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Government Notice

OFFICE OF THE PRIME MINISTER

No. 274 1999

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 20 of 1999: Members of Parliament and other Office-bearers Pension Fund Act, 1999.

ACT

To provide for the establishment of a Members of Parliament and other Office-bearers Pension Fund; and to provide for matters connected therewith.

(Signed by the President on 19 November 1999)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Definitions

1. (1) In this Act, unless the context indicates otherwise-

“fixed date” means the date on which the Members of Parliament and other Office-bearers Pension Fund, established by section 2, is registered as a pension fund in accordance with the Pension Funds Act, 1956 (Act No. 24 of 1956);

“pension fund” means the Members of Parliament and other Office-bearers Pension Fund established by section 2;

“members of the pension scheme” means a person who immediately prior to the fixed date contributed towards the pension scheme in terms of section 2 of the repealed Act;

“pension scheme” means the pension scheme instituted by the repealed Act; and

“repealed Act” means the Members of the National Assembly and other Office-bearers Pensions Act, 1990 (Act No. 21 of 1990).

(2) The President may by proclamation in the *Gazette* declare any person who in terms of any law holds or is appointed to hold an office in the service of the Republic of Namibia as an office-bearer for the purposes of the rules of the pension fund, with effect from a date specified in the proclamation, which may be a date prior to the date of such proclamation, but not prior to the date of the person's appointment to the office concerned.

Establishment of pension fund

2. (1) There is hereby established a pension fund to be known as the Members of Parliament and other Office-bearers Pension Fund.

(2) The pension fund shall in accordance with section 4 of the Pension Funds Act, 1956 (Act No. 24 of 1965) apply for registration as a pension fund and shall for the purpose of that Act be deemed to be a pension fund organization referred to in paragraph (a) of the definition of “pension fund organization” in section 1(1) of the said Act.

Transfer of membership to pension fund and continuation of payment of pensions

3. (1) Any person who immediately prior to the fixed date-

(a) was a member of the pension scheme shall with effect from that date be a member of the pension fund and contribute thereto;

(b) received a pension in terms of the pension scheme shall with effect from that date be a pensioner of the pension fund.

(2) Any provision of the rules of the pension fund which, upon registration of that fund in accordance with section 2(2) or upon any amendment thereof thereafter, purports to impose in relation to any person referred to in subsection (1) any condition or obligation the effect of which is-

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- (a) to diminish or otherwise detrimentally affect any right or benefit to which such person was entitled under the pension scheme immediately prior to the fixed date; or
- (b) to introduce any requirement, restriction or qualification in respect of continued participation as a member or pensioner of the fund,

and being a condition or obligation which did not apply to such person under the pension scheme, shall be invalid in relation to such person.

Payment of certain moneys to the pension fund

4. (1) The accrued benefits of every person who immediately prior to the fixed date was a member of the pension scheme or a pensioner under that scheme shall with due regard to actuarial principles and practices be calculated as on that date in accordance with the provisions of subsection (2).

(2) For the purposes of subsection (1) "accrued benefits" means -

- (a) in relation to a member of the pension scheme, the value of the benefit, as represented by the State Revenue Fund's actuarial liability towards such member, that would have accrued to him or her as a pension and a gratuity in terms of the repealed Act if he or she had ceased to be a member of the pension scheme on the fixed date, and such calculation shall be made in accordance with subsection (1)(a) of section 3 of the repealed Act (as it applied immediately before its repeal), subject to subsection (3), in respect of every member of the pension scheme according to the period of his or her pensionable service, including, and notwithstanding anything to the contrary contained in that section, any period of pensionable service which is less than 5 years;
- (b) in relation to a pensioner of the pension scheme, the value of such pensioner's interest in the pension scheme on the date immediately prior to the fixed date, as represented by the State Revenue Fund's actuarial liability towards such pensioner.

(3) (a) Every member of the pension scheme shall on the fixed date be entitled to an advanced portion of his or her gratuity, not exceeding 75 per cent of the total amount thereof, that would have accrued to him or her as contemplated in subsection (2)(a).

(b) An amount equal to that portion may, subject to subsection (4)(b), be advanced to such member on that date from the State Revenue Fund, provided a written request to that effect is made by such member to the Treasury before the fixed date.

(c) Notwithstanding anything to the contrary contained in the Income Tax Act, 1981 (Act No. 24 of 1981), the portion of the gratuity advanced in terms of paragraph (b) shall be exempt from income tax.

(d) For the purposes of section 16(1)(z) of the Income Tax Act, 1981 it shall be deemed, notwithstanding anything to the contrary in this Act, that the pension scheme is a pension fund contemplated in section 1 of that Act and that the full benefit of a member of the pension scheme was transferred to the pension fund on the fixed date.

(4) When calculating the value of the accrued benefits of a member of the pension scheme, there shall be deducted-

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- (a) any amount which the member owes to the State Revenue Fund in respect of any liability relating to the pension scheme; and
 - (b) an amount equal to the amount of gratuity advanced to the member under subsection (3)(b).
- (5) The accrued benefits calculated in accordance with subsection (2) -
- (a) of all the pensioners of the pension scheme, shall on the fixed date be paid from the State Revenue Fund to the pension fund; and
 - (b) of every member of the pension scheme, as well as any interest thereon calculated in accordance with subsection (6), shall be paid from the State Revenue Fund to the pension fund for the benefit of the member concerned and in his or her name in such instalments as may be determined by the Minister of Finance from time to time, and which shall be paid in full to the pension fund upon the death of a member or when he or she reaches his or her retirement as determined in accordance with the rules of the pension fund.
- (6) The amount representing the accrued benefit of a member of the pension scheme shall, until it is fully paid to the pension fund, bear interest at a rate equal to the average rate payable on Treasury Bills plus such percentage margin as may be determined by the Minister after consultation with the board of trustees of the fund, which margin shall not exceed 3 percent per annum, and which interest and percentage margin shall be calculated and credited to the member's account at the expiry of every six months.
- (7) Notwithstanding anything to the contrary contained in this Act, if on the fixed date a dispute or doubt exists as to the person who, immediately before that date, was entitled to a pension under the pension scheme, the accrued benefits in question shall not be paid to the pension fund as contemplated in subsection (5) but shall be retained in the State Revenue Fund until the dispute has been settled or the doubt has been resolved between the Minister of Finance and the person concerned, in which event, in relation to the pension in question -
- (a) the provisions of the repealed Act shall continue to apply as if this Act had not been passed;
 - (b) the date on which the dispute is settled or the doubt is resolved shall be taken as the fixed date for the purposes of this Act.

Pension fund rules

5. Notwithstanding sections 4 and 12 of the Pension Funds Act, 1956, no rules of the pension fund and no alteration or rescission thereof or addition thereto, shall be endorsed or registered by the Registrar of Pension Funds unless and until it had been tabled in and approved by the National Assembly.

Dissolution of pension fund

6. Notwithstanding sections 28 and 29 of the Pension Funds Act, 1956, the pension fund shall not be dissolved or wound up except by or under the authority of an Act of Parliament.

Construction of definition of "retirement date" in section 1 of Act No. 24 of 1956

7. In the application of the definition of "retirement date" in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), in relation to members referred to in

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section 3(1)(a) of the Members of Parliament and other Office-bearers Act, 1999, the words "on account of age, ill-health or retrenchment of staff" in that definition shall be deemed to include the words "or cessation of membership of the pension fund."

Repeal of law

8. The Members of the National Assembly and other Office-bearers Pensions Act, 1990 (Act No. 21 of 1990) shall be repealed with effect from the date determined by the Minister of Finance by notice in the *Gazette*.

Short title and commencement

9. This Act shall be called the Members of Parliament and other Office-bearers Pension Fund Act, 1999 and shall come into operation on a date to be determined by the Minister of Finance by notice in the *Gazette*.
