

**ACT 679**  
**LONG-TERM SAVINGS SCHEME ACT, 2004**

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**ACT 679****LONG-TERM SAVINGS SCHEME ACT, 2004<sup>1</sup>**

**AN ACT to establish a Long-term Savings Scheme; to provide the general framework for the operation and regulation of the Scheme, and to provide for related matters.**

*Long-term Savings Scheme and Long-term Savings Agency**The Scheme***1. Establishment of Scheme**

There is established by this Act a Long-term Savings Scheme.

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1. This Act was assented to on 11th November, 2004, and notified in the *Gazette* on 12th November, 2004.

## 2. Object of the Scheme

The object of the Scheme is to provide for the operation of tax-incentive-based voluntary savings plans, which shall provide for any one or more of the following:

- (a) retirement savings;
- (b) savings for home ownership and educational needs;
- (c) savings for an all purpose plan;
- (d) lump-sum payment on account of physical or mental disability; and
- (e) lump-sum payment to dependants in the event of death, of a contributor to a plan.

## 3. Establishment of the Agency

(1) There is hereby established by this Act a Long-term Savings Scheme Agency.

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

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

## 4. Functions of the Agency

The Agency shall administer and operate the Scheme and shall for that purpose

- (a) formulate and pursue policies to achieve the object of the Scheme;
- (b) in consultation with the Securities and Exchange Commission take measures to protect the interests of contributors where the solvency of a funds manager is in doubt;
- (c) carry out research in relation to the Scheme and protect the integrity of the Scheme against any abuses;
- (d) promote and educate the public on the Scheme;
- (e) monitor and evaluate the operations and performance of the Scheme;
- (f) receive and process applications from persons who want to operate as funds managers under this Act for approval;
- (g) put in place structures for the Scheme and issue guidelines and notices as required for the proper operation of the Scheme;
- (h) publish the manuals that it considers necessary for the conduct and operation of the Scheme; and
- (i) advise the Minister on all matters relating to the Scheme.

## 5. Power of the Agency to request for production of books

(1) The Agency may by notice in writing at any time, if the Council considers that there is sufficient cause to do so, give directions to a funds manager, a trustee, an employer, or any other person, to produce to a person authorised by the Agency, the books or records specified in the notice.

(2) The Agency may in writing authorise a person possessed of the qualification that the Council considers adequate, to exercise the power to request for the production of books conferred on the Agency under this section.

(3) Where the Agency or a person authorised by the Agency requires the production of books under this section and a person has a lien on the books, the production of the books shall not prejudice the lien.

(4) An action shall not lie against a person for complying with a direction or requirement to produce books made or given under this section.

(5) A request to produce books or records under this section extends, if the person is a body corporate, to a person who is or has been an officer of the body corporate whether that body corporate is in the course of being wound up or has been dissolved.

## **6. Powers of the Agency in relation to books required to be produced**

(1) Where the required books are produced under section 5 (1), the person to whom they are produced

- (a) may take possession of them, make copies of them, or take extracts from them;
- (b) may require a person who was party to the compilation of the books to make a statement providing an explanation of any matters contained in the books;
- (c) may retain possession of the books for as long as the Council considers necessary to enable the books to be inspected and copies of or extracts from the books to be made or taken by or on behalf of the Agency; and
- (d) shall permit the person who produced them, on giving a reasonable notice and specification of the books, to have access to them.

(2) Where the books are not produced, the Agency or the authorised person may require the person who should have produced the books

- (a) to state, to the best of that persons knowledge and belief, where the books may be found;
- (b) to identify the person who, to the best of that person's knowledge and belief, last had custody of the books and where the person may be found; or
- (c) to state the reasons why the books cannot be produced.

## **7. Power of Agency to conduct investigation and inspection**

(1) Where the Council has reason to suspect that a person has committed an offence under this Act or has been guilty of fraud or dishonesty in relation to dealing in plan activities, it may conduct the investigation that it considers appropriate in accordance with this Act.

(2) The Agency may inspect the books, accounts, documents and transactions of a funds manager or trustee.

(3) The Agency may appoint a person possessed of the qualification that the Council considers adequate, to exercise the power of the Agency under subsection (1).

(4) For the purposes of an inspection under this section, the funds manager or trustee shall afford the Agency access to, and shall produce books, accounts and documents and shall give the information and provide the facilities required to conduct the investigation or inspection.

(5) A person appointed by the Agency under subsection (3) shall have the power to copy or take possession of the books, accounts and any other documents of a funds manager or trustee.

(6) A funds manager or trustee, who fails, without reasonable excuse, to produce any book, account or document, information or facilities in accordance with subsection (4) commits an offence under this Act and is liable on summary conviction to a fine of not less than one thousand penalty units or to a term of imprisonment of not less than three years or to both the fine and the imprisonment.

### *The Council*

#### **8. Governing Council of the Agency**

(1) The governing body of the Agency is a Council.

(2) The Council shall provide policy direction for the Scheme and shall ensure that the functions of the Agency are effectively and efficiently performed.

(3) The Council consists of

- (a) the chairperson,
- (b) one representative of each of the following:
  - (i) the Ministry of Finance and Economic Planning, not below the rank of director,
  - (ii) the Ministry of Manpower Development and Employment, not below the rank of director,
  - (iii) the Ghana Employers Association,
  - (iv) the Ghana Securities Industry Association,
  - (v) the Ghana Association of Bankers,
  - (vi) the Ghana Insurers Association, and
  - (vii) organised labour,
- (c) two other individuals representing the informal sector, one of whom is a woman, and
- (d) the Administrator of the Agency.

#### **9. Appointment of members of the Council**

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

(2) The President shall in appointing the chairperson and the other members of the Council under subsection (1) consider the integrity expertise, experience, and knowledge of the persons in matters relevant to the functions of the Agency.

**10. Tenure of office of members of the Council**

(1) The chairperson and the members of the Council shall hold office for a period not exceeding four years and are eligible for re-appointment.

(2) A member of the Council may resign from the office at any time by letter addressed to the President through the Minister.

(3) A member who is absent from four consecutive meetings of the Council without sufficient cause ceases to be a member of the Council.

(4) The chairperson or any other member of the Council may be removed from office by the President for inability to perform the functions of office, for stated misbehaviour or for any other just cause.

(5) The chairperson of the Council shall notify the Minister of vacancies that occur in the membership of the Council within one month of the occurrence of the vacancy.

(6) Where a person is appointed to fill a vacancy that person shall hold office for the remainder of the term of the previous member and shall subject to the provisions of this Act be eligible for re-appointment.

**11. Meetings of the Council**

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

(2) The chairperson shall on the request of not less than one third of the membership of the Council convene a special meeting of the Council.

(3) The quorum at a meeting of the Council is seven members.

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

(5) Matters before the Council shall be decided by a majority of the members present and voting.

(6) The person presiding at a meeting of the Council shall in the event of an equality of votes have a casting vote.

(7) The Council may co-opt a person to act as an adviser at its meetings but a co-opted person is not entitled to vote at a meeting of the Council.

(8) The validity of the proceedings of the Council shall not be affected by a vacancy in membership or by a defect in the appointment or qualification of a member.

(9) Except as otherwise provided under this section, the Council shall determine and regulate the procedure for its meetings.

**12. Committees of the Council**

The Council may for the purposes of achieving the object of the Scheme appoint committees of the Council comprising members of the Council or non-members or both and may assign to a committee any of the functions that the Council may determine.

**13. Disclosure of interest**

(1) A member of the Council who has an interest in a matter being considered or dealt with by the Council shall disclose the nature of that interest to the Council and shall not take part in the deliberations or decision of the Council with respect to that matter.

(2) A member who has an interest in a matter before the Council and who fails to disclose that interest under subsection (1) ceases to be member of the Council.

**14. Allowances for members of the Council**

The chairperson and the other members of the Council shall be paid the allowances determined by the Minister.

*Finance and Administration***15. Funds of the Agency**

(1) The funds of the Agency include

- (a) money accruing to the Agency in the course of performance of its functions under this Act,
- (b) money accruing to the Agency from the fees imposed under this Act,
- (c) grants received from the Government by the Agency for the performance of its functions,
- (d) loans granted to the Agency by the Government or by any other body or person, and
- (e) grants approved by the Minister to be made to the Agency by donors.

(2) Funds received by or on behalf of the Agency shall be deposited to the credit of the Agency in an account in a bank or banks approved by the Council.

**16. Fees**

(1) The Agency is entitled to fees charged on returns on plan funds or assets under management of the funds managers at a rate that shall be determined by the Agency in consultation with the funds managers.

(2) A funds manager shall deduct the fee from the total returns on plan funds or assets under management of the funds managers and remit the deduction to the Agency at the end of every quarter.

(3) The fee remitted to the Agency under subsection (2) shall be applied by the Agency for the purposes

- (a) of the operational and other expenses of the Agency, and
- (b) any other uses of benefit to the Scheme that the Agency may determine in accordance with the Regulations.

**17. Appointment and responsibility of the Administrator**

(1) The President acting in accordance with article 195 of the Constitution shall appoint an Administrator for the Agency.

(2) The Administrator shall

- (a) hold office on the terms and conditions specified in the letter of appointment, and
- (b) be a member of the Council.

(3) Subject to the directions of the Council, the Administrator is responsible for the day-to-day administration of the affairs of the Agency and shall ensure the implementation of the decisions of the Council.

#### **18. Appointment of other staff**

(1) The Agency shall have a secretary to the Council and any other staff necessary for the effective and efficient performance of the functions of the Agency.

(2) The President acting in accordance with article 195 of the Constitution, shall appoint the officers and the other members of staff who shall hold office on the terms and conditions specified in their letters of appointment.

(3) Other public officers may be transferred or seconded to the Agency.

#### **19. Delegation of power of appointment**

The President may in accordance with article 195 (2) of the Constitution, delegate the power of appointment of public officers under this Act.

#### **20. Accounts and audit**

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

(2) The books of account of the Agency shall be audited by the Auditor-General within six months after the end of each financial year.

(3) In addition to the annual audit, technical audits may be conducted on a selective basis by the Auditor-General.

#### **21. Annual report**

(1) The Council shall submit to the Minister as soon as practicable and in any event not more than eight months after the end of each financial year a report dealing generally with the activities and operation of the Agency during the year to which the report relates.

(2) The report shall include

- (a) the audited accounts of the Agency and the Auditor-General's report on the accounts of the Agency, and
- (b) any other information as the Council considers necessary.

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

#### **22. Financial year**

The financial year of the Agency shall be the same as the financial year of the Government.



*Contributions***23. Operation of plans**

(1) A plan consists of contributions by a person into a fund managed by a funds manager on terms, conditions and rules agreed on between the funds Manager and the contributor, for one or more of the purposes specified in section 2.

(2) A person becomes a contributor if that person completes a form approved by the Agency and submits that form to a funds manager for the purpose, and accepts to abide by the plan rules.

(3) A contributor shall receive a copy of the plan rules on joining a plan.

(4) The objectives of a plan and the benefits to be derived from the plan shall be clearly stated in the plan rules and any information documents issued in relation to the plan.

(5) The plan rules shall set minimum contributions to a plan, as determined by the Agency by notice published in the *Gazette*.

(6) Despite subsection (5) a funds manager may with the approval of the Agency accept contributions below the minimum contributions.

(7) The plan rules shall, subject to the provisions of this Act, set out the conditions and procedures for withdrawal of moneys standing to the credit of a contributor to a plan.

**24. Plan contributions**

(1) A person may, subject to section 23 (2) contribute to a plan on that person's own behalf or on behalf of a named beneficiary.

(2) An employer may in accordance with an agreement with its employee contribute to a plan on behalf of that employee.

(3) A contribution made and the returns earned from investment of the contribution shall, subject to deductions of fees in accordance with this Act and the plan rules, be credited to the account of the contributor.

(4) Contributions may be made to a plan by or on behalf of a contributor after the retirement of the contributor from employment.

(5) A contribution shall not be made to a plan on behalf of a contributor on or after the death of the contributor.

(6) Ownership of an employer's contributions on behalf of an employee shall not vest in the employee until at the end of the vesting period.

(7) Subject to subsection (6), an employer's contributions to a plan on behalf of an employee shall be the personal property of that employee.

(8) Despite subsection (6), except for termination for proven misconduct, in the event of severance by the employer of the employment relationship with the contributor, or in the event of liquidation of the employer, an employer's contributions for its employee shall vest in the employee even if the vesting period has not expired.

(9) Subject to subsection (8), a contributor shall forfeit the total amount of the employer's contributions for that contributor if the contributor leaves the employment of the employer before the end of the vesting period.

(10) On the death of a contributor before the expiry of or after expiry of the vesting period, the contributions by the contributors portfolio shall devolve on the estate of the contributor.

(11) Subject to this Act and the Regulations, funds standing to the credit of an employee under a provident fund sponsored by an employer or employee group, may at any time within nine months or a longer period that the Agency may by notice specify, be transferred to a plan as contribution, pursuant to an agreement

- (a) between the employer and the employee, or
- (b) among the employee group.

(12) Section 30 shall apply to contributions made pursuant to section 24 (11) after the coming into force of this Act.

## **25. Withdrawal of portfolio**

Subject to sections 26, and 30 (6), (7) and (8), a contributor or a beneficiary specified by the contributor may withdraw all or part of the contributor's portfolio from a plan

- (a) after ten years from the date of first contribution in the case of a group personal retirement plan or an individual retirement plan;
- (b) after eight years from the date of first contribution in the case of an all purpose plan,
- (c) after five years from the date of first contribution in the case of a home ownership plan or an educational savings plan, except that a withdrawal shall not be allowed from a home ownership plan or an educational savings plan for a purpose other than for home ownership or educational purpose,
- (d) at any time following a certification by a medical board that the contributor is incapable of a normal gainful employment by virtue of a permanent physical or mental disability, or
- (e) at any time by the beneficiaries of the estate of a deceased contributor.

## **26. Contributor leaving employment**

(1) Subject to section 24 (7), where a contributor for any reason leaves the employment of an employer who contributes to a plan on behalf of the contributor

- (a) before the expiry of the vesting period
  - (i) the contributor may by notice in writing request the funds manager to transfer the contributor's portfolio to another plan operated by that funds manager or to a plan operated by a funds manager specified by the contributor, or may, subject to section 30 (6), (7) and (8) withdraw all or part of the contributor's portfolio;
  - (ii) the funds manager shall ensure that the total amount of the employer's contributions together with the returns earned on the contributions are refunded to the employer of the contributor at the same

time that the transfer or withdrawal of the contributor's portfolio is made;

- (iii) the total amount of the employer's contributions and returns refunded under subparagraph (ii) shall be taxable as income in the hands of the employer in the year of the refund; and
  - (iv) the funds manager shall issue a notice of refund to the Agency and the Commissioner of the Internal Revenue Service at the same time as the refund is made to the employer's account under subparagraph (ii);
- (b) after the vesting period, the contributor may
- (i) request the funds manager to transfer the contributor's portfolio to another plan operated by the funds manager;
  - (ii) request the funds manager to transfer the contributor's portfolio to a plan operated by a funds manager specified by the contributor; or
  - (iii) subject to section 30 (6), (7) and (8) withdraw the portfolio.

(2) A funds manager shall not act on a contributor's request for transfer or withdrawal of the contributor's portfolio without notice in writing to that contributor's employer if that employer has contributed to the plan on behalf of the contributor.

(3) Subject to subsection (2), a funds manager shall ensure that on receipt of a notice under this section for a transfer by a contributor or an employer, the transfer is effected in accordance with the transfer notice not later than fourteen days from the date the transfer notice is received by the funds manager.

#### **27. Right of contributor to convert plan**

(1) Subject to subsections (2) and (3) and the provisions of the plan rules, a contributor may by notice in writing to the appropriate funds manager convert one plan to another plan.

(2) For purposes of this section, a conversion under subsection (1) shall be prospective and the date of service of the notice of conversion on the funds manager shall be the first date of contribution to the latter plan for purposes of determining the period of contribution to the latter plan.

(3) Where a person converts a plan into another plan in accordance with subsection (1), the tax benefits applicable to the latter plan under section 30 shall apply, with effect from the date the notice under subsection (1) is served on the appropriate funds manager.

#### **28. Creation of encumbrances in respect of contribution**

(1) Subject to subsection (2), a contributor may pledge or otherwise create a charge in respect of a part or all of that contributor's portfolio.

(2) Where a beneficiary of a pledge or charge created by a contributor under subsection (1) enforces the charge, the beneficiary is liable for the tax applicable to withdrawals under section 30.

**29. Duty of employer in respect of plan**

Despite the provisions of any plan rules or an agreement to the contrary, an employer shall

- (a) provide the administrative and accounting facilities required to enable each employee to join a plan of the employee's choice and contribute to that plan;
- (b) without prejudice to subsection (a), an employer shall make appropriate payroll deductions from the monthly remuneration of an employee who wishes to contribute to a plan and remit the contributions to the funds manager of the plan within fourteen days after the end of the month of deduction.
- (c) not co-mingle payroll deductions under this Act with the employer's own funds and where an employer deducts contributions from the salary of an employee under this Act, the contributions shall be held by the employer in trust for the purposes of this Act until remitted to the appropriate Funds Manager, and
- (d) exercise in good faith any other duties conferred by the plan rules.

*Tax Reliefs***30. Tax reliefs**

(1) Subject to subsections (2) and (3), contributions made by an employer to a plan on behalf of a contributor, shall for the purposes of income tax, be treated as part of the deductible income for that employer for any tax year.

(2) Contributions not exceeding in total, seventeen and one half percent of a contributor's monthly income, made by a contributor or the contributor's employer or both a contributor and the contributor's employer to a group personal retirement plan or to an individual retirement plan, shall for the purposes of income tax, be treated as deductible income for the contributor and the contributor's employer to the extent of their respective contributions.

(3) Contributions not exceeding in total, fifteen percent of a contributor's monthly income, made by a contributor or a contributor's employer or both a contributor and the contributor's employer to an educational savings plan or to a home ownership plan shall for the purposes of income tax, be treated as deductible income for the contributor and the contributor's employer to the extent of their respective contributions.

(4) Contributions not exceeding in total, ten percent of a contributor's monthly income, made by a contributor or a contributor's employer or both a contributor and the contributor's employer for the all purpose plan shall for the purposes of income tax, be treated as deductible income for the contributor and the contributor's employer to the extent of their respective contributions.

(5) Investment income including capital gains, earned from the investment of plan funds shall for the purposes of income tax, be treated as deductible income.

(6) A withdrawal of all or a part of a contributor's portfolio under a group personal retirement plan or an individual retirement plan

- (a) on or after retirement is tax exempt;

- (b) before ten years of contributions and before retirement is subject to the appropriate income tax and a surcharge of ten percent of the income earned on the amount withdrawn.
- (7) A withdrawal from a home-ownership plan or educational savings plan
- (a) after five years of contributions is tax exempt if the amount withdrawn is used for home ownership or educational purposes, or
- (b) before five years of contributions or for purposes other than home-ownership or education is subject to the appropriate income tax and a surcharge of ten percent of the income earned on the amount withdrawn.
- (8) A withdrawal from an all purpose plan
- (a) after eight years of contributions is exempt from tax, or
- (b) before eight years of contributions is subject to the appropriate income tax and a surcharge of ten percent of the income earned on the amount withdrawn.
- (9) Despite section 30 (6), (7) and (8) where a contributor withdraws from a plan before the times specified for tax-exempt withdrawals under subsections (6) (a) and (7) (a) and (8) (a), certification by a medical board that the contributor is incapable of a normal gainful employment by virtue of a permanent physical or mental disability, the contributor's withdrawals shall be exempt from tax.
- (10) A withdrawal from a plan at any time by the beneficiaries of the estate of a deceased contributor shall be exempt from tax.

### *Management of Plans*

#### **31. Management of plan funds**

Plan funds shall be managed by a funds manager approved by the Agency under this Act.

#### **32. Qualification of funds manager**

A person does not qualify as a funds manager for the purposes of this Act unless that person is licensed by the Security and Exchange Commission as an investment adviser under the Securities Industry Act, 1993<sup>2</sup> as amended and

- (a) is a body corporate,
- (b) is a wholly-owned subsidiary of
- (i) an insurance company,
- (ii) a bank, or
- (iii) a non-bank financial institution, and
- (c) has obtained approval from the Agency to manage plan funds under this Act.

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2. P.N.D.C.L. 333.

**33. Application for approval of funds manager**

(1) A person who wishes to operate as a funds manager of a plan shall apply in writing in the prescribed form to the Agency for approval.

(2) The Agency shall within fourteen days of receiving an application for approval and on satisfying itself that the applicant has satisfied the preconditions including the payment of the fees required for approval, grant approval to the applicant.

(3) The Agency may grant approval subject to the conditions or restrictions that the Council considers appropriate and the Agency may at any time by written notice to a funds manager vary a condition or restriction in relation to the approval.

(4) A person granted approval to operate as a funds manager under this Act shall satisfy the security and investment requirements prescribed in the Regulations.

(5) Where the Agency is not satisfied with the application, the Agency may, in writing to the applicant, within fourteen days after receiving the application,

- (a) request the applicant to rectify an error in the application or to satisfy a precondition for the grant of approval, within twenty-one days and grant the approval on the rectification of the error or satisfaction of the preconditions within the specified time; or failing which the Agency shall refuse to grant approval, or
- (b) refuse to grant the approval.

(6) Where an application for approval is refused, the Agency shall state the reasons for the refusal in the notice of the refusal to the applicant.

(7) An applicant dissatisfied with the Agency's refusal to grant approval may apply to the Security Exchange Commission for settlement of the dispute.

(8) Where a settlement is not achieved under subsection (7) the applicant may apply to the High Court for a review of the Agency's decision.

**34. Revocation and suspension of funds manager's approval**

(1) The Agency

- (a) shall revoke an approval granted to a person to operate as a funds manager under this Act if that person ceases to satisfy any of the qualifications required under section 32; and
- (b) may revoke or suspend an approval given to a person to operate as a funds manager if that person is in breach of any of the duties imposed under section 35 or is in breach of any of the provisions of this Act or the plan rules.

(2) Where the Agency suspends or revokes an approval under subsection (1), the Agency shall within seven days after the decision to suspend or revoke the approval give notice of the decision to the funds manager affected by the decision.

(3) Where the Agency suspends an approval given to a person to operate as a funds manager, the Agency shall in the notice under subsection (2) specify the defect, omission or breach which has occasioned the suspension and request the person to remedy the defect within thirty days after the notice.

(4) If under subsection (3) the defect, omission or breach is remedied within the time specified, the Agency shall by notice in writing to that person restore its approval for that person to manage plan funds, otherwise the Agency shall revoke the approval granted to that person to operate as a funds manager.

(5) Where the Agency revokes an approval granted to a person to operate as a funds manager under this Act

- (a) subject to paragraph (d), the Agency shall immediately assume responsibility for the management of the plan funds managed by the affected funds manager and the depository institution holding the plan funds shall accord immediate recognition to the Administrator and secretary of the Agency as the signatories of the account of the plan funds to replace the signatures of the funds manager;
- (b) the Agency shall within seven days of revocation of the approval, notify the general public through the electronic media, publication in the *Gazette* and a newspaper of wide national circulation of the revocation;
- (c) the Agency shall within seven days of revocation of an approval, issue a written notice to every contributor and employer of the contributor, where applicable, informing them of the action of the Agency and requesting them to discontinue further contributions to the plan; and
- (d) a contributor to a plan managed by the affected funds manager may by notice to the Agency request the Agency to transfer that contributor's portfolio to a plan operated by a funds manager specified in the notice or may, subject to section 30 (6), (7) and (8) withdraw the portfolio.

(6) Despite subsection (5) where the revocation of the approval is in relation to

- (a) a funds manager ceasing to satisfy the qualifications required under section 32, or
- (b) insolvency of the funds manager,

the Agency shall refer the matter to the Securities and Exchange Commission for the necessary action.

(7) A person who is dissatisfied with the decision of the Agency to revoke or suspend an approval granted to that person by the Agency to operate as a funds manager under this Act may apply to the Securities and Exchange Commission for settlement of the dispute.

(8) Where a settlement is not achieved under subsection (7) the applicant may apply to the High Court for a review of the Agency's decision.

(9) A depository institution which refuses or fails to comply with subsection (5) (a) commits an offence and is liable on summary conviction to a fine of not less than two thousand penalty units.<sup>3</sup>

### **35. Duties and prohibited activities of a funds manager**

A funds manager shall

- (a) manage the plan funds in accordance with the stated objectives of the plan;
- (b) make investments not prohibited by the Agency;

3. The reference to a term of imprisonment has been omitted as an institution cannot be sent to jail.

- (c) not pledge or otherwise encumber the plan assets;
- (d) make investments on an arm's length basis;
- (e) ensure the solvency of the plan funds at all times and ensure that enough funds are available for withdrawals as and when required;
- (f) submit to each contributor at the intervals prescribed by the Agency, a periodic account of contributions and returns on contributions;
- (g) maintain adequate systems of internal controls;
- (h) submit to the inspections that the trustee appointed under section 39 may in the performance of the functions of a trustee, require;
- (i) submit to the trustee at such intervals as shall be prescribed by the Agency, periodic reports and accounts of contributions, returns on contributions and withdrawals from the plan funds;
- (j) submit on a date specified by the trustee any other reports and records that the trustee in the performance of the duties of a trustee may require;
- (k) submit to any technical audits that the Agency may require;
- (l) submit the records and reports required by the Agency to the Agency;
- (m) display evidence of the Agency's approval to operate as a funds manager in a conspicuous place on its premises and quote its approval number in any advertisement or information document in which it offers its services as a funds manager; and
- (n) abide by the Rules and Regulations made under this Act or directions given by the Agency and perform any other functions that may be imposed by the plan rules and Regulations made under this Act.

### **36. Permitted investment of plan fund**

(1) The Agency shall determine an appropriate holding by Funds Managers of secure interest bearing investments of plan funds so as to ensure the safety and liquidity of plans.

(2) Subject to subsection (1) and the plan rules, a contributor may specify which of the plan manager's products the contributor's portfolio should be invested in.

### **37. Permitted expenditure from plan**

A funds manager shall not charge any expenditures or make any deductions from the plan funds other than those prescribed by the Agency or authorised under this Act.

### **38. Fees of funds manager**

A funds manager shall be paid out of gross earnings on investment of plan funds, a fee as shall be agreed with each contributor subject to the limits determined by the Agency through notices.

### **39. Appointment of trustee for plan**

(1) A funds manager shall appoint for every plan, a trustee approved by the Agency.



(2) A person shall not qualify to be appointed a trustee under subsection (1) unless that person is an investment adviser, a trustee of a unit trust scheme or a custodian of a mutual fund, licensed by the Securities and Exchange Commission under the Securities Industry Act, 1993<sup>3</sup> as amended, and is

- (a) a wholly-owned subsidiary of a bank or insurance company or a non-bank financial institution;
- (b) is independent of the funds manager;
- (c) has satisfied any security requirement prescribed by the Agency to be satisfied or to be paid; and
- (d) has paid the requisite approval fee prescribed by the Agency.

(3) A person who wishes to operate as a trustee for a plan shall apply in writing in the prescribed form to the Agency for approval, accompanied by a copy of a trust deed for the plan prepared in a form prescribed by the Agency.

(4) The Agency shall within fourteen days of receiving an application for approval and on satisfying itself that the applicant has satisfied the preconditions including the payment of the fees required for approval, grant approval to the applicant.

(5) The Agency may grant approval subject to the conditions or restrictions that the Council thinks fit, and the Agency may at any time by written notice to a trustee vary a condition or restriction in relation to the approval.

(6) Where the Agency is not satisfied with the application, the Agency may, in writing to the applicant, within fourteen days after receiving the application

- (a) request the applicant to rectify an error in the application or to satisfy a pre-condition for the grant of approval, within twenty-one days and grant the approval on the rectification of the error or satisfaction of the pre-condition within the specified time; or
- (b) refuse to grant the approval.

(7) Where an application for approval is refused, the Agency shall state the reasons for the refusal, in the notice of the refusal to the applicant.

(8) An applicant dissatisfied with the Agency's refusal to grant approval may apply to the Security Exchange Commission for settlement of the dispute.

(9) Where a settlement is not achieved under subsection (8) the applicant may apply to the High Court for a review of the Agency's decision.

#### **40. Duties and powers of a trustee**

(1) A trustee of a plan shall in addition to any other duties imposed by the trust deed

- (a) hold plan assets in its name on behalf of contributors;
- (b) where applicable, ensure that contributions are remitted to the funds manager in accordance with the plan rules and this Act;
- (c) exercise fiduciary duties conferred by the trust deed in good faith and in the interest of contributors;

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- (d) ensure that at the expiration of the period specified for the maturity of a plan or an earlier period permitted by this Act, a contributor's portfolio is liquidated and paid to the contributor in accordance with the plan rules and this Act;
- (e) conduct the inspections of books and records of the funds manager as are necessary for the performance of the functions imposed on the trustee by this Act and under the plan rules and notify the Agency of a breach of duty on the part of the funds manager; and
- (f) submit to the Agency on a date specified by the Agency, the records and reports in relation to the performance of the functions of a trustee that the Agency may require.

(2) A trustee may with the approval of the Agency request a funds manager to submit periodic accounts and reports of the plan funds as the trustee considers appropriate.

#### **41. Suspension and revocation of trustee's approval**

##### **(1) The Agency**

- (a) shall revoke an approval granted to a person to operate as a trustee of a plan if that person ceases to satisfy any of the qualifications required under section 39 (2),
- (b) may revoke or suspend an approval given to a person to operate as a trustee if that person is in breach of any of the duties imposed under section 40 or is in breach of the plan rules.

(2) The Agency shall, not later than seven days after making a decision to suspend or revoke a trustee's approval, inform the trustee in writing of the decision and the reasons for the decision and request the trustee to directly inform contributors, their employers and the funds manager of the suspension or revocation.

(3) Where the approval of a trustee is suspended, the procedures specified under subsections (3) and (4) of section 34, shall apply to the trustee as appropriate.

(4) Where the Agency revokes an approval granted to a person to operate as a trustee of a plan, the Agency shall within seven days of revocation of the approval, notify the general public through the electronic media, publication in the *Gazette* and a newspaper of wide national circulation of the revocation.

(5) A person whose application for approval to act as a trustee for a plan is refused or whose approval is suspended or revoked by the Agency may apply to the Securities and Exchange Commission for a settlement of a dispute.

(6) Where a settlement is not achieved under subsection (5) the applicant may apply to the High Court for a review of the Agency's decision.

#### **42. Fees of trustee**

A trustee shall be paid a fee agreed on with the funds manager subject to the limits determined by the Agency.

*Miscellaneous Matters***43. Dispute resolution**

(1) Where a dispute arises between a contributor and a funds manager, or where a dispute arises between a trustee and a funds manager, the dispute shall first be submitted to the Agency.

(2) A dispute arising between a contributor and an employer in relation to deductions from the contributor's salary or in relation to an employer's breach of an agreement to make contributions on behalf of the contributor shall be referred to the National Labour Agency established under section 70 (3) of the Labour Act, 2003 (Act 651).

**44. Accounts and audit of funds manager and trustee**

(1) A funds manager or a trustee shall keep proper books and records in relation to the plan in the form determined by the Agency.

(2) A funds manager shall have an external auditor who shall audit the books and records of the plan funds at least once a year, and prepare an audit report, which shall include a statement

- (a) on the extent of compliance with the provisions of this Act and the Regulations;
- (b) on the extent of compliance with the plan's investment objective and other requirements under this Act and under the plan rules;
- (c) on the extent of solvency of the plan; and
- (d) on any other matter that the Agency may require under this Act or under the Regulations.

(3) A trustee shall have an external auditor who shall audit the records of the trustee relating to the plan funds at least once a year, and prepare an audit report, which shall include a statement on

- (a) the extent of compliance with the provisions of this Act and the Regulations,
- (b) the extent of compliance with the trustee's duties under the trust deed and under this Act, and
- (c) any other matter that the Agency may require under this Act or under the Regulations.

(4) Without limiting the scope of subsections (2) and (3), the Agency may order technical audits of the facilities, equipment, resources and accounts of a funds manager or a trustee to be conducted, as the Agency considers appropriate.

**45. Reports of funds manager or trustee**

(1) A person who is a funds manager or a trustee shall submit an annual report to the Agency within four months after the end of each financial year, detailing 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 44 (2) and (3) and a report on any other matter that the Agency may prescribe.

**46. Financial year**

The financial year of a funds manager or a trustee shall be the same as the financial year of the Agency.

**47. Protection of plan funds on liquidation**

- (1) In the event of a winding up by an employer,
  - (a) contributions made by that 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 as agreed with a contributor and the payroll deductions made from the contributor's salary but which have not been remitted to a funds manager at the time of liquidation, shall have priority.
- (2) Where a funds manager is being liquidated,
  - (a) that funds manager shall not receive under a plan operated by that funds manager, contributions from the date of the commencement of the winding up process of the funds manager, and
  - (b) a plan operated by that funds manager may with the approval of the contributor and on the directions of the Agency be merged with a plan operated by another funds manager by the transfer of the assets and liabilities of the plan to that other funds manager.

(3) Where a trustee is being liquidated, the funds manager of the plan to which the trust relates shall with the approval of the contributor and the Agency appoint another trustee approved by the Agency.

**48. Offences**

(1) A person who operates as a funds manager or as a trustee for a plan without the relevant approval as required under this Act, commits an offence and is liable on summary conviction to a fine of not less than two thousand penalty units or to a term of imprisonment of not less than ten years or to both the fine and the imprisonment.

- (2) A person who operates
  - (a) as a funds manager to a plan, or
  - (b) as a trustee to a plan,

when the approval granted under this Act to operate has been revoked or suspended, commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units or to a term of imprisonment of not less than five years or to both the fine and the imprisonment.

(3) An employer who makes deductions from a contributor's salary for the purpose of contribution to a plan and who fails to pay the sums deducted to a funds manager within fourteen days after the end of the month in which the deduction was made, is liable to pay interest on the amount not remitted at the prevailing 91 day Treasury Bill rate for each day during which the amount remained unremitted and if the amount still remained unpaid thirty days after the expiry of the initial fourteen days the employer commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units or to a term of imprisonment of not less than five years or to both the fine and the imprisonment.

(4) Where a body corporate commits an offence under this Act, every director of that body corporate shall be deemed to have committed that offence unless the director proves that the offence was committed without the director's consent or connivance or that the director exercised the due diligence to prevent the commission of the offence which the director ought to have exercised having regard to the nature of the director's functions and circumstances.

#### 49. Regulations

(1) The Minister on the advice of the Agency may, by legislative instrument, make Regulations for the effective implementation of this Act.

(2) Regulations made under subsection (1), may prescribe for

- (a) fees to be paid by a funds manager to the Agency for approval to operate as a funds manager of a plan;
- (b) fees to be paid by a Trustee to the Agency for approval to operate as a trustee of a plan;
- (c) fees to be paid by a contributor to a funds manager and fees to be paid by a funds manager to a trustee;
- (d) security and investment requirements to be by a funds manager;
- (e) the nature and types of investments that shall not be made by a funds manager from plan funds;
- (f) the nature and type of expenditures that shall not be made by a funds manager from plan funds;
- (g) the form of statements on contribution and returns on contributions that must be submitted to a contributor by a funds manager; and
- (h) for any other matter that will generally give effect to this Act.

#### 50. Interpretation

In this Act, unless the context otherwise requires,

**"Agency"** means the Agency established under section 3;

**"all purpose savings plan"** means a plan to which a contributor contributes personally or to which the contributor or the contributor's employer or both the contributor and the contributor's employer contribute, to provide savings for purposes determined by the contributor;

**"Auditor-General"** includes an auditor approved by the Auditor-General;

**"contributor"** means a person who joins a plan in accordance with section 23 (2) and contributes to a plan on that person's own behalf or on behalf of a minor or a person with disability;

**"Council"** means the governing body of the Agency established under section 8;

**"educational savings plan"** means a plan to which a contributor contributes personally or to which the contributor or the contributor's employer or both the contributor and the contributor's employer contribute, to provide savings for educational purposes for the contributor or a named beneficiary;

**“functions”** includes powers and duties;

**“funds manager”** means a person approved by the Agency to operate and manage a plan and its related funds under this Act;

**“gross earnings”** means income earned on investment of plan funds before deductions;

**“group personal retirement plan”** means a plan to which a contributor contributes personally, or to which a contributor or the contributor’s employer or both the contributor and the contributor’s employer contribute, to provide savings for the contributor on the contributor’s retirement;

**“home-ownership plan”** means a plan to which a contributor contributes personally, or to which a contributor or the contributor’s employer or both the contributor and the contributor’s employer contribute, to provide savings for the housing needs of the contributor;

**“individual retirement plan”** means a plan to which a contributor contributes personally, to provide savings for the contributor’s own retirement;

**“Minister”** means the Minister responsible for Finance;

**“plan”** means a savings plan and unless otherwise specified, includes a group personal retirement plan, an individual retirement plan, a home-ownership plan, an educational savings plan, an all purpose plan, and any other plan specified by the Minister;

**“plan assets”** means the total amount of contributions made to a plan and the returns earned on the contributions as variously invested in accordance with this Act, the Regulations and the plan rules;

**“plan funds”** means contributions to a plan and income accruing from the investments of the contributions;

**“plan rules”** includes rules made by the plan operator and accepted as binding by the contributor, for the effective administration of plans, and rules relating to the objectives, benefits, duties and obligations of the relevant parties under a plan;

**“portfolio”** includes the total amount of contributions and the returns earned on the contributions standing to a contributor’s credit less the approved fees under this Act and under the plan rules and before the end of the vesting period and employer contributions made on behalf of the contributor;

**“prescribe”** means prescribed by the Regulations;

**“Regulations”** means the Regulations made under this Act;

**“retirement”** means the attainment of the retirement age, or on voluntary retirement;

**“Scheme”** means the Scheme established by section 1;

**“Securities and Exchange Commission”** means the Securities and Exchange Agency established under section 1 of the Securities Industry Act, 1993<sup>5</sup> as amended;

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**“trustee”** means a person appointed by a funds manager and approved by the Agency under this Act to hold plan assets on behalf of contributors to a plan;

**“vesting period”** means the period determined by the employer not exceeding five years from the first contribution by the employer on behalf of the contributor during which period the contributor remained in the employment of the employer.

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