintains a functional bank account into which his or her benefits shall be paid.

PART VIII — MISCELLANEOUS

Annual reports

35. (1) The Board shall as soon as practicable, but not later than 3 months after the expiry of each financial year, submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister may approve, and shall include information on the financial affairs of the Fund and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Fund may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the Parliament next following receipt by him or her of the report referred to in subsection (1), lay the report before Parliament and the Board may publish the report for sale to the public.

Dissolution of the Fund

36. The Fund shall not be dissolved except by an Act of Parliament.

Regulations

37. The Minister may, by notice published in the Gazette, make regulations for the carrying into effect the provisions of this Act.

Rules of the Fund

38. (1) The Board may make rules for the operation and management of the Fund.

(2) The rules shall-

- (a) be binding between the Fund and its members;
- (b) not change the conditions of service of a public officer;
- (c) provide for the payment into, and disbursement from, the Fund;
- (d) provide for the transfer of funds from previous funds into the Fund and transfers from the Fund to the other approved funds;
- (e) provide for any other matter within the powers of the Board.

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- ¹ Act No.4 of 1999
 - ² Act No. 4 of 1996
 - ³ Act No. 1 of 2005
 - ⁴ Act No. 10 of 1995
 - ⁵ Act No. 18 of 1976
 - ⁶ Proclamation No. 4 of 1964
 - ⁷ Act No.9 of 1994
 - ⁸ Legal Notices No.26 and28 of 1998
 - ⁹ Act No.25 of 1967
 - ¹⁰ Proclamation No.51 of 1957
 - ¹¹ Proclamation No.19 of 1935

