

Zambia

Pension Scheme Regulation Act, 1996

Chapter 255

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Contents

Part I – Preliminary	1
1. Short title	1
2. Application	1
3. Interpretation	1
Part II – Registrar of Pensions and Insurance	2
4. Appointment of Registrar	2
5. Qualification of Registrar	2
6. Deputy Registrar	2
7. Functions of Registrar	2
Part III – Registration of pension schemes	3
8. Registration of pension schemes	3
9. Application for registration	3
10. Grant of certificate of registration	3
11. Creation of fund	4
12. Application of fund	4
13. Conditions of certificate of registration	4
14. Duration of certificate	4
15. Register of Pension Schemes	5
16. Use of Register in evidence	5
17. Inspection of Register	5
Part IV – Prudential regulations and supervision of pension schemes	5
18. Conditions of compliance of pension schemes	5
19. Appointment of actuary	6
20. Qualification of actuary	6
21. Actuary's rights and duties	6
22. Accounts and audits	6
23. Appointment of auditor	7
24. Investment policy	7
25. Investment of funds	7
26. Returns	7
27. Institution of legal proceedings	8
28. Unsafe and unsound practices	8
29. Examination of fund by Registrar	8
30. General obligation of manager	8

31. Protection against attachment	9
32. Liability insurance	9
Part V – De-registration and appeals	9
33. De-registration	9
34. Notification	10
35. Rights of contributors	10
36. Powers of Registrar if assets insufficient	10
37. Appeals	10
Part VI – Miscellaneous	10
38. General guidelines	10
39. Appointment of inspectors	11
40. Powers of inspectors	11
41. Obstruction of inspectors	11
42. General penalty	11
43. Exemption from Banking and Financial Services Act	11
44. Transitional provisions	12
45. Tax exemptions	12
46. Regulations	12

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[Act No. 28 of 1996; Statutory Instrument 27 of 1997]

An Act to provide for the prudential regulation and supervision of pension schemes; to provide for the appointment of the Registrar of Pensions and Insurance; to provide for the Registrar's powers and functions; and to provide for matters connected with or incidental to the forgoing.

Part I – Preliminary

1. Short title

This Act may be cited as the Pension Scheme Regulation Act.

2. Application

This Act shall apply to any institution or company that establishes or manages a pension scheme except the National Pension Scheme established under the National Pension Scheme Act.

[Cap. 256]

3. Interpretation

In this Act, unless the context otherwise requires—

"Deputy Registrar" means the Deputy Registrar appointed under section six;

"fund" means the total assets of a pension scheme;

"member" means any person who has joined a pension scheme after the eligibility requirements have been met and has not ceased membership to a scheme or any person drawing a pension under the plan;

"manager" means a person who is licensed as a company or institution and is registered under this Act to establish or manage a pension scheme;

"Multi-employer trust" means the legal entity established by a group of employers into which all contributions, investment earnings, surpluses and other moneys are accumulated on behalf of members of a pension scheme;

"pension scheme" means any private, occupational or personal defined benefit or defined contribution pension scheme or savings plan;

"pension plan rules" means the regulations which shall be issued by each pension fund and which shall be distributed to each member;

"Register" means the Register of Pensions established under this Act;

"Registrar" means the Registrar of Pensions and Insurance appointed under section four; and

"trust" means the legal entity, separate from the employer, in which the pension scheme funds are accumulated.

Part II – Registrar of Pensions and Insurance

4. Appointment of Registrar

The Minister, in consultation with the Minister responsible for labour and social security shall appoint a Registrar who shall be a public officer and who shall be head of the Registry Office for pension funds and the Supervisory Authority for pension funds.

5. Qualification of Registrar

A person shall not be qualified for appointment as Registrar unless the Minister is satisfied that the person has qualifications and experience in actuarial analysis, business management or accounting.

6. Deputy Registrar

- (1) The Minister shall appoint a Deputy Registrar who shall be a public officer and who shall be subject to the control and directions of the Registrar.
- (2) The Deputy Registrar shall be competent to exercise and perform any of the powers and functions of the Registrar.

7. Functions of Registrar

- (1) The functions of the Registrar shall be to—
 - (a) register and de-register pension schemes in accordance with this Act;
 - (b) ensure that a pension fund is established in the form of a multi-employer trust separate from the employer's business or alternatively, affiliated to such a trust by a corresponding affiliation agreement;
 - (c) ensure that the pension scheme is laid down in pension plan rules covering the contribution formula, all the benefits, type of plan, options provided and deadlines for choosing, calculation of portability rights and member's rights for participation in the management of the pension fund.
 - (d) examine the certificate of incorporation of the trust;
 - (e) ensure that an auditor and an actuary are appointed in accordance with this Act;
 - (f) examine the annual accounts, the report of the manager of the pension fund and the auditor's report;
 - (g) examine the actuarial valuation and ensure it is done periodically according to this Act;
 - (h) ensure that re-insurance arrangements are entered into in accordance with the actuary's recommendation;
 - (i) ensure that, in the case of a "multi-employer trust", a written affiliation agreement exists, which adequately protects the pension funds, the member's rights and the portability of accrued rights;
 - (j) enforce any conditions imposed under this Act on a pension fund, trust or the manager of such a fund or trust; and
 - (k) exercise and perform such other powers and functions as may be conferred on him by or under this Act.

- (2) The Registrar, jointly with the appointed auditor and actuary, or a pension scheme shall at all times —
- (a) protect the rights, benefits and other interests of the members in accordance with their corresponding pension scheme; and
 - (b) monitor the viability of a pension scheme and ensure that a pension scheme is operating on sound financial and actuarial principles.

Part III – Registration of pension schemes

8. Registration of pension schemes

- (1) A person shall not establish or manage a pension scheme except in accordance with this Act and under the authority of a certificate of registration of a pension scheme issued under this Act.
- (2) A person who establishes or manages a pension scheme in contravention of this section shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.

9. Application for registration

- (1) A person may apply to the Registrar for a certificate to establish or manage a pension scheme.
- (2) An application under subsection (1) shall be in such form as may be prescribed by the Minister, by statutory instrument, and shall specify—
 - (a) the name and address of the applicant;
 - (b) the physical address of the place where the pension scheme is to be established or managed;
 - (c) a certified up to date extract from the register of companies;
 - (d) a description of the applicant's qualifications enabling him to manage a pension scheme;
 - (e) the name and address of the appointed actuary and auditor;
 - (f) the latest annual account established in compliance with generally accepted accounting principles and report of the auditor; and
 - (g) the latest actuarial valuation containing the confirmation that the pension fund's assets sufficiently cover the accrued benefit obligations;

Provided that paragraphs (f) and (g) shall not apply to newly established pension funds or pension fund managers.

- (3) An application under subsection (1) shall be accompanied by the prescribed application fee.

10. Grant of certificate of registration

The Registrar shall issue the applicant with a certificate of registration authorising the applicant to establish or manage a pension scheme, if the Registrar is satisfied that—

- (a) the applicant shall carry out the scheme in accordance with this Act and in accordance with generally accepted actuarial principles;
- (b) the applicant shall protect the interests of the members;
- (c) the applicant is likely to be at all times capable of meeting its obligations to members in accordance with the pension plan rules;

- (d) the applicant has the capacity and the necessary facilities to conduct and manage a pension fund professionally; and
- (e) the applicant is capable of keeping the individual accounts of the members, and collecting the contributions and paying out the benefits.

11. Creation of fund

Each pension scheme registered under this Act shall have a fund established in a separate multi-employer trust or alternatively be affiliated to such a trust into which shall be paid all contributions, investment earnings, surpluses from insurance and other moneys, as may be required under the relevant pension plan rules or under this Act.

12. Application of fund

There shall be charged on, and discharged from a pension fund—

- (a) the payment of benefits in accordance with pertaining pension plan rules and this Act;
- (b) the expenses incurred in the management of the fund including the auditing and actuarial fees; and
- (c) any other payments authorised to be made out of the fund under this Act or any other law.

13. Conditions of certificate of registration

- (1) A certificate of registration shall be subject to the conditions laid down in this Act and such other conditions as the Registrar may consider necessary so as to ensure that the rights of the members under the pension plan are protected in accordance with this Act.
- (2) The Registrar may attach such other conditions to a certificate when it is granted as the Registrar may determine.
- (3) The conditions of a certificate of registration shall include conditions—
 - (a) requiring the manager to comply with this Act, the pension plan rules and the directions given by the Registrar under this Act;
 - (b) requiring the manager to furnish the Registrar, annually within three months after the end of the financial year, with the annual accounts established in compliance with the generally accepted accounting principles, the report of the auditor and the confirmation that the individual accounts of the members are duly kept;
 - (c) requiring the manager to furnish the actuarial reports in accordance with this Act;
 - (d) requiring the manager to file the pension plan rules and any revisions to those rules;
 - (e) requiring the manager to maintain assets of such value as the actuary and the auditor may determine so as to ensure that the manager shall meet his obligation towards the members; and
 - (f) which the Registrar may determine in consultation with the actuary and the auditor.

14. Duration of certificate

Subject to the other provisions of this Act, a certificate of registration under this section shall remain in force for a period of three years, and may be renewed on its expiry on payment to the Registrar of such fees as the Minister may, by statutory instrument, prescribe.

15. Register of Pension Schemes

- (1) The Registrar shall establish and maintain a register to be known as the Register of Pension Schemes, in which shall be entered particulars of all registered pension schemes in accordance with this Act.
- (2) The particulars under subsection (1) shall include—
 - (a) the name of the pension scheme and the date of registration;
 - (b) a specification whether it is a single or multi-employer trust;
 - (c) a summary of the pension plan rules stating the type of pension scheme;
 - (d) a statement of assets and liabilities of the pension fund;
 - (e) the investment portfolio including a summary of the investments and the net return on investment realised during the last financial year;
 - (f) the total administration cost in percent of the total contributions made to the fund;
 - (g) the financial year of the pension scheme; and
 - (h) such other particulars as the Minister may prescribe.

16. Use of Register in evidence

- (1) For the purposes of ascertaining the facts concerning the registration of a pension scheme, entries made in the Register shall be *prima facie* evidence as to the facts specified in the Register.
- (2) A document certified by the Registrar as a true copy or extract from the Register shall be admissible in any court as *prima facie* evidence of the contents of the Register.

17. Inspection of Register

The Register or a copy of the Register shall be available for inspection by the public at the office of the Registrar during business hours and upon payment of such fee as may be prescribed by regulation.

Part IV – Prudential regulations and supervision of pension schemes

18. Conditions of compliance of pension schemes

- (1) A pension scheme shall—
 - (a) make adequate arrangements for the preservation of pension rights so as to protect the interest of its members;
 - (b) lay down the rights and obligations of the members in writing in the pension plan rules, a copy of which shall be given to each member;
 - (c) each year give to every member a benefit statement showing the member's actual benefits and the member's accrued portable benefits;
 - (d) during the first five years after registration, carry out an actuarial valuation every two years, thereafter at least every five years so as to review and determine the sound funding of the pension scheme;
 - (e) in managing its assets, aim to maintain at any time the real value of its members' accrued portable benefits; and

- (f) grant to members leaving the scheme before a benefit has become payable full portability of the accrued retirement benefits at the time the member leaves the scheme.
- (2) For the purposes of this section and the defined contribution schemes "portable benefits" means the total of the retirement contributions paid by the employee and the employer on the leaving member's account, plus interest during his participation under the plan.
- (3) Where a member leaves a scheme under paragraph (f) of subsection (1), in the case of—
 - (a) a defined contribution scheme, the portable benefits shall be the total of the retirement contributions paid by the member and the member's employer on the leaving member's account, plus interest during his participation under the plan; and
 - (b) a defined benefit scheme, the portable benefit shall amount to the present value of the accrued retirement pension.

19. Appointment of actuary

The manager in consultation with the board of trustees shall appoint an actuary to the fund, who shall not be bound to take directions from the manager, the trustees or the employer, and shall be financially independent from any such person or body.

20. Qualification of actuary

A manager shall not appoint an actuary to its pension scheme for the purposes of this Act unless the actuary so appointed has an actuarial qualification equivalent to the one of an associate or fellow of the Institute of Actuaries of England and has the experience to perform the tasks assigned to him under this Act.

21. Actuary's rights and duties

- (1) An actuary appointed under section nineteen shall prepare an actuarial valuation of a pension scheme at the intervals stated in paragraph (d) of subsection (1) of section eighteen.
- (2) The actuary shall, upon any valuation of a pension scheme, prepare a report on the state of the fund with regard to the fund's ability to meet the obligations it has entered into in the pension plan rules and the affiliation agreement and shall make recommendations and state any action required to be taken by, the manager of such a pension scheme.
- (3) The actuary shall submit the report under subsection (2) to the manager, the trustees and the Registrar and a copy to the Minister.
- (4) The Registrar shall ensure that the recommendations made by the actuary are carried out by the manager and trustees, within the deadlines fixed by the Registrar in consultation with the actuary, the manager and the trustees.
- (5) A manager who contravenes this section shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

22. Accounts and audits

A manager shall after the end of each financial year cause to be prepared—

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure;
- (c) an audited statement of the administration cost;

- (d) an audited statement that the individual account for the members are duly established in accordance with the pension rules under this Act;
- (e) such other information as the Registrar may require in order to ensure compliance with the pension rules and this Act;

23. Appointment of auditor

- (1) The manager of a pension scheme shall appoint an auditor for each financial year.
- (2) A person shall not be qualified for appointment as an auditor unless he is a member in good standing of a professional association of accountants in Zambia under the Accountant's Act.
[Cap. 390]
- (3) The auditor appointed under subsection (2) shall not be bound to take directions from the manager, the trustees and the employer and shall be financially independent from any such person.
- (4) An auditor appointed under subsection (2) shall audit the accounts of the pension fund for the financial year for which he was appointed, and audit annually the pension fund so as to ensure compliance with this Act.
- (5) The auditor shall submit a report to the board of trustees and the manager of the pension scheme so audited.
- (6) The manager shall lodge a copy of its accounts in accordance with subsection (1) and the auditor's report to the Registrar within three months after the end of its financial year.

24. Investment policy

- (1) Each pension scheme shall have an investment policy so as to—
 - (a) achieve secure and profitable investments; and
 - (b) maintain at any time the real value of its members' accrued portable benefits
- (2) The manager of a pension scheme shall, at such times as the Registrar may require, prepare and furnish to the Registrar, a statement of existing and proposed investments for the pension scheme.

25. Investment of funds

- (1) A manager may invest in such type of investment as may be approved by the Registrar.
- (2) The Minister shall, regulate the minimum interest rate to be applied for calculating the portable benefits.
- (3) The Minister may issue investment guidelines relating to the upper limits for investment categories.
- (4) A pension fund shall not make unsecured loans to an affiliated employer or invest its assets abroad.

26. Returns

- (1) A manager shall prepare quarterly returns in the prescribed form relating to the investment of pension funds, and shall furnish the returns to the Registrar within fourteen days after their preparation.
- (2) The quarterly returns under subsection (1) shall be recorded in the register, and made available for inspection by the public; and inspection shall be free of charge to the members.

27. Institution of legal proceedings

A contributor may institute legal proceedings against a manager contravening this Act, pension plan rules or regulations so as to protect his contributions under a pension scheme:

Provided that any secured loan to an employer shall not exceed five percentum of the total assets of the pension fund.

28. Unsafe and unsound practices

- (1) Where in the opinion of the Registrar, the auditor, the actuary and the manager are pursuing any act or course of conduct that the Registrar considers as unsafe or of unsound business practice, the Registrar shall direct the manager of such a pension scheme to refrain from adopting or pursuing a particular course of action.
- (2) A manager shall comply with the directions given by the Registrar under subsection (1).
- (3) Directions given under this section shall be given by notice in writing to the manager of a pension scheme and may in like manner be varied or revoked.
- (4) A direction given under this section shall be effective immediately and shall remain in effect in accordance with its terms.
- (5) A manager acting in contravention of this section shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.

29. Examination of fund by Registrar

- (1) The Registrar may cause an on site examination to be made of a pension scheme's books of accounts so as to determine the viability of the fund and to determine whether the pension fund is operating prudently in accordance with section twenty-four.
- (2) An examination under subsection (1) shall be made by the Registrar if—
 - (a) he has reasonable cause to believe that the manager is contravening the Act;
 - (b) the manager has continued to contravene any requirement under this Act after notice has been given to him by the Registrar;
 - (c) the manager has failed to carry out the recommendations made by an actuary under this Act; or
 - (d) he has received a complaint from a member under a pension scheme.
- (3) The Registrar shall publish his findings in the *Gazette* within thirty days after he has concluded the examination under subsection (1) and shall furnish a copy to the manager.
- (4) Subject to subsection (1), the Registrar may give such directions as he sees fit to the manager so as to protect the member's interest.

30. General obligation of manager

A manager shall—

- (a) ensure that the pension scheme is at all times managed in compliance with this Act, pertaining regulations, the pension plan rules and directions of the Registrar;
- (b) take reasonable care to ensure that the administration of pension funds is carried out in the best interest of members of pension scheme and that members are informed periodically in accordance with the pension rules and this Act;

- (c) report to the Registrar immediately any occurrences which in his view could affect the rights of the members under the pension plan or under this Act;
- (d) report to the Registrar immediately if the contributions of an employer or a member are more than one month in arrears;
- (e) inform the Registrar of any mass-dismissals in process or impending with a contributing employer.

31. Protection against attachment

Notwithstanding anything contained in any other law, where any judgement or order has been obtained against a member, no execution or attachment or process of any nature shall be issued against the contributions of a member, or an employer, except in accordance with the terms of the pension scheme and such contributions shall not form part of the assets of the member or an employer in the event of bankruptcy.

32. Liability insurance

A manager in consultation with the auditor and the actuary shall take out liability insurance with a recognised insurance company against the negligence or dishonesty of the directors, officers or employees of a pension scheme in order to safeguard its member's contributions and a copy of the insurance policy shall be lodged with the Registrar.

Part V – De-registration and appeals

33. De-registration

- (1) The Registrar, in consultation with the actuary and the auditor, may de-register a pension scheme if it appears to him that the manager has contravened or failed to comply with any provision of, or requirements under, this Act or regulations made under this Act or the pension plan rules.
- (2) The Registrar shall, before taking any action under this section, satisfy himself so far as he reasonably can, that the action would not unfairly operate to the detriment of a contributor of a pension scheme.
- (3) The Registrar may appoint a curator who in the opinion of the actuary and of the auditor has had training and experience in pension fund management, to advise the manager on the implementation of such measures as may be specified by the Registrar after consultation with the actuary and the auditor to restore the pension scheme to a sound financial and operating condition.
- (4) When a curator is appointed under this section, the manager and any of his employees shall act in accordance with every instruction given by the curator concerning the pension scheme or any part of the pension scheme's administration and operations that is regulated by or under this Act.
- (5) If a manager fails to comply with any instruction of a curator appointed under this section, he shall be guilty of an offence and liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.
- (6) The curator shall comply with any written instruction of the Registrar, and in all other matters shall act honestly and in good faith so as to restore the pension scheme to a sound financial and operating condition.
- (7) Any act or omission of the manager in accordance with a direction of the curator shall be binding upon the manager, but no person shall have any right or claim against the curator or the Registrar as a result of any direction given by the curator in good faith in accordance with this Act.
- (8) The curator shall advise the Registrar within six months following the curator's appointment whether in his opinion the pension scheme can be restored to a sound financial and operating condition within a reasonable time, or should be de-registered.

- (9) The Registrar shall not be bound to accept the advice of a curator under subsection (8).

34. Notification

- (1) The Registrar shall within fourteen days after his decision to de-register a pension scheme notify, in writing—
- (a) the manager, the actuary and the auditor;
 - (b) the members of such a pension scheme;
 - (c) the employer of a member and any other person otherwise entitled to any funds held by the pension fund;
- of the decision to de-register the pension scheme.
- (2) A notice for the purposes of subsection (1), shall set forth such information as the Registrar may require by notice to the manager, contributor and contributor's employer.

35. Rights of contributors

- (1) The decision of the Registrar under this Part for de-registration of a pension scheme shall not prejudice the rights of a contributor or other creditor to payment in full of a claim against the scheme.

36. Powers of Registrar if assets insufficient

If the Registrar finds that the assets of a pension scheme that is de-registered shall not be sufficient for the full discharge of its obligations to its members, the Registrar may take over the distribution of the assets and the supervision of the pension fund so as to protect contributors' interest under the pension scheme so de-registered and such distribution shall take place only after a corresponding distribution plan has been established by the Registrar.

37. Appeals

- (1) Any person aggrieved by the Registrar's refusal to register a pension scheme, renew a certificate of registration on its expiry, or decision to de-register a pension scheme, may appeal to the Minister within thirty days after the decision of the Registrar in the manner prescribed by the Minister, by statutory instrument.
- (2) A person not satisfied with the decision of the Minister under subsection (1) may appeal to the High Court within thirty days.
- (3) The Registrar shall give effect to the decision of the Minister under subsection (1) pending a decision of the High Court.
- (4) Where an appeal is disallowed by the Minister or the High Court, the Registrar shall take adequate steps to ensure the member's interest under the pension scheme are protected.

Part VI – Miscellaneous

38. General guidelines

The Registrar shall have power to prescribe and publish guidelines or other regulatory statements as he, in consultation with the actuaries and the auditors, may consider necessary or desirable for the administration and execution of this Act.

39. Appointment of inspectors

- (1) In order to ensure compliance with the provisions of this Act the Minister may appoint suitably qualified public officers as inspectors for the purposes of this Act.
- (2) Every inspector shall be provided with a certificate of appointment, and in the exercise of any powers of the inspector under this Act, the inspector shall produce the certificate for inspection by any person reasonably requiring its production.

40. Powers of inspectors

For the purposes of this Act, an inspector may at any reasonable time, enter the premises where a pension scheme is operating and inspect any accounts, documents or records relating to a pension scheme so as to determine the viability of such a pension scheme.

41. Obstruction of inspectors

A person who—

- (a) delays or obstructs an inspector in the exercise or performance of the inspector's powers and functions;
- (b) refuses to give an inspector such reasonable assistance as the inspector may require for the purpose of the exercise of the inspector's power under this Act; or
- (c) gives an inspector false or misleading information in answer to any inquiry made by the inspector;

shall be guilty of an offence and shall be liable, upon conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

42. General penalty

- (1) Any person who—

- (a) contravenes any provision of this Act that is expressly stated to be an offence but for which no other penalty is provided; or
- (b) fails to comply with any direction given by the Registrar under this Act;

shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

- (2) In the case of any offence under this Act committed by a body of persons—

- (a) in the case of a body corporate, every director or similar officer of the body shall be guilty of the offence; and
- (b) in the case of a partnership, every partner shall be guilty of an offence.

- (3) A person shall not be guilty of an offence under subsection (1), if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance or that he attempted to prevent the commission of the offence having regard to all the circumstances of the case.

43. Exemption from Banking and Financial Services Act

The Banking and Financial Services Act shall not apply to any pension scheme registered under this Act in so far as it relates to the regulation and supervision of a pension scheme.

[Cap. 387]

44. Transitional provisions

Any pension scheme to which this Act applies that was operating immediately before the commencement of this Act shall apply to the Registrar for registration within ninety days after the commencement of this Act.

45. Tax exemptions

Any pension scheme to which this Act applies shall be entitled to tax exemptions as may be provided for under the Income Tax Act.

[Cap. 323]

46. Regulations

- (1) The Minister, in consultation with the Minister responsible for labour and social security, and the Registrar, may, by statutory instrument, make regulations to give effect to the provisions of this Act, and to prescribe anything which by the provisions of this Act is required to be prescribed.
- (2) Without limiting the generality of subsection (1), regulations may provide for the following matters:
 - (a) the form and manner of making applications for registration of a pension scheme and fees payable for such application;
 - (b) prescribe investment guidelines; and
 - (c) the form and manner of appeals.